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**Title 3—**

**The President**

**Executive Order 13743 of October 13, 2016**

## Charitable Fundraising

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for a more comprehensive workplace giving program, it is hereby ordered as follows:

**Section 1**. Executive Order 12353 of March 23, 1982, as amended, is further amended as follows:

(a) By revising the introductory paragraph by deleting the term ''voluntary agencies'' and inserting in its place the term ''voluntary health and welfare organizations''; and by deleting the term ''recipient agencies'' and inserting in its place ''recipient organizations''.

(b) By revising section 1 of that order to read as follows:

''**Section 1**.

(a) The Director of the Office of Personnel Management shall make arrangements for voluntary health and welfare organizations to solicit contributions from Federal employees and members of the uniformed services at their places of employment or duty. Federal employees and members of the uniformed services can also be solicited to make pledges of volunteer time. These arrangements shall take the form of an annual Combined Federal Campaign in which eligible voluntary health and welfare organizations are authorized to take part.

(b) The Director shall consider permitting annuitants to make contributions to the Combined Federal Campaign through allotments or assignments of amounts from their Federal annuities. The Director may prescribe rules and regulations to govern the solicitation of such contributions and make arrangements to inform annuitants of their ability to make contributions in this manner.''

(c) By revising section 2(a) by deleting the term ''voluntary agencies'' and inserting in its place the term ''voluntary health and welfare organizations''.

(d) By revising the first clause of section 2(b)(1) to delete ''and of local communities''.

(e) By revising section 2(b)(2) by deleting the first instance of the word ''agencies'' and inserting in its place the word ''organizations''.

(f) By revising section 2(b)(3) by deleting the term ''Agencies'' and inserting in its place the term ''Organizations''; and by deleting the term ''charitable health and welfare agencies'' and inserting in its place the term ''charitable health and welfare organizations''.

(g) By revising section 2(b)(5) to read as follows:

''(5) Local voluntary, charitable, health and welfare organizations that are not affiliated with a national organization or federation but that satisfy the eligibility criteria set forth in this order and by the Director shall be permitted to participate in the Combined Federal Campaign.''

(h) By revising section 3 by deleting the term ''voluntary agencies'' and inserting in its place the term ''voluntary health and welfare organizations''.

(i) By revising section 5 to read as follows:

''**Sec. 5**. Subject to such rules and regulations as the Director may prescribe, the Director may authorize:

(a) outreach coordinators to conduct campaign promotion in a local Combined Federal Campaign; and

(b) central campaign administrators to administer application and pledging systems and to collect and disburse pledged funds.

Such authorizations shall, if made, ensure at a minimum that outreach coordinators and central campaign administrators operate subject to the direction and control of the Director and such local Federal coordinating entities as may be established; and manage the Combined Federal Campaign fairly and equitably. The Director may consult with and consider advice from interested parties and organizations, and shall publish reports on the management and results of the Combined Federal Campaign.''

(j) By revising section 6 to read as follows:

''**Sec. 6**. The methods for the solicitation of funds shall clearly specify the eligible organizations and provide a direct means to designate funds to such organizations. Where allocation of undesignated funds by the central campaign administrator is authorized by the Director, prominent notice of the authorization for such allocation shall be provided.''

**Sec. 2**. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) All rules, regulations, and directives continued or issued under Executive Order 12353, as amended, shall continue in effect until revoked or modified under the provisions of this order.

THE WHITE HOUSE,

*October 13, 2016.*

[FR Doc. 2016–25288

Filed 10–17–16; 8:45 am]

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# Presidential Documents

**Executive Order 13744 of October 13, 2016**

## Coordinating Efforts To Prepare the Nation for Space Weather Events

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to prepare the Nation for space weather events, it is hereby ordered as follows:

**Section 1.** *Policy*. Space weather events, in the form of solar flares, solar energetic particles, and geomagnetic disturbances, occur regularly, some with measurable effects on critical infrastructure systems and technologies, such as the Global Positioning System (GPS), satellite operations and communication, aviation, and the electrical power grid. Extreme space weather events—those that could significantly degrade critical infrastructure—could disable large portions of the electrical power grid, resulting in cascading failures that would affect key services such as water supply, healthcare, and transportation. Space weather has the potential to simultaneously affect and disrupt health and safety across entire continents. Successfully preparing for space weather events is an all-of-nation endeavor that requires partnerships across governments, emergency managers, academia, the media, the insurance industry, non-profits, and the private sector.

It is the policy of the United States to prepare for space weather events to minimize the extent of economic loss and human hardship. The Federal Government must have (1) the capability to predict and detect a space weather event, (2) the plans and programs necessary to alert the public and private sectors to enable mitigating actions for an impending space weather event, (3) the protection and mitigation plans, protocols, and standards required to reduce risks to critical infrastructure prior to and during a credible threat, and (4) the ability to respond to and recover from the effects of space weather. Executive departments and agencies (agencies) must coordinate their efforts to prepare for the effects of space weather events.

**Sec. 2**. *Objectives*. This order defines agency roles and responsibilities and directs agencies to take specific actions to prepare the Nation for the hazardous effects of space weather. These activities are to be implemented in conjunction with those identified in the 2015 *National Space Weather Action Plan* (Action Plan) and any subsequent updates. Implementing this order and the Action Plan will require the Federal Government to work across agencies and to develop, as appropriate, enhanced and innovative partnerships with State, tribal, and local governments; academia; non-profits; the private sector; and international partners. These efforts will enhance national preparedness and speed the creation of a space-weather-ready Nation.

**Sec. 3**. *Coordination*. (a) The Director of the Office of Science and Technology Policy (OSTP), in consultation with the Assistant to the President for Homeland Security and Counterterrorism and the Director of the Office of Management and Budget (OMB), shall coordinate the development and implementation of Federal Government activities to prepare the Nation for space weather events, including the activities established in section 5 of this order and the recommendations of the National Science and Technology Council (NSTC), established by Executive Order 12881 of November 23, 1993 (Establishment of the National Science and Technology Council).

(b) To ensure accountability for and coordination of research, development, and implementation of activities identified in this order and in the Action Plan, the NSTC shall establish a Space Weather Operations, Research, and Mitigation Subcommittee (Subcommittee). The Subcommittee member agencies shall conduct activities to advance the implementation of this order, to achieve the goals identified in the 2015 *National Space Weather Strategy* and any subsequent updates, and to coordinate and monitor the implementation of the activities specified in the Action Plan and provide subsequent updates.

**Sec. 4**. *Roles and Responsibilities*. To the extent permitted by law, the agencies below shall adopt the following roles and responsibilities, which are key to ensuring enhanced space weather forecasting, situational awareness, space weather preparedness, and continuous Federal Government operations during and after space weather events.

(a) The Secretary of Defense shall ensure the timely provision of operational space weather observations, analyses, forecasts, and other products to support the mission of the Department of Defense and coalition partners, including the provision of alerts and warnings for space weather phenomena that may affect weapons systems, military operations, or the defense of the United States.

(b) The Secretary of the Interior shall support the research, development, deployment, and operation of capabilities that enhance the understanding of variations of the Earth's magnetic field associated with solar-terrestrial interactions.

(c) The Secretary of Commerce shall:

(i) provide timely and accurate operational space weather forecasts, watches, warnings, alerts, and real-time space weather monitoring for the government, civilian, and commercial sectors, exclusive of the responsibilities of the Secretary of Defense; and

(ii) ensure the continuous improvement of operational space weather services, utilizing partnerships, as appropriate, with the research community, including academia and the private sector, and relevant agencies to develop, validate, test, and transition space weather observation platforms and models from research to operations and from operations to research.

(d) The Secretary of Energy shall facilitate the protection and restoration of the reliability of the electrical power grid during a presidentially declared grid security emergency associated with a geomagnetic disturbance pursuant to 16 U.S.C. 824o–1.

(e) The Secretary of Homeland Security shall:

(i) ensure the timely redistribution of space weather alerts and warnings that support national preparedness, continuity of government, and continuity of operations; and

(ii) coordinate response and recovery from the effects of space weather events on critical infrastructure and the broader community.

(f) The Administrator of the National Aeronautics and Space Administration (NASA) shall:

(i) implement and support a national research program to understand the Sun and its interactions with Earth and the solar system to advance space weather modeling and prediction capabilities applicable to space weather forecasting;

(ii) develop and operate space-weather-related research missions, instrument capabilities, and models; and

(iii) support the transition of space weather models and technology from research to operations and from operations to research.

(g) The Director of the National Science Foundation (NSF) shall support fundamental research linked to societal needs for space weather information through investments and partnerships, as appropriate.

(h) The Secretary of State, in consultation with the heads of relevant agencies, shall carry out diplomatic and public diplomacy efforts to strengthen global capacity to respond to space weather events.

(i) The Secretaries of Defense, the Interior, Commerce, Transportation, Energy, and Homeland Security, along with the Administrator of NASA and the Director of NSF, shall work together, consistent with their ongoing activities, to develop models, observation systems, technologies, and approaches that inform and enhance national preparedness for the effects of space weather events, including how space weather events may affect critical infrastructure and change the threat landscape with respect to other hazards.

(j) The heads of all agencies that support National Essential Functions, defined by Presidential Policy Directive 40 (PPD–40) of July 15, 2016 (National Continuity Policy), shall ensure that space weather events are adequately addressed in their all-hazards preparedness planning, including mitigation, response, and recovery, as directed by PPD–8 of March 30, 2011 (National Preparedness).

(k) NSTC member agencies shall coordinate through the NSTC to establish roles and responsibilities beyond those identified in section 4 of this order to enhance space weather preparedness, consistent with each agency's legal authority.

**Sec. 5**. *Implementation*. (a) Within 120 days of the date of this order, the Secretary of Energy, in consultation with the Secretary of Homeland Security, shall develop a plan to test and evaluate available devices that mitigate the effects of geomagnetic disturbances on the electrical power grid through the development of a pilot program that deploys such devices, *in situ*, in the electrical power grid. After the development of the plan, the Secretary shall implement the plan in collaboration with industry. In taking action pursuant to this subsection, the Secretaries of Energy and Homeland Security shall consult with the Chairman of the Federal Energy Regulatory Commission.

(b) Within 120 days of the date of this order, the heads of the sector-specific agencies that oversee the lifeline critical infrastructure functions as defined by the National Infrastructure Protection Plan of 2013—including communications, energy, transportation, and water and wastewater systems—as well as the Nuclear Reactors, Materials, and Waste Sector, shall assess their executive and statutory authority, and limits of that authority, to direct, suspend, or control critical infrastructure operations, functions, and services before, during, and after a space weather event. The heads of each sector-specific agency shall provide a summary of these assessments to the Subcommittee.

(c) Within 90 days of receipt of the assessments ordered in section 5(b) of this order, the Subcommittee shall provide a report on the findings of these assessments with recommendations to the Director of OSTP, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of OMB. The assessments may be used to inform the development and implementation of policy establishing authorities and responsibilities for agencies in response to a space weather event.

(d) Within 60 days of the date of this order, the Secretaries of Defense and Commerce, the Administrator of NASA, and the Director of NSF, in collaboration with other agencies as appropriate, shall identify mechanisms for advancing space weather observations, models, and predictions, and for sustaining and transitioning appropriate capabilities from research to operations and operations to research, collaborating with industry and academia to the extent possible.

(e) Within 120 days of the date of this order, the Secretaries of Defense and Commerce shall make historical data from the GPS constellation and other U.S. Government satellites publicly available, in accordance with Executive Order 13642 of May 9, 2013 (Making Open and Machine Readable

the New Default for Government Information), to enhance model validation and improvements in space weather forecasting and situational awareness.

(f) Within 120 days of the date of this order, the Secretary of Homeland Security, through the Administrator of the Federal Emergency Management Agency and in coordination with relevant agencies, shall lead the development of a coordinated Federal operating concept and associated checklist to coordinate Federal assets and activities to respond to notification of, and protect against, impending space weather events. Within 180 days of the publication of the operating concept and checklist, agencies shall develop operational plans documenting their procedures and responsibilities to prepare for, protect against, and mitigate the effects of impending space weather events, in support of the Federal operating concept and compatible with the National Preparedness System described in PPD–8.

**Sec. 6**. *Stakeholder Engagement*. The agencies identified in this order shall seek public-private and international collaborations to enhance observation networks, conduct research, develop prediction models and mitigation approaches, enhance community resilience and preparedness, and supply the services necessary to protect life and property and promote economic prosperity, as consistent with law.

**Sec. 7**. *Definitions*. As used in this order:

(a) ''Prepare'' and ''preparedness'' have the same meaning they have in PPD–8. They refer to the actions taken to plan, organize, equip, train, and exercise to build and sustain the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the Nation. This includes the prediction and notification of space weather events.

(b) ''Space weather'' means variations in the space environment between the Sun and Earth (and throughout the solar system) that can affect technologies in space and on Earth. The primary types of space weather events are solar flares, solar energetic particles, and geomagnetic disturbances.

(c) ''Solar flare'' means a brief eruption of intense energy on or near the Sun's surface that is typically associated with sunspots.

(d) ''Solar energetic particles'' means ions and electrons ejected from the Sun that are typically associated with solar eruptions.

(e) ''Geomagnetic disturbance'' means a temporary disturbance of Earth's magnetic field resulting from solar activity.

(f) ''Critical infrastructure'' has the meaning provided in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)), namely systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(g) ''Sector-Specific Agency'' means the agencies designated under PPD–21 of February 12, 2013 (Critical Infrastructure Security and Resilience), or any successor directive, to be responsible for providing institutional knowledge and specialized expertise as well as leading, facilitating, or supporting the security and resilience programs and associated activities of its designated critical infrastructure sector in the all-hazards environment.

**Sec. 8**. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
*October 13, 2016.*

[FR Doc. 2016–25290
Filed 10–17–16; 8:45 am]
Billing code 3295–F7–P

# Rules and Regulations

Federal Register

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Tuesday, October 18, 2016

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Parts 1753 and 1755

**RIN 0572–AC29**

## New Equipment Contract, RUS Contract Form 395 for Telecommunications and Broadband Borrowers

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is issuing a final rule to streamline the contractual process for equipment procurement by replacing type-specific equipment contracts, RUS Forms 397, 398, 525, 545, and associated documents (Forms 231, 396, 396a, 517, 525a, 744, 752a, 754, and addenda) with a new, unified Equipment Contract, RUS Contract Form 395 and associated close-out documents (Forms 395a, 395b, 395c and 395d) and by removing construction standards RUS Forms 397b, 397c, 397d, 397f, 397g, 397h. On October 1, 2015, RUS published a Request for Comments in the **Federal Register**, to establish a new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

**DATES:** This final rule is effective October 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** Aylene Mafnas, Chief, Engineering Branch, Policy and Outreach Division, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1599, 1400 Independence Ave. SW., Washington, DC 20250–1550, Telephone number: (202) 690–4673.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

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

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

### Executive Order 12372

This final rule is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review'', as implemented under USDA's regulations at 7 CFR part 3015.

### Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.851. The Catalog is available on the Internet at *http://www.cfda.gov.*

### Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

### E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

### Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 imposes requirements on RUS in the development of regulatory policies that have tribal implications or preempt tribal laws. RUS has determined that this rule does not have a substantial direct effect on one or more Indian tribes(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this final rule has implications of which RUS is not aware and would like to engage in consultation with RUS on this rule,

please contact the Rural Development Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov*.

**USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410; (2) *fax:* (202) 690–7442; or (3) *email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

**Information Collection and Recordkeeping Requirements**

The information collection and recordkeeping requirements contained in this final rule are pending approval by OMB pursuant to the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35) under control number 0572–NEW. The paperwork contained in this rule will not be effective until approved by OMB.

**Background**

Rural Development is a mission area within the U.S. Department of Agriculture comprising the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation and cultural and historic preservation.

In order to continue to facilitate the programmatic interest of the Rural Electrification Act of 1936 (the ''RE Act''), as amended (7 U.S.C. 901 *et seq.*), that loans and loans guaranteed by RUS are adequately secured, RUS has established the use of certain standardized forms for materials, equipment, and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures help to assure that appropriate standards and specifications are maintained by the borrower in order to not adversely affect RUS's loan security, and ensure that loan and loan guarantee funds are effectively used for the intended purpose(s).

RUS may, from time to time, promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS is required by 7 CFR 1755.29, to publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.30(c), *List of telecommunications standard contract forms*. On February 12, 2014, RUS published a proposed rule in the **Federal Register** (79 FR 8327) to establish a new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) under 7 CFR parts 1753 and 1755. RUS Contract Form 395 reflects present business and RUS practices, as well as changes in technology, services and equipment. The Agency also issued a Request for Comments notice which published in the **Federal Register** on Thursday, October 1, 2015 at 80 FR 59080, providing the public with an additional opportunity for public comment. Comments were received by the Agency which are summarized and addressed in the Comments Section of this final rule.

In response to changes in competition, legislation, technologies, and regulation which have resulted in changes to business practices in the communications industry, RUS has undertaken a comprehensive review of its Telecommunications and Broadband Programs' contracts and contracting procedures. The purpose of this undertaking is to streamline the contractual process for equipment procurement and improve the customer service provided to the RUS rural telecommunications and broadband borrowers.

Under this rulemaking, the new equipment contract RUS Contract Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d) *replace* the current equipment specific contracts, RUS Forms 397, 398, 525, 545, and the associated close-out documents (Forms 231, 396, 396a, 517, 744, 752, 752a, and 754). Furthermore, along with the elimination of the RUS Form 397, the associated construction standards RUS Forms 397b, 397c, 397d, 397f, 397g, 397h have also been eliminated. The contract terms and obligations included in the new RUS Contract Form 395 reflect current RUS and private sector industry practices, as well as changes in technology, services and equipment. This final rule also removes references to Informational Publication (I.P.) 344–2, ''List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers'' (List of Materials) from the Telecommunications Program regulations. The maintenance and use of this list was discontinued by memorandum from the Agency Administrator dated May 23, 2011. Instead, in order to protect RUS's loan security and compliance with continuing Buy America statutory mandates, the Agency has incorporated an approach into the review of individual projects and the approval of loan advances for this purpose. Traditional telecommunications borrowers and broadband borrowers will both benefit from use of the new RUS Contract Form 395 contract as it reflects many of the changes the telecommunications industry has experienced as it has technologically

transitioned from narrowband to broadband. The new RUS Contract Form 395 can assist RUS borrowers with the purchase of equipment specifically designed to meet or exceed the requirements of either narrowband or broadband systems.

**Comments**

On February 12, 2014, RUS published a proposed rule in the **Federal Register** (79 FR 8327) to establish a new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) under 7 CFR parts 1753 and 1755. The Agency also issued a Request for Comments notice in the **Federal Register** on Thursday, October 1, 2015 at 80 FR 59080, providing the public with an additional opportunity for public comment. Comments were received by the Agency which are summarized and addressed in this section of the final rule.

Comments specifically concerning the new contract were submitted by Osmose Communications Services, LLC and by ACE, The Association of Communications Engineers. Two (2) comments were submitted on behalf of Osmose Communications Services, LLC and twenty-four (24) comments on behalf of ACE. Additionally, the Bloom Corporation submitted general comments non-related to the RUS Contract Form 395.

**Osmose Communications Services, LLC**

*Issue 1:* The two (2) comments submitted on behalf of Osmose Communications Services, LLC concerned the provisions of the contract form to accommodate a buyer's request for partial or staged delivery of equipment covered under the contract.

*RUS Response:* As written, the RUS Contract Form 395 already supports agreements for staged delivery by appropriately filling in the agreed to information in the table that comprises Schedule 1. Due to the fact that Schedule 1 is part of the contract, the delivery schedule is acknowledged by both parties of the contract by the signatures of offer and acceptance.

**Association of Communications Engineers (ACE)**

*Issue 1:* Twenty-two (22) comments submitted on behalf of ACE were editorial in nature, providing typographical correction, consistency with other RUS contracts, and/or section clarity.

*RUS Response:* RUS accepts these suggestions and has incorporated those suggestions into the document.

*Issue 2:* ACE referenced the notice published in the **Federal Register** on October 1, 2015, that RUS technical specifications 397b, 397c, 397d, 397g, and 397h are not being replaced as stated in the notice.

*RUS Response:* RUS agrees. The Final Rule will state that these documents are being eliminated rather than replaced.

*Issue 3:* ACE commented that they support RUS' inclusion of sales and use tax in Schedule 2 of RUS Contract Form 395.

*RUS Response:* RUS acknowledges the comment.

**Bloom Corporation**

Comments *not* specifically related to the new Equipment Contract, Form 395 were submitted on behalf of the Bloom Corporation, Bellevue, WA. In summary, the comment stated that as presently written, the revised regulations do not adequately ensure equipment purchased using program funds are in compliance with the ''Buy American'' Requirement of the Rural Electrification Act of 1936, as amended. The comments are summarized below with the Agency's responses as follows:

*Issue 1:* Commenter states that only a manufacturer can certify Buy American compliance. Proposed regulations allow RUS Form No. 213 (Buy American) to be signed by a ''Contractor'', ''Subcontractor'', ''Seller'' or ''Material Supplier''.

*RUS Response:* The RUS Contract Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Addressing changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

*Issue 2:* Commenter states that only RUS can confirm that a Buy American Certification is adequate and in line with statutory requirements. Proposed regulations abdicate this oversight function to a ''Contractor'', ''Subcontractor'', ''Seller'' or ''Material Supplier''. RUS can rely on borrowers and their engineers to ascertain conformance with relevant standards but not the Buy American Act requirement.

*RUS Response:* The RUS Contract Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

*Issue 3:* Commenter states that if RUS never possesses the signed Buy American Certification, their role is not one of oversight, but is reduced to one of administration only. The proposed regulations do not require borrowers to submit the Buy American Certification paperwork they assembled to RUS. Without that paperwork, RUS is entrusting borrowers to enforce the statutory Buy American requirement in a way the Commenter believes they are not permitted.

*RUS Response:* The procedure specifies the requirement that the certification be maintained and presented to RUS if and when requested.

*Issue 4:* Commenter states that retiring the Information Publication (I.P.) 344–2, ''List of Material acceptable for Use on Telecommunications Systems of RUS Borrowers'' reference tool, while still requiring that equipment be in compliance with the Buy American Act, will create an exponential increase in work for borrowers and engineers as they are left to their own devices to determine Buy American compliance, a function the RUS List of Materials once performed. The proposed regulations intentionally or not will require every borrower, for every project, for every component to ascertain Buy American compliance by their own means. And in turn every manufacturer will have to address every inquiry, for every component, from every borrower on a case-by-case basis. The RUS List of Materials was created to avoid this exact scenario.

*RUS Response:* In an open letter from the Rural Utilities Service (RUS) Administrator on May 23, 2011, it was announced that RUS would no longer accept applications for equipment to be added to the List of Materials for Telecommunications and immediately ceased publication of the List of Materials for Telecommunications. To protect the Agency's loan security and compliance with continuing Buy America statutory mandates, RUS transitioned from a listing process to an approach which ensures that construction financed by RUS meets applicable industry standards. This approach has been incorporated into the Agency's review of individual projects and the approval of loan advances. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate the listing process.

*Issue 5:* Commenter states that RUS should create and maintain a Buy American Registry listing of all the equipment for which RUS themselves have collected documented proof are compliant with the Buy American Act. Such a list will resolve most if not all of the issues I raise.

*RUS Response:* The discontinuance of the RUS List of Material, under which the Buy American registry would be maintained, was announced by the RUS Administrator in an open letter on May 23, 2011. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate a listing process.

**List of Subjects**

*7 CFR Part 1753*

Communications equipment, Loan programs—Telecommunications, Reporting and recordkeeping requirements, Rural areas, and Telephone.

*7 CFR Part 1755*

Loan programs—Telecommunications; Reporting and recordkeeping requirements, Rural areas, and Telecommunications.

For the reasons set forth in the preamble, the Rural Utilities Service is amending Chapter XVII of Title 7 of the Code of Federal Regulations as follows:

## PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 1. The authority citation for part 1753 continues to read as follows:

**Authority:** 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

### Subpart A—General

■ 2. Amend § 1753.2:
■ a. By removing the definition of ''RTB'';
■ b. By revising the definitions of ''Contract'' and ''Project'' to read as follows:

**§ 1753.2 Definitions.**

* * * * *

*Contract*—''Contract'' means collectively the Seller's Proposal, Seller's Technical Proposal including any general or feature descriptions, equipment lists, Seller's responses to the Buyer's specifications and Performance Requirements, the Buyer's Acceptance, Articles I through X herein, the Performance Requirements, and the Contractor's Bond when required by the Buyer.

* * * * *

*Project*—''Project'' means any equipment, including but not limited to switching, routing, access, video, and/or transport equipment, which will be used in the delivery of voice, video, or data services, which are listed under Column 2, ''Equipment,'' in Schedule 1 hereto. A Project will have a single delivery and completion schedule listed under Column 7 and Column 8. The Contract may consist of one or more Projects.

* * * * *

■ 3. Amend § 1753.6 by revising paragraph (a) to read as follows:

**§ 1753.6 Standards, specifications, and general requirements.**

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by RUS in 7 CFR 1755.97 which lists the RUS Bulletins containing the standards and specifications for telephone facilities.

* * * * *

■ 4. Amend § 1753.7 by:
■ a. Revising paragraph (c),
■ b. Removing paragraph (f)(4).
The revision reads as follows:

**§ 1753.7 Plans and specifications (P&S).**

* * * * *

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use all appropriate project specific engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on appropriate project specific engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under paragraph (e) of this section.

* * * * *

■ 5. Amend § 1753.9 by revising paragraphs (a) and (c) to read as follows:

**§ 1753.9 Subcontracts.**

(a) RUS construction contract Forms 257, 395, and 515, contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

* * * * *

(c) As stated in contract Forms 257, 395, and 515, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

* * * * *

### Subpart B—Engineering Services

■ 6. Amend § 1753.18 by revising paragraph (c) to read as follows:

**§ 1753.18 Engineer and architect contract closeout certifications.**

* * * * *

(c) A statement that construction used was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards and that it meets all applicable national and local code requirements as to strength and safety.

* * * * *

### Subpart E—Purchase and Installation of Central Office Equipment

■ 7. Amend § 1753.36 by revising paragraphs (b), (c), (e), and (g) to read as follows:

**§ 1753.36 General.**

* * * * *

(b) Terms used in this subpart are defined in § 1753.2 and Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

(c) Borrowers shall use RUS Contract Form 395, and associated RUS Form 395a, Equipment Contract Certificate of Completion (Including Installation), when the firm supplying the equipment will install it and RUS Contract Form 395 and associated RUS Form 395b, Equipment Contract Certificate of Completion (Not Including Installation) when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

* * * * *

(e) The borrower shall take sealed competitive bids for all central office equipment to be purchased under RUS Contract Form 395 using the procedure set forth in Sec. 1753.38(a), unless RUS approval to negotiate is obtained.

* * * * *

(g) Materials and equipment must meet the standards and general specifications approved by RUS.

* * * * *

■ 8. Amend § 1753.37 by revising paragraphs (a) and (b) to read as follows:

**§ 1753.37 Plans and specifications (P&S).**

(a) *General.* (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) P&S for equipment to be provided under an Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) contract without installation shall require the supplier to provide specific installation information and a detailed bonding and grounding plan to be utilized by the engineer, borrower, and others responsible for the installation of the equipment.

(b) *Preparation of P&S.* The P&S shall include RUS Contract Form 395, Notice and Instructions to Bidders, specifications for the required equipment for each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

* * * * *

■ 9. Amend § 1753.38 by:

■ a. Revising paragraphs (a)(1)(i), (a)(1)(iii), (a)(2)(i)(J), and (a)(2)(i)(K)(v);

■ b. Revising paragraph (b)(10);

■ c. Removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e); and

■ d. Revising newly redesignated paragraphs (d)(3) and (d)(5).

The revisions read as follows:

**§ 1753.38 Procurement procedures.**

(a) * * *

(1) * * *

(i) After RUS approval of the specifications and equipment requirements (required only for projects expected to exceed $500,000 or 25% of the loan, whichever is less), the borrower shall send ''Notice and Instructions to Bidders'' to suppliers with central office equipment.

* * * * *

(iii) Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) shall be used, except that the ''Notice'' shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

* * * * *

(2) * * *

(i) * * *

(J) Some types of equipment contain software. RUS Contract Form 395 indicates whether the equipment contains software and whether the software contract stipulations are applicable.

(K) * * *

(v) After evaluation of the technical proposals and RUS approval of the changes to P&S (required only for projects that are expected to exceed $500,000 or 25% of the loan, whichever is less), sealed bids shall be solicited from only those bidders whose technical proposals meet P&S requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids.

* * * * *

(b) * * *

(10) Installation of the central office equipment and materials provided under RUS Contract Form 395 may be made in accordance with subpart I, if applicable, or by an approved Force Account Proposal (FAP).

* * * * *

(d) * * *

(3) If RUS approval was required by paragraph (d)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 395, or when applicable, the procedures contained in subpart I of this part.

* * * * *

(5) Installation of the central office equipment and materials procured by RUS Contract Form 395 without installation may be made in accordance with subpart I, if applicable, or by an approved FAP.

* * * * *

■ 10. Revise § 1753.39 to read as follows:

**§ 1753.39 Closeout documents.**

Closeout of Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) (including or not including installation) shall be conducted as follows:

(a) *Contract amendments.* Amendments that must be submitted to RUS for approval, as required by § 1753.11, shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

(b) *Acceptance tests.* The borrower will perform acceptance tests as part of the partial closeout and final closeout of RUS Contract Form 395 that will demonstrate compliance with the requirements as specified by the borrower's engineer in the Performance Requirements. Other tests demonstrating compliance will be acceptable.

(c) *Grounding system audit.* A grounding system audit shall be performed and found acceptable for equipment provided under RUS Contract Form 395, (including or not including installation), prior to placing a central office or remote switching terminal into full service operation. The audits are to be conducted in accordance with the requirements specified by the borrower's engineer in the Performance Requirements. The audits shall be performed by the contractor and borrower when using the RUS Contract Form 395 with equipment installation and by the borrower when using the RUS Contract Form 395 without equipment installation.

(d) *Partial Closeout Procedure.* Under conditions set forth in RUS Contract Form 395, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project. The contractor is to receive such payment, according to procedures contained in the applicable sections of RUS Contract Form 395. In addition to complying with the appropriate partial closeout procedure contained in RUS Contract Form 395, the borrower shall:

(1) Obtain from the engineer a certification of partial closeout; and

(2) Submit one copy of the summary to RUS with an FRS.

(e) *Final contract closeout procedure.* The documents required for the final closeout of the equipment contract, RUS Contract Form 395 with or without installation, are listed in the Table 1 to paragraph (e), which also indicates the number of copies and their distribution.

TABLE 1 TO PARAGRAPH (e)—DOCUMENTS REQUIRED TO CLOSE OUT EQUIPMENT CONTRACT, RUS CONTRACT FORM 395

| RUS Form No. | Description | Number of copies prepared by | | Distribution | |
|---|---|---|---|---|---|
| | | Seller | Engineer | Buyer | Seller |
| 213 | Certificate (Buy American) | 1 | | 1. | |
| 238 | Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval). | | 3 sent to RUS | 1 from RUS | 1 from RUS. |
| 395a | Certificate of Completion for Equipment Contract (Including Installation). | | 2 | 1 | 1. |
| 395b | Certificate of Completion for Equipment Contract (Not Including Installation). | | 2 | 1 | 1. |
| 395c | Certificate of Contractor and Indemnity Agreement (Use only for installation contracts). | 1 | | 1. | |
| None | Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications (Form 395d may be used). | | 1 | 1. | |
| None | Set of maintenance recommendations for all equipment furnished under the contract. | 1 | | 1. | |

(f) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the engineer that the project and all required documentation are satisfactory and complete. The requirements for the final contract certification are contained in § 1753.18.

(g) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS, requesting the remaining funds on the contract.

## Subpart H—Purchase and Installation of Special Equipment

■ 11. Revise § 1753.66 to read as follows:

### § 1753.66 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in § 1753.2 and Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

(c) Borrowers must obtain RUS review and approval of the LD for their telephone systems. Applications of equipment not included in an approved LD must conform to the modernization plan as required by 7 CFR part 1751, subpart B, and must be submitted to RUS for review and approval.

(d) RUS Contract Form 395 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish-and-install basis, as well as on a furnish-only basis.

(e) The procedures provided in subpart I, if applicable, or a FAP approved by RUS may be used for the installation of special equipment purchased with a RUS Contract Form 395 contract not including installation.

(f) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in subpart I or the purchase procedures contained in this subpart H.

(g) Some types of special equipment contain software. RUS Contract Form 395 indicates whether the equipment contains software and whether the software contract stipulations are applicable.

■ 12. Revise § 1753.67 to read as follows:

### § 1753.67 Contracts and specifications.

(a) Equipment Contract, RUS Contract Form 395 shall be used to purchase equipment on a furnish-and-install basis, as well as on a furnish-only basis.

(b) The equipment specifications must accompany the equipment contract form and each specification consists of performance specifications, installation requirements (if applicable), and application engineering requirements.

■ 13. Amend § 1753.68:

■ a. In paragraph (a)(1)(iv) by removing the term ''Form 398 Contract'' and adding in its place ''Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) without installation'' ;

■ b. In paragraph (a)(8) by removing the term ''Form 397'' and adding in its place ''RUS Contract Form 395'';

■ c. By revising paragraph (a)(9);

■ d. In the heading of paragraph (d)(1) by removing the term ''Form 397'' and adding in its place ''RUS Contract Form 395 with installation'';

■ e. By revising paragraph (d)(2) ;

■ f. In paragraph (d)(3)(i) by removing the phrase ''special equipment contract'' and adding in its place the phrase ''equipment contract''; and

■ g. By revising the table in paragraph (d)(3)(i).

The revisions read as follows:

### § 1753.68 Purchasing special equipment.

(a) * * *

(9) The specifications for the various applications of equipment is prepared by the RUS borrower's engineer and based on generally accepted engineering considerations and practices found in the Telecommunications Industry.

* * * * *

(d) * * *

(2) Acceptance tests for RUS Contract Form 395 without installation. (Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

* * * * *

TABLE 1 TO PARAGRAPH (d)(3)(i)—DOCUMENTS REQUIRED TO CLOSE OUT EQUIPMENT CONTRACT, RUS CONTRACT FORM 395

| RUS Form No. | Description | Number of copies prepared by | | Distribution | |
|---|---|---|---|---|---|
| | | Seller | Engineer | Buyer | Seller |
| 213 | Certificate (Buy American) | 1 | | 1. | |
| 238 | Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval). | | 3 sent to RUS | 1 sent to RUS | 1 from RUS. |
| 395a | Certificate of Completion for Equipment Contract (Including Installation). | | 2 | 1 | 1. |
| 395b | Certificate of Completion for Equipment Contract (Not Including Installation). | | 2 | 1 | 1. |
| 395c | Certificate of Contractor and Indemnity Agreement (Use only for installation contracts). | | | 1. | |
| None | Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications. (Form 395d may be used.). | | 1 | 1. | |
| None | Set of maintenance recommendations for all equipment furnished under the contract. | 1 | | 1. | |

* * * * *

## Subpart I—Minor Construction

■ 14. Amend § 1753.80 by:

■ a. Removing in paragraph (b)(3) the phrase ''special equipment'' and adding in its place ''equipment''; and

■ b. Revising paragraph (d)(2).

The revision reads as follows:

### § 1753.80 Minor construction procedure.

* * * * *

(d) * * *

(2) All standard RUS procedures are followed, including the application of RUS construction practices (see § 1753.6).

* * * * *

## Subpart J—Construction Certification Program

### § 1753.93 [Amended]

■ 15. In § 1753.93, remove paragraphs (b)(7) and (8) and redesignate paragraphs (b)(9) through (13) as (b)(7) through (11).

### § 1753.96 [Amended]

■ 16. Amend the Certification Addendum in § 1753.96 by removing the words ''or Rural Telephone Bank,'' from the second sentence.

## PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

■ 17. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.,* 7 U.S.C. 1921 *et seq.,* 7 U.S.C. 6941 *et seq.*

■ 18. Amend § 1755.30 by revising paragraphs (c)(25) through (c)(45), and removing paragraphs (c)(46) through paragraphs (c)(56)to read as follows:

### § 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(25) RUS Form 395, October 18, 2016, Equipment Contract.

(26) RUS Form 395a, October 18, 2016, Equipment Contract Certificate of Completion (Including Installation).

(27) RUS Form 395b, October 18, 2016, Equipment Contract Certificate of Completion (Not Including Installation).

(28) RUS Form 395c, October 18, 2016, Certificate of Contractor and Indemnity Agreement.

(29) RUS Form 395d, October 18, 2016, Results of Acceptance Tests.

(30) RUS Form 506, issued 3–97, Statement of Engineering Fee—Telecommunications.

(31) RUS Form 515, issued September 17, 2001, Telecommunications Systems Construction Contract (Labor and Materials).

(32) RUS Form 526, issued 8–66, Construction Contract Amendment.

(33) RUS Form 527, issued 3–71, Statement of Construction, Telephone System ''Outside Plant''.

(34) RUS Form 553, issued 5–67, Check List for Review of Plans and Specifications.

(35) RUS Form 724, issued 10–63, Final Inventory, Telephone Construction Contract.

(36) RUS Form 724a, issued 4–61, Final Inventory, Telephone Construction—Telephone Construction Contract (Labor and Materials), columns 1–8.

(37) RUS Form 724b, issued 3–61, Final Inventory, Telephone Construction Contract (Labor and Materials), columns 9–14.

(38) RUS Form 771, issued 10–75, Summary of Work Orders (Inspected by RUS Field Engineer).

(39) RUS Form 771a, issued 10–75, Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer).

(40) RUS Form 773, issued 12–90, Miscellaneous Construction Work and Maintenance Services Contract.

(41) RUS Form 787, issued 8–63, Supplement A to Construction Contract.

(42) RUS Form 817, issued 6–60, Final Inventory, Telephone Force Account Construction.

(43) RUS Form 817a, issued 6–60, Final Inventory, Telephone Force Account Construction, columns 1–8.

(44) RUS Form 817b, issued 6–60, Final Inventory, Telephone Force Account Construction, Columns 9–14.

(45) RUS Form 835, issued 3–66, Preloan Engineering Service Contract, Telephone System Design.

Dated: October 5, 2016.

**Brandon McBride,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2016–24945 Filed 10–17–16; 8:45 am]

BILLING CODE P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2015–3629; Directorate Identifier 2015–NM–011–AD; Amendment 39–18662; AD 2016–19–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE–FALCON 50, MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. This AD was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and resulted in the loss of some airplane functions. This AD requires modification of the anti-collision light bonding. We are issuing this AD to prevent loss of electrical power and essential airplane functions, and possible reduced control of the airplane.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 22, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3629.

### 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–2015–3629; 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, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model MYSTERE–FALCON 50, MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The SNPRM published in the **Federal Register** on June 17, 2016 (81 FR 39597) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on September 24, 2015 (80 FR 57545) (''the NPRM''). The NPRM proposed to require modification of the anti-collision light bonding. The NPRM was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and induced the loss of some airplane functions. The SNPRM proposed to clarify the applicability. We are issuing this AD to prevent loss of electrical power and essential airplane functions, and possible reduced control 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 2015–0006, dated January 15, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model MYSTERE–FALCON 50, MYSTERE–FALCON 900, FALCON 900EX, FALCON 2000, and FALCON 2000EX airplanes. The MCAI states:

> An occurrence was reported where a Falcon 2000 aeroplane experienced an in-flight lightning strike, which caused severe damage and induced the loss of some aeroplane functions. The investigation results revealed that the entering point of the lightning was at the WHELEN anti-collision light located on the top of the vertical fin tip.
>
> When the lightning strike hit the anti-collision light, an electric arc occurred between the aeroplane structure and the anti-collision light and created a conductive path by which the lightning current entered inside the aeroplane. Further analysis has determined that the electrical bonding between the WHELEN anti-collision light, Part Number (P/N) 01–0790044–09, and the fin tip fairing or the No. 2 engine air intake cover is insufficient to withstand a lightning strike.
>
> In case of severe lightning, this condition, if not corrected, could lead to an unsafe condition (loss of electrical power and/or of essential functions) possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Dassault Aviation developed a modification (mod) to improve the WHELEN anti-collision light bonding when the anti-collision light is located on top of the vertical fin tip or on No. 2 engine air intake cover, and issued several Service Bulletins (SB) to modify all affected aeroplanes in service.
>
> For the reasons described above, this [EASA] AD requires modification of the anti-collision light bonding.

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–2015–3629.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM 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 SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

### Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Dassault Service Bulletin F50–481, Revision 1 (also referred to as 481–R1), dated January 26, 2015.
- Dassault Service Bulletin F900–372, Revision 1 (also referred to as 372–R1), dated January 26, 2015.
- Dassault Service Bulletin F900–378, Revision 1 (also referred to as 378–R1), dated January 26, 2015.
- Dassault Service Bulletin F900EX–285, Revision 1 (also referred to as 285–R1), dated January 26, 2015.

• Dassault Service Bulletin F900EX–305, Revision 1 (also referred to as 305–R1), dated January 26, 2015.

• Dassault Service Bulletin F2000–337, Revision 1 (also referred to as 337–R1), dated January 26, 2015.

• Dassault Service Bulletin F2000EX–108, Revision 1 (also referred to as 108–R1), dated January 26, 2015.

The service information describes procedures for modifying the anti-collision light bonding. These documents are distinct since they apply to different airplane models in different configurations. 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 778 airplanes of U.S. registry.

We also estimate that it would take about 12 work-hours 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 $801 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,416,738, or $1,821 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):

**2016–19–13 Dassault Aviation:** Amendment 39–18662; Docket No. FAA–2015–3629; Directorate Identifier 2015–NM–011–AD.

**(a) Effective Date**

This AD is effective November 22, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Dassault Aviation airplanes, certificated in any category, identified in figure 1 to paragraph (c) of this AD.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABILITY

| Airplanes | Configuration | Except airplanes modified through: [1] | |
|---|---|---|---|
| | | Dassault modification embodied in production | Service bulletin in service |
| Dassault Aviation Model MYSTERE-FALCON 50 airplanes. | M1853 has been embodied in production or in service through Dassault Service Bulletin F50–241. | M2083 or M3094 [2] ..... | Dassault Service Bulletin F50-257. |
| Dassault Aviation Model MYSTERE-FALCON 900 airplanes. | Group 1: M1682 has been embodied in production or in service through Dassault Service Bulletin F900–182 [3]. | M5381 ..... | Not applicable. |
| | Group 2: M1682 has been embodied in production or in service through Dassault Service Bulletin F900–182 and Modification M1947 is embodied in production or in service through Dassault Service Bulletin F900–176 [4]. | M5386 ..... | Not applicable. |
| Dassault Aviation Model FALCON 900EX airplanes. | Group 1: M1682 has been embodied in production or in service through Dassault Service Bulletin F900EX-025 [3]. | M5381 ..... | Not applicable. |
| | Group 2: M1682 has been embodied in production or in service through Dassault Service Bulletin F900EX-025 and Modification M1947 is embodied in production or in service through Dassault Service Bulletin F900EX-19 [4]. | M5103 or M5386 ..... | Not applicable. |

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABILITY—Continued

| Airplanes | Configuration | ≤Except airplanes modified through: [1] | |
|---|---|---|---|
| | | Dassault modification embodied in production | Service bulletin in service |
| Dassault Aviation Model FALCON 2000 airplanes. | M331 has been embodied in production or in service through Dassault Service Bulletin F2000–44. | M810 or M1061 or M2778. | Dassault Service Bulletin F2000–111. |
| Dassault Aviation Model FALCON 2000EX airplanes. | M1802 has been embodied in production ..... | M810 or M1061 or M2778. | Not applicable. |

[1] The excluded airplanes, as specified in figure 1 to paragraph (c) of this AD—Applicability, embody either one modification in production or one service bulletin in service, as applicable.
[2] Modification M2083, Dassault Service Bulletin F50–257, Modification M1947, Dassault Service Bulletin F900–176, Dassault Service Bulletin F900EX–19, Modification M5103, as applicable, introduce fin tip SATCOM fairing, in production or in service.
[3] Group 1: Airplanes with WHELEN anti-collision light located on top of the vertical fin tip.
[4] Group 2: Airplanes with WHELEN anti-collision light located on top of the engine No. 2 air intake cover.

**(d) Subject**

Air Transport Association (ATA) of America Code 33, Lights.

**(e) Reason**

This AD was prompted by a report of an in-flight lightning strike to the WHELEN anti-collision light located on the top of the vertical fin tip that caused severe damage and resulted in the loss of some airplane functions. We are issuing this AD to prevent loss of electrical power and essential airplane functions, and possible reduced control of the airplane.

**(f) Compliance**

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

**(g) Modification**

Within 24 months after the effective date of this AD, modify the anti-collision light bonding, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(7) of this AD.

(1) For Model MYSTERE–FALCON 50 airplanes: Dassault Service Bulletin F50–481, Revision 1 (also referred to as 481–R1), dated January 26, 2015.

(2) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the vertical fin tip: Dassault Service Bulletin F900–372, Revision 1 (also referred to as 372–R1), dated January 26, 2015.

(3) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900–378, Revision 1 (also referred to as 378–R1), dated January 26, 2015.

(4) For Model FALCON 900EX airplanes with the WHELEN system installed on the vertical fin tip: Dassault Service Bulletin F900EX–285, Revision 1 (also referred to as 285–R1), dated January 26, 2015.

(5) For Model FALCON 900EX airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900EX–305, Revision 1 (also referred to as 305–R1), dated January 26, 2015.

(6) For Model FALCON 2000 airplanes: Dassault Service Bulletin F2000–337, Revision 1 (also referred to as 337–R1), dated January 26, 2015.

(7) For Model FALCON 2000EX airplanes: Dassault Service Bulletin F2000EX–108, Revision 1 (also referred to as 108–R1), dated January 26, 2015.

**(h) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (h)(1) through (h)(7) of this AD.

(1) For Model MYSTERE–FALCON 50 airplanes: Dassault Service Bulletin F50–481, dated August 22, 2007.

(2) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the vertical fin tip: Dassault Service Bulletin F900–372, dated August 22, 2007.

(3) For Model MYSTERE–FALCON 900 airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900–378, dated September 19, 2007.

(4) For Model FALCON 900EX airplanes with the WHELEN system installed on the vertical fin tip: Dassault Service Bulletin F900EX–285, dated July 18, 2007.

(5) For Model FALCON 900EX airplanes with the WHELEN system installed on the S-duct cowl: Dassault Service Bulletin F900EX–305, dated September 19, 2007.

(6) For Model FALCON 2000 airplanes: Dassault Service Bulletin F2000–337, dated July 25, 2007.

(7) For Model FALCON 2000EX airplanes: Dassault Service Bulletin F2000EX–108, dated July 25, 2007.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0006, dated January 15, 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–2015–3629.

(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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0006, dated January 15, 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–2015–3629.

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

**(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) Dassault Service Bulletin F50–481, Revision 1 (also referred to as 481–R1), dated January 26, 2015.

(ii) Dassault Service Bulletin F900–372, Revision 1 (also referred to as 372–R1), dated January 26, 2015.

(iii) Dassault Service Bulletin F900–378, Revision 1 (also referred to as 378–R1), dated January 26, 2015.

(iv) Dassault Service Bulletin F900EX–285, Revision 1 (also referred to as 285–R1), dated January 26, 2015.

(v) Dassault Service Bulletin F900EX–305, Revision 1 (also referred to as 305–R1), dated January 26, 2015.

(vi) Dassault Service Bulletin F2000–337, Revision 1 (also referred to as 337–R1), dated January 26, 2015.

(vii) Dassault Service Bulletin F2000EX–108, Revision 1 (also referred to as 108–R1), dated January 26, 2015.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.*

(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 September 14, 2016.

**Michael Kaszycki,**

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

[FR Doc. 2016–22832 Filed 10–17–16; 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–2016–3703; Directorate Identifier 2015–NM–115–AD; Amendment 39–18669; AD 2016–20–03]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the skin lap splice is subject to widespread fatigue damage (WFD). This AD requires repetitive external detailed and surface high frequency eddy current (HFEC) inspections of the outer skin for cracking around fastener heads common to the inboard fastener row of the skin lap splice and corrective action. We are issuing this AD to detect and correct fatigue cracking of the skin lap splice, which could grow and result in possible rapid decompression and reduced structural integrity of the airplane.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 22, 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–2016–3703.

### 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–2016–3703; 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:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@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 767–200, –300, and –400ER series airplanes. The NPRM published in the **Federal Register** on February 25, 2016 (81 FR 9367) (''the NPRM''). The NPRM was prompted by an evaluation by the DAH indicating that the skin lap splice is subject to WFD. The NPRM proposed to require repetitive external detailed and surface HFEC inspections of the outer skin for cracking around fastener heads common to the inboard fastener row of the skin lap splice. We are issuing this AD to detect and correct fatigue cracking of the skin lap splice, which could grow and result in possible rapid decompression and reduced structural integrity of the airplane.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. Boeing stated that it supports the NPRM.

### Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01920SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of this AD as (c)(1) and added new paragraph (c)(2) to this AD to state that installation of STC ST01920SE does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

### Request To Revise the Compliance Time for the Repetitive Inspection Intervals

United Airlines (UAL) requested that we revise the repetitive inspection intervals for any repair accomplished using the structural repair manual (SRM) specified in Part 2 of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. UAL commented that a Zone B repair is Category B, and per the SRM inspections, the airplanes would have an initial inspection at 25,000 total flight cycles after airplane delivery. UAL stated that the initial inspection compliance time for the proposed rule is 40,000 total flight cycles, and if a repair is accomplished at this time, it is already over the initial inspection threshold specified in the SRM.

We agree with the commenter's request. There is a conflict between the initial inspection thresholds in Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, and the Category B repair specified in the SRM. We are working with Boeing to revise the conflicting compliance times for the SRM repairs. We have added a new paragraph (h) in this AD, which provides clarification that the post-repair damage tolerance inspections are not required by this AD, but are airworthiness limitations (ALIs), and those inspections are required by maintenance and operational rules. Any deviation from the post-repair ALI inspections will need FAA approval,

but will not require an AMOC. We have coordinated this change with Boeing. We redesignated subsequent paragraphs accordingly.

**Request To Clarify the Note in the Service Information**

UAL requested that we clarify the note in paragraph 3.B.l. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, to state that inspections for any repair accomplished as a result of Part 1 findings are to be inspected per the Part 1 inspection requirements and that these supersede the SRM inspection requirements. UAL stated that the note in Paragraph 3.B.1. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, currently states that it is not necessary to repeat the Part 1 inspections in areas covered by a previously approved repair.

We disagree with the commenter's request. Note (a) in paragraph 1.E, ''Compliance,'' and the note in paragraph 3.B.1. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, specify terminating action for the AD-mandated inspections for the area under an approved repair. The repairs are evaluated under their own damage tolerance inspection program. The post-repair inspection program is different from the baseline inspections specified in Part 1 of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. Post-repair damage tolerance inspections for any approved repair are ALIs, and these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an AMOC. We have not changed this AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD 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 767–53A0260, dated August 26, 2014. The service information describes procedures for a detailed inspection and a surface HFEC inspection at section 41, stringer S–2R skin lap splice from body station (STA) 368 to STA 434, for any cracking, and repair. 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 356 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 |
|---|---|---|---|---|
| Inspections ..... | 3 work-hours × $85 per hour = $255 per inspection cycle. | $0 | $255 per inspection cycle | $90,780 per inspection cycle. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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):

**2016–20–03 The Boeing Company:** Amendment 39–18669; Docket No. FAA–2016–3703; Directorate Identifier 2015–NM–115–AD.

**(a) Effective Date**

This AD is effective November 22, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to the Boeing Company Model 767–200, -300, and -400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027F43B9A7486E86257B1D006591EE?OpenDocument&Highlight=st01920se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by an evaluation by the design approval holder indicating that the skin lap splice is subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking of this skin lap splice, which could grow and result in possible rapid decompression and reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Inspection and Corrective Actions**

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, except as required by paragraph (i) of this AD: Do a detailed inspection and a surface high frequency eddy current (HFEC) inspection at section 41, stringer S–2R skin lap splice from body station (STA) 368 to STA 434, for any cracking, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. If any existing external repair is found in the inspection area, then the inspections in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, are not required in the area hidden by the repair, provided that the repair was previously approved by the Manager, Seattle Aircraft Certification Office (ACO), or by the Authorized Representative of the Boeing Commercial Airplanes Organization Designation Authorization (ODA), or installed as specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014. Inspections in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, remain applicable in areas not hidden by the repair.

**(h) Post-Repair Inspections**

Repairs identified in Part 2 of Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, specify post-repair airworthiness limitation inspections for compliance with 14 CFR 25.571(a)(3) at the repaired locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an AMOC.

**(i) Exception to the Service Information**

Where Boeing Alert Service Bulletin 767–53A0260, dated August 26, 2014, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

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

(1) The Manager, Seattle 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 ODA that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i) of this AD: 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) 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. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. 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 Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@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 767–53A0260, dated August 26, 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 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.

(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 September 16, 2016.

**Suzanne Masterson,**

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

[FR Doc. 2016–23076 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–6640; Directorate Identifier 2015–SW–084–AD; Amendment 39–18683; AD 2016–21–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky)

Model S–92A helicopters. This AD requires altering the fire bottle inertia switch wiring and performing a cartridge functional test of the fire extinguishing system. This AD was prompted by the inadvertent tripping of inertia-switches that has led to unintentional discharging of the fire bottles, leaving the helicopter's auxiliary power unit and engines without fire protection. The actions are intended to prevent unintentional and undetected fire bottle discharges and subsequent unavailability of fire suppression in case of a fire.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of November 22, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6640.

## 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–2016–6640; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kris Greer, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *kristopher.greer@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

On May 13, 2016, at 81 FR 29817, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Sikorsky Model S–92A helicopters. Sikorsky has informed us that the inadvertent tripping of inertia switches has caused several engine and auxiliary power unit fire bottle discharges during taxi, flight, and landing operations. Because these discharges are undetected, the fire bottles remain unavailable in the event of a fire.

The NPRM proposed to require altering the fire bottle inertia switch wiring to disable the automatic feature of the fire extinguishing system and performing a cartridge functional test. The proposed requirements were intended to prevent an unintentional and undetected fire bottle discharge and subsequent unavailability of fire suppression in the event of a fire.

Since the NPRM was issued, the email address for Sikorsky has changed. We have revised this email address throughout this final rule.

## Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

## FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

## Related Service Information Under 1 CFR Part 51

We reviewed Sikorsky Alert Service Bulletin 92–26–005A, Revision A, dated June 27, 2014 (ASB 92–26–005A). ASB 92–26–005A specifies performing a one-time alteration of the fire bottle inertia switch wiring to disable the automatic actuation feature of the fire extinguishing system. ASB 92–26–005A includes figures that depict the wiring and electrical connector pin changes.

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.

## Other Related Service Information

We also reviewed Sikorsky Alert Service Bulletin 92–26–005, Basic Issue, dated June 18, 2014 (ASB 92–26–005). ASB 92–26–005 contains the same procedures as ASB 92–26–005A. However, ASB 92–26–005A contains an additional figure.

## Differences Between This AD and the Service Information

This AD has a compliance date within 90 days, and the service information has a calendar date, which has already passed. This AD does not require performing a cartridge functional test prior to alteration. The service information does specify performing a cartridge functional test prior to alteration.

## Costs of Compliance

We estimate that this AD will affect 80 helicopters of U.S. Registry.

We estimate that operators may incur the following costs to comply with this AD. Labor costs are estimated at $85 per work-hour. Altering the fire bottle switch and performing a cartridge functional test will take about 2 work-hours. No parts are needed for an estimated cost of $170 per helicopter and $13,600 for the U.S. fleet.

## 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 to the extent that it justifies making a regulatory distinction; and

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2016–21–02 Sikorsky Aircraft Corporation:** Amendment 39–18683; Docket No. FAA–2016–6640; Directorate Identifier 2015–SW–084–AD.

**(a) Applicability**

This AD applies to Model S–92A helicopters, serial number 920006 through 920250, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as inadvertent tripping of a fire bottle inertia-switch. This condition results in an unintentional and undetected fire bottle discharge and subsequent unavailability of fire suppression in the event of a fire.

**(c) Effective Date**

This AD becomes effective November 22, 2016.

**(d) Compliance**

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

**(e) Required Actions**

Within 90 days:

(1) Alter each fire bottle inertia switch by following the Accomplishment Instructions, paragraph 3.B., of Sikorsky Alert Service Bulletin 92–26–005A, Revision A, dated June 27, 2014.

(2) Perform a cartridge functional test.

**(f) Credit for Actions Previously Completed**

Compliance with Sikorsky Alert Service Bulletin 92–26–005, Basic Issue, dated June 18, 2014, before the effective date of this AD is considered acceptable for compliance with the actions specified in paragraph (e) of this AD.

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

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kris Greer, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate,1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *kristopher.greer@faa.gov.*

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

**(h) Additional Information**

Sikorsky Alert Service Bulletin 92–26–005, Basic Issue, dated June 18, 2014, which is not incorporated by reference, contains additional information about the subject of this final rule. For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.* You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 2621 Fire Bottle, Fixed.

**(j) Material Incorporated by Reference**

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

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

(i) Sikorsky Alert Service Bulletin 92–26–005A, Revision A, dated June 27, 2014.

(ii) Reserved.

(3) For Sikorsky service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email *wcs_cust_service_eng.gr-sik@lmco.com.*

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

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

Issued in Fort Worth, Texas, on October 3, 2016.

**Lance T. Gant,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2016–24738 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–6418; Directorate Identifier 2015–NM–158–AD; Amendment 39–18676; AD 2016–20–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports of fuel leaking through fuel pump electrical connectors and of fuel pump electrical connector damage caused by the build-up of moisture behind the electrical connectors. This AD requires an inspection of the fuel pumps to identify their part numbers and replacement of affected pumps. We are issuing this AD to prevent a potential ignition source and a fuel leak through damaged fuel pump electrical connectors, which creates a flammability risk in an area adjacent to the fuel tank.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 22, 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–2016–6418.

**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–2016–6418; 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 all Airbus Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on May 9, 2016 (81 FR 28033) (''the NPRM''). The NPRM was prompted by reports of fuel leaking through fuel pump electrical connectors and of fuel pump electrical connector damage caused by the build-up of moisture behind the electrical connectors. The NPRM proposed to require an inspection of the fuel pumps to identify their part numbers and replacement of affected pumps. We are issuing this AD to prevent a potential ignition source and a fuel leak through damaged fuel pump electrical connectors. This condition creates a flammability risk in an area adjacent to the fuel tank.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0194, dated September 22, 2015, to correct an unsafe condition for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> Operators reported cases of fuel leak through fuel pump electrical connectors. Subsequent investigation revealed fuel pump electrical connector damage caused by moisture build up behind the electrical connector.
>
> This condition, if not detected and corrected, could create concurrently an ignition source and fuel leak as a result of a single failure, resulting in exposure to a flammability risk in an adjacent area to the fuel tank.
>
> To address this unsafe condition, Airbus published Service Bulletins (SB) A330–28–3127, SB A340–28–4138 and SB A340–28–5060, providing inspection/identification instructions, and instructions for replacement of the fuel pumps.
>
> For the reasons described above, this [EASA] AD requires identification and replacement of the affected fuel pumps.

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–2016–6418.

**Comments**

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

**Request To Clarify Compliance for Affected Pumps**

American Airlines (AAL) requested that we clarify which groups of pumps paragraphs (h)(1) and (h)(2) of the proposed AD are intended to control. Where individual items begin with ''All of the affected pumps. . . .'' AAL explained that paragraph (h) of the proposed AD must be intended to refer to all of the affected pumps on each airplane. AAL pointed out that this language creates a requirement for all airplanes that have one or more pumps having part number (P/N) 568–1–28300–001 or 568–1–28300–002 installed to be modified in accordance with the service information within 72 months. AAL asserted that consistent references to ''each affected pump'' confuse that interpretation and seem to imply that each pump is treated separately. If the intent is to control the compliance time for replacement at the pump level, AAL stated that it would be more efficient to simply state that –001 and –002 pumps must be replaced within 72 months, while –100 and –101 pumps must be replaced within 96 months. If the intent is to control the compliance time at the airplane level, AAL stated that the language throughout paragraph (h) of the proposed AD should be revised to reflect that intent; American provided some example language.

We agree that this AD should specify the compliance times at the airplane level. Therefore, we have revised paragraphs (h)(1) and (h)(2) of this AD by replacing the text in the beginning of the sentences, ''For affected fuel pumps that have . . . , '' with the text ''For airplanes with fuel pumps that have . . .'' in order to clearly identify the airplane configuration.

**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 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**

Airbus has issued the following service information:

- Airbus Service Bulletin A330–28–3127, Revision 02, dated April 14, 2016.
- Airbus Service Bulletin A340–28–4138, Revision 01, dated September 24, 2015.
- Airbus Service Bulletin A340–28–5060, Revision 01, dated September 24, 2015.

The service information describes procedures to identify and replace affected fuel pumps with serviceable fuel pumps. These documents are distinct since they apply to different airplane models. 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 99 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $33,660, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 17 work-hours and require parts costing $10,400, for a cost of $11,845 per product. We have no way of determining the number of airplanes that might need these actions.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We determined that this 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):

**2016–20–10 Airbus:** Amendment 39–18676; Docket No. FAA–2016–6418; Directorate Identifier 2015–NM–158–AD.

**(a) Effective Date**

This AD is effective November 22, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A330–223F and –243F airplanes; Model A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, and –213 airplanes; Model A340–311, –312, and –313 airplanes; Model A340–541 and A340–642 airplanes; certificated in any category; all manufacturer serial numbers.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by reports of fuel leaking through fuel pump electrical connectors and of fuel pump electrical connector damage caused by the build-up of moisture behind the electrical connectors. Electrical connections that become damaged by moisture can create an ignition source and a fuel leak. We are issuing this AD to prevent a potential ignition source and a fuel leak through damaged fuel pump electrical connectors, which creates a flammability risk in an area adjacent to the fuel tank.

**(f) Compliance**

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

**(g) Identify Part Numbers (P/Ns)**

Within 48 months after the effective date of this AD, inspect each fuel pump to identify the part number, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–28–3127, Revision 02, dated April 14, 2016; Airbus Service Bulletin A340–28–4138, Revision 01, dated September 24, 2015; or Airbus Service Bulletin A340–28–5060, Revision 01, dated September 24, 2015; as applicable to airplane model. A review of airplane delivery or maintenance records is acceptable in lieu of this inspection if the part number of the fuel pump can be conclusively determined from that review.

**(h) Modification**

If, during the inspection required by paragraph (g) of this AD, it is determined that any affected fuel pump is installed: Within the compliance time specified in paragraph (h)(1) or (h)(2) of this AD, depending on the configuration of the affected fuel pumps installed, replace each affected fuel pump with a serviceable fuel pump, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–28–3127, Revision 02, dated April 14, 2016; Airbus Service Bulletin A340–28–4138, Revision 01, dated September 24, 2015; or Airbus Service Bulletin A340–28–5060, Revision 01, dated September 24, 2015; as applicable to airplane model.

(1) For airplanes with fuel pumps that have a part number or combination of part numbers that are specified in paragraphs (h)(1)(i) through (h)(1)(vi) of this AD: Do the replacement within 72 months after the effective date of this AD.

(i) All installed fuel pumps have P/N 568–1–28300–001.

(ii) All installed fuel pumps have P/N 568–1–28300–002.

(iii) Installed fuel pumps have a combination of P/Ns 568–1–28300–001 and 568–1–28300–002.

(iv) Installed fuel pumps have a combination of P/Ns 568–1–28300–001 and 568–1–28300–101.

(v) Installed fuel pumps have a combination of P/Ns 568–1–28300–002 and 568–1–28300–101.

(vi) Installed fuel pumps have a combination of P/Ns 568–1–28300–001, 568–1–28300–002, and 568–1–28300–101.

(2) For airplanes with fuel pumps that have a part number or combination of part numbers that are specified in paragraphs (h)(2)(i) through (h)(2)(iii) of this AD: Do the replacement within 96 months after the effective date of this AD.

(i) All installed fuel pumps have P/N 568–1–28300–100.

(ii) All installed fuel pumps have P/N 568–1–28300–101.

(iii) Installed fuel pumps have a combination of P/Ns 568–1–28300–100 and 568–1–28300–101.

**(i) Definitions**

(1) For the purpose of this AD, an ''affected fuel pump'' is defined as any pump having P/N 568–1–28300–001, 568–1–28300–002, 568–1–28300–100, or 568–1–28300–101.

(2) For the purpose of this AD, a ''serviceable fuel pump'' is a pump having a part number not listed in paragraph (i)(1) of this AD.

**(j) No Reporting Requirement**

Although Airbus Service Bulletin A330–28–3127, Revision 02, dated April 14, 2016; Airbus Service Bulletin A340–28–4138, Revision 01, dated September 24, 2015; and Airbus Service Bulletin A340–28–5060, Revision 01, dated September 24, 2015; specify submitting certain information to the manufacturer, and specifies that action as ''RC'' (Required for Compliance), this AD does not include that requirement.

**(k) Parts Installation Prohibition**

After the identification of the fuel pump part numbers required by paragraph (g) of this AD, comply with the prohibition

required by paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For an airplane that does not have an affected fuel pump installed: After the identification of the fuel pump part numbers required by paragraph (g) of this AD, no person may install an affected fuel pump on the airplane.

(2) For an airplane that has an affected fuel pump installed: After modification of the airplane as required by paragraph (h) of this AD, no person may install an affected fuel pump on the airplane.

**(l) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (l)(1), (l)(2), (l)(3), and (l)(4) of this AD. This service information is not incorporated by reference in this AD.

(1) Airbus Service Bulletin A330–28–3127, dated July 14, 2015.

(2) Airbus Service Bulletin A330–28–3127, Revision 01, dated September 24, 2015.

(3) Airbus Service Bulletin A340–28–4138, dated July 14, 2015.

(4) Airbus Service Bulletin A340–28–5060, dated July 14, 2015.

**(m) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as provide by paragraph (j) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(n) Related Information**

(1) Refer to Continuing Airworthiness Information (MCAI) EASA AD 2015–0194, dated September 22, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6418.

**(o) Material Incorporated by Reference**

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

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

(i) Airbus Service Bulletin A330–28–3127, Revision 02, dated April 14, 2016.

(ii) Airbus Service Bulletin A340–28–4138, Revision 01, dated September 24, 2015.

(iii) Airbus Service Bulletin A340–28–5060, Revision 01, dated September 24, 2015.

(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.* 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.

(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 September 26, 2016.

**Dionne Palermo,**

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

[FR Doc. 2016–23647 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–8470; Directorate Identifier 2013–NM–199–AD; Amendment 39–18674; AD 2016–20–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 95–21–09 for all Airbus Model A300 series airplanes, and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 95–21–09 required repetitive inspections for cracking of the No. 2 flap beams, and replacement of the flap beams, if necessary; and provided optional modifications for extending certain inspection thresholds, and an optional terminating modification for certain inspections. This new AD requires reduced compliance times for inspections and also reduces the number of airplanes affected. This AD was prompted by a determination that the compliance times must be reduced. We are issuing this AD to detect and correct cracking of the No. 2 flap beams, which could result in rupture of the flap beams and reduced structural integrity of the airplane.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 17, 1995 (60 FR 53847, October 18, 1995).

**ADDRESSES:** For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of

this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8470.

**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–2015–8470; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is 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:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 95–21–09, Amendment 39–9395 (60 FR 53847, October 18, 1995) (''AD 95–21–09''). AD 95–21–09 applied to all Airbus Model A300 and A300–600 series airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3045) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013–0234R2, dated October 7, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A300 and A300–600 series airplanes. The MCAI states:

> Fatigue and ''fail safe'' tests developed on a test specimen confirmed that cracks may appear and propagate from the bolt holes of the base member and the side members of flap beam No. 2.
>
> The development of such cracks, if not detected, could result in a rupture of flap beams No. 2, which could adversely affect the structural integrity of the airframe.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A300–57–0116 and SB A300–57–6005 and DGAC [Direction Générale de l'Aviation Civile] France issued AD 1986–187–076(B), later revised, to require a repetitive inspection programme [and corrective action] for A300 and A300–600 aeroplanes. [French AD 86–187–076(B)R3, dated March 2, 1994, corresponds to FAA AD 95–21–09, which superseded FAA AD 85–07–04, Amendment 39–5027 (50 FR 13013, April 2, 1985).]
>
> For A300 aeroplanes, and in the frame of the Extended Service Goal (ESG) exercise, it was shown that design changes (Airbus Mod. 4740/Airbus SB A300–57–0128 or Airbus Mod. 5815/Airbus SB A300–57–0141) were not sufficient to enable full ESG life without inspections.
>
> For A300–600 aeroplanes, since DGAC France AD 1986–187–076(B) was issued, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300–600 ESG2 exercise. Airbus SB A300–57–6005 has been revised accordingly to decrease the inspection thresholds and intervals.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD 1986–187–076(B)R4, which is superseded, and requires those inspections to be accomplished at reduced thresholds and intervals.
>
> This [EASA] AD has been revised to correct typographical errors in some compliance times defined in Appendix 1, Tables 1 and 2.

The MCAI also reduces the number of airplanes identified in the applicability by exempting certain Model A300–600 airplanes on which certain Airbus modifications have been embodied. 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–2015–8470.

**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 Remove Certain Exceptions in the Proposed Applicability**

United Parcel Service (UPS) requested that the applicability exceptions in paragraphs (c)(3) and (c)(4) of the proposed AD be revised to remove Airbus Modifications 11133 and 12699 as exceptions. UPS stated that the exceptions provided in paragraphs (c)(3) and (c)(4) of the proposed AD are inconsistent with the effectivity specified in the service information referenced in the NPRM. UPS pointed out that the effectivity of Airbus Service Bulletin A300–57–6005, Revision 06, dated November 14, 2013, applies to airplanes with manufacturer serial number (MSN) 775 and subsequent, with MSN 775 as the production cut-in for Airbus Modification 11133. UPS asserted that this service bulletin's effectivity also does not list all post-modification 11133 and 12699 airplanes. UPS stated that the determining factor for the service information effectivity is whether an airplane is approved for the extended service goal (ESG–2) operational life or not. UPS also pointed out that the effectivity of Airbus Service Bulletin A300–57–6005, Revision 06, dated November 14, 2013, does not include Model A300 F4–622 airplanes that are in a UPS configuration (Airbus Modifications 11133, 12047, 12048, 12050, but not 12699), which would mean UPS would need to request an alternative method of compliance (AMOC) or other means to show compliance for those airplanes.

We acknowledge the concern UPS identified regarding the clarity of the AD applicability. Therefore, we have revised the applicability to match the related MCAI, which should address UPS's concern. We do not intend for this AD to affect UPS's specified A300 F4–622R configuration (Airbus Modifications 11133, 12047, 12048, 12050, but not 12699). We have revised paragraph (c)(4) of this AD accordingly. However, we do not agree to delete references to both Airbus Modifications 11133 and 12699 from the applicability of this AD since there are airplanes with these modifications in the worldwide fleet that might be imported and placed on the U.S. Register. Therefore, we have not removed references to Airbus Modifications 11133 and 12699 from paragraphs (c)(3) and (c)(4) of this AD.

**Request To Remove Typographical Error**

UPS requested that paragraph (l)(2) of the proposed AD be revised to remove a typographical error that resulted in listing Model A300 F4–622R airplanes twice.

We agree that there was a typographical error, as described by UPS. We have removed the redundant reference in this AD.

**Additional Change to This AD**

We added new paragraph (m) to this AD to specify clearly the required calculation method for establishing the average flight times (AFT) for the compliance times for certain inspections required by this AD. We also redesignated subsequent paragraphs.

**Conclusion**

We reviewed the available data, including 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 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

Airbus has issued Service Bulletins A300–57–0116, Revision 07, dated September 19, 2011, including Appendixes A and B; and A300–57–6005, Revision 06, dated November 14, 2013. This service information describes procedures for ultrasonic inspections of the No. 2 flap beam base and side members. These documents are distinct since they apply to different airplane models. 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 49 airplanes of U.S. registry.

The actions required by AD 95–21–09 and retained in this AD, take about 6 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 95–21–09 is $510 per product, per inspection cycle.

We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $24,990 per inspection cycle, or $510 per product, per inspection cycle.

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

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 95–21–09, Amendment 39–9395 (60 FR 53847, October 18, 1995), and adding the following new AD:

**2016–20–08 Airbus:** Amendment 39–18674; Docket No. FAA–2015–8470; Directorate Identifier 2013–NM–199–AD.

**(a) Effective Date**

This AD is effective November 22, 2016.

**(b) Affected ADs**

This AD replaces AD 95–21–09, Amendment 39–9395 (60 FR 53847, October 18, 1995) (''AD 95–21–09'').

**(c) Applicability**

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, all manufacturer serial numbers (MSNs).

(2) Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R airplanes, all MSNs.

(3) Airbus Model A300 F4–605R, all MSNs, except those airplanes on which both Airbus Modifications 11133 and 12699 have been embodied.

(4) Airbus Model A300 F4–622R airplanes, all MSNs, except those airplanes on which the modifications identified in paragraph (c)(4)(i) or (c)(4)(ii) of this AD have been embodied.

(i) All Airbus Modifications 11133, 12047, 12048, and 12050 have been embodied.

(ii) Both Airbus Modifications 11133 and 12699 have been embodied.

(5) Airbus Model A300 C4–605R Variant F airplanes, all MSNs.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a determination that the compliance times must be reduced. We are issuing this AD to detect and correct cracking of the No. 2 flap beams, which could result in rupture of the flap beams and reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Retained Inspection and Corrective Actions for Model A300 Series Airplanes, With Note 3 of AD 95–21–09 Incorporated and Additional Terminating Provisions**

This paragraph restates the requirements of paragraph (a) of AD 95–21–09, with Note 3 of AD 95–21–09 incorporated and additional terminating provisions. For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 120 days after May 9, 1985 (the effective date of AD 85–07–04, Amendment 39–5027 (50 FR 13013, April 2, 1985) (''AD 85–07–04'')), whichever occurs later, inspect for cracking of the base steel member and light alloy side members of the No. 2 flap beams, left hand and right hand, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993. Accomplishing the requirements of paragraph (h) or (l) of this AD terminates the requirements of this paragraph. Measurement of crack length is performed by measurement of the probe displacement (perpendicular to symmetry plane of beam) between defect indication appearance and its complete disappearance. The bolt hole indication should not be interpreted as an indication of a defect. These two indications appear very close together because the defects originate from the bolt holes.

(1) If no cracking is detected: Except as provided by paragraph (i) of this AD, repeat the inspection at intervals not to exceed 1,700 landings until the requirements of paragraph (h) or (l) of this AD are accomplished.

(2) If any crack is detected that is less than or equal to 4 millimeters (mm): Repeat the inspection at intervals not to exceed 250 landings, until the requirements of paragraph (h) or (l) of this AD are accomplished.

(3) If any crack is detected that exceeds 4 mm: Prior to further flight, replace the flap beam in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993, and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by paragraph (h) or (l) of this AD.

**(h) Retained Ultrasonic Inspection and Corrective Action for Model A300 Series Airplanes, With Additional Terminating Provisions**

This paragraph restates the requirements of paragraph (b) of AD 95–21–09, with additional terminating provisions. For Model A300 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 1,000 landings after November 17, 1995 (the effective date of AD 95–21–09), whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap beams, in accordance with Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993. Accomplishment of this inspection terminates the inspections required by paragraph (g) of this AD. Accomplishment of the requirements of paragraph (l) of this AD terminates the requirements of this paragraph.

(1) If no cracking is detected: Except as provided by paragraph (i) of this AD, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole, and that crack is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993; and prior to the accumulation of 15,000 flight cycles on the replaced flap beam, perform the ultrasonic inspection as required by this paragraph.

**(i) Retained Modification of the No. 2 Track Beam for Model A300 Series Airplanes, With Changes to Compliance Extension**

This paragraph restates the provisions of paragraph (c) of AD 95–21–09, with changes to compliance extension. For Model A300 series airplanes: After accomplishing the initial inspection required by paragraph (h) of this AD, accomplishment of either paragraph (i)(1) or (i)(2) of this AD before the effective date of this AD extends the fatigue life of the No. 2 flap track beam as specified in those paragraphs, provided that no cracking is detected during any inspection required by paragraph (g) or (h) of this AD.

(1) Removal of any damage and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 4740), in accordance with Airbus Service Bulletin A300–57–128, Revision 3, dated January 26, 1990, extends the interval for the first repetitive inspection required by paragraph (h) of this AD from 1,700 landings to 12,000 landings, provided that Modification No. 4740 is accomplished prior to the accumulation of 16,700 total landings on the flap beams. Following accomplishment of the first repetitive inspection, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings.

(2) Cold working of the bolt holes and the installation of larger diameter bolts on the No. 2 flap track beam (Modification No. 5815), in accordance with Airbus Service Bulletin A300–57–141, Revision 7, dated July 16, 1993, extends the interval for the first repetitive inspection required by paragraph (h) of this AD from 1,700 landings to the interval specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) If interference fit bolts that are 15/32-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (h) of this AD is extended to 22,000 landings, provided that Modification No. 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (h) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings.

(ii) If interference fit bolts that are 7/16- or 3/8-inch in diameter are fitted, the interval for the first repetitive inspection required by paragraph (h) of this AD is extended to 33,000 landings, provided that Modification No. 5815 is accomplished prior to the accumulation of 16,700 total landings on the flap beam. Following accomplishment of the first repetitive inspection required by paragraph (h) of this AD, subsequent repetitive inspections shall be performed at intervals not to exceed 1,700 landings.

**(j) Retained Ultrasonic Inspection and Corrective Actions for Model A300–600 Series Airplanes, With Terminating Provisions**

This paragraph restates the requirements of paragraph (d) of AD 95–21–09, with terminating provisions. For Model A300–600 series airplanes: Prior to the accumulation of 15,000 total landings, or within the next 1,000 landings after November 17, 1995 (the effective date of AD 95–21–09), whichever occurs later, perform an ultrasonic inspection to detect cracking of the No. 2 flap track beams, in accordance with Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993. Accomplishing the actions required by paragraph (l) of this AD terminates the requirements of this paragraph.

(1) If no cracking is detected, repeat the ultrasonic inspections thereafter at intervals not to exceed 1,700 landings.

(2) If any crack is detected beyond the bolt hole and that crack is less than or equal to 4 mm in length: Repeat the ultrasonic inspections thereafter at intervals not to exceed 250 landings.

(3) If any crack is detected beyond the bolt hole and that crack is greater than 4 mm in length: Prior to further flight, replace the flap beam in accordance with Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993, and prior to the accumulation of 15,000 landings on the replaced flap beam, perform the ultrasonic inspection required by paragraph (j) of this AD.

**(k) Retained Optional Action With Note 5 of AD 95–21–09 Incorporated and Changes To Terminating Action**

This paragraph restates the provisions of paragraph (e) of AD 95–21–09, with Note 5 of AD 95–21–09 incorporated and changes to terminating action. For Model A300–600 series airplanes: Installation of oversized transition fit bolts in cold-worked holes, in accordance with Airbus Service Bulletin A300–57–6006, Revision 4, dated July 25, 1994 (Modification No. 5815), constitutes terminating action for the repetitive inspection requirements of paragraph (j) of this AD, provided that no cracking is detected during any inspection required by paragraph (j) of this AD, and provided that the installation is accomplished prior to the accumulation of 15,000 total landings and before the effective date of this AD. If any bolt requires oversizing above 7/16-inch diameter during accomplishment of this installation, prior to further flight, repair using a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. As of the effective date of this AD, any new repair approval must be done using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. If Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993, was accomplished concurrently with Airbus Service Bulletin A300–57–6006, Revision 3, dated December 16, 1993 (Modification No. 5815), the ultrasonic inspection for cracking required by paragraph (j) of this AD need not be performed since the eddy current inspection detailed for Modification No. 5815 is more comprehensive.

**(l) New Requirement of This AD: Initial and Repetitive Ultrasonic Inspections**

At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD and, thereafter at intervals not to exceed those defined in table 3 to paragraph (l) of this AD, as applicable, accomplish an ultrasonic inspection for cracking of the steel base member and the aluminum side members' flap beam on the left-hand (LH) and right-hand (RH) sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0116, Revision 07, dated September 19, 2011, including Appendixes A and B; or Airbus Service Bulletin A300–57–6005, Revision 06, dated November 14, 2013; as applicable. For the purposes of this AD, average flight time

(AFT) must be established as specified in paragraph (m) of this AD. Doing the actions required by this paragraph terminates the requirements of paragraphs (g) through (k) of this AD.

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes (referred to as Model A300 series airplanes): Within the applicable compliance time defined in table 1 to paragraph (l) of this AD.

(2) For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R airplanes, and Model A300 C4–605R Variant F airplanes (referred to as Model A300–600 series airplanes): At the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within the compliance time defined in table 2 to paragraph (l) of this AD.

(ii) Within 300 flight cycles or 640 flight hours after the effective date of this AD, whichever occurs first.

TABLE 1 TO PARAGRAPH (l) OF THIS AD—INSPECTION COMPLIANCE TIMES FOR MODEL A300 SERIES AIRPLANES

| Airplane configuration | Compliance times for airplanes with an AFT of less than 1.5 | Compliance times for airplanes with an AFT of more than or equal to 1.5 |
|---|---|---|
| Model A300 B2–1A, B2–1C, B2K–3C, B2–203 airplanes on which Airbus Modifications 4740 and 5815 have not been embodied. | Within 15,000 flight cycles or 16,900 flight hours since first flight of the airplane, whichever occurs first. | Within 15,000 flight cycles or 16,900 flight hours since first flight of the airplane, whichever occurs first. |
| Model A300 B4–103 airplanes on which Airbus Modifications 4740 and 5815 have not been embodied. | Within 15,000 flight cycles or 20,500 flight hours since first flight of the airplane, whichever occurs first. | Within 15,000 flight cycles or 20,500 flight hours since first flight of the airplane, whichever occurs first. |
| Model A300 B4–2C, and B4–203 airplanes on which Airbus Modifications 4740 and 5815 have not been embodied. | Within 16,200 flight cycles or 22,200 flight hours since first flight of the airplane, whichever occurs first. | Within 15,000 flight cycles or 34,000 flight hours since first flight of the airplane, whichever occurs first. |
| Model A300 B2–1A, B2–1C, B2K–3C, B2–203 airplanes on which Airbus Modification 4740 has been embodied. | Within 12,000 flight cycles or 13,500 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. | Within 12,000 flight cycles or 13,500 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. |
| Model A300 B4–103 airplanes on which Airbus Modification 4740 has been embodied. | Within 12,000 flight cycles or 16,400 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. | Within 12,000 flight cycles or 16,400 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. |
| Model A300 B4–2C, and B4–203 airplanes on which Airbus Modification 4740 has been embodied. | Within 12,900 flight cycles or 17,700 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. | Within 12,000 flight cycles or 27,200 flight hours since embodiment of Airbus Modification 4740, whichever occurs first. |
| Model A300 B2–1A, B2–1C, B2K–3C, B2–203 airplanes on which Airbus Modification 5815 has been embodied and no bolt larger than 7/16-inch diameter is fitted. | Within 33,000 flight cycles or 37,200 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 33,000 flight cycles or 37,200 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300 B4–103 airplanes on which Airbus Modification 5815 has been embodied and no bolt larger than 7/16-inch diameter is fitted. | Within 33,000 flight cycles or 45,200 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 33,000 flight cycles or 45,200 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300 B4–2C, and B4–203 airplanes on which Airbus Modification 5815 has been embodied and no bolt larger than 7/16-inch diameter is fitted. | Within 35,600 flight cycles or 48,800 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 33,000 flight cycles or 74,900 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300 B2–1A, B2–1C, B2K–3C, B2–203 airplanes on which Airbus Modification 5815 has been embodied and at least one bolt with a 15/32-inch diameter is fitted. | Within 22,000 flight cycles or 24,800 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 22,000 flight cycles or 24,800 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300 B4–103 airplanes on which Airbus Modification 5815 has been embodied and at least one bolt with a 15/32-inch diameter is fitted. | Within 22,000 flight cycles or 30,100 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 22,000 flight cycles or 30,100 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300 B4–2C, and B4–203, airplanes on which Airbus Modification 5815 has been embodied and at least one bolt with a 15/32-inch diameter is fitted. | Within 23,700 flight cycles or 32,500 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 22,000 flight cycles or 49,900 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |

TABLE 2 TO PARAGRAPH (1) OF THIS AD—COMPLIANCE TIMES FOR MODEL A300–600 SERIES AIRPLANES

| Airplane configuration | Compliance times for airplanes with an AFT of less than 1.5 | Compliance times for airplanes with an AFT of more than or equal to 1.5 |
|---|---|---|
| Model A300–600 series airplanes on which Airbus Modification 5815 and Airbus Modification 11133 have not been embodied. | Within 16,200 flight cycles or 24,300 flight hours since first flight of the airplane, whichever occurs first. | Within 15,000 flight cycles or 32,400 flight hours since first flight of the airplane, whichever occurs first. |
| Model A300–600 series airplanes on which Airbus Modification 5815 has been embodied and no bolt larger than 7/16-inch diameter is fitted. | Within 35,600 flight cycles or 53,400 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 33,000 flight cycles or 71,200 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |
| Model A300–600 series airplanes on which Airbus Modification 5815 has been embodied and at least one bolt 15/32-inch diameter is fitted. | Within 23,700 flight cycles or 35,600 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. | Within 22,000 flight cycles or 47,500 flight hours since embodiment of Airbus Modification 5815, whichever occurs first. |

TABLE 2 TO PARAGRAPH (1) OF THIS AD—COMPLIANCE TIMES FOR MODEL A300–600 SERIES AIRPLANES—Continued

| Airplane configuration | Compliance times for airplanes with an AFT of less than 1.5 | Compliance times for airplanes with an AFT of more than or equal to 1.5 |
|---|---|---|
| Model A300–600 series airplanes on which Airbus Modification 11133 has been embodied. | Within 35,600 flight cycles or 53,400 flight hours since first flight, whichever occurs first. | Within 33,000 flight cycles or 71,200 flight hours since first flight, whichever occurs first. |

TABLE 3 TO PARAGRAPH (1) OF THIS AD—REPETITIVE INSPECTION INTERVALS

| Airplane models | Repetitive interval (not to exceed) for airplanes with an AFT of less than 1.5 | Repetitive interval (not to exceed) for airplanes with an AFT equal to or more than 1.5 |
|---|---|---|
| A300 B2–1A, B2–1C, B2K–3C, B2–203 | 1,500 flight cycles or 1,600 flight hours, whichever occurs first. | 1,500 flight cycles or 1,600 flight hours, whichever occurs first. |
| A300 B4–103 airplanes | 1,500 flight cycles or 2,000 flight hours, whichever occurs first. | 1,500 flight cycles or 2,000 flight hours, whichever occurs first. |
| A300 B4–2C, and B4–203 | 1,600 flight cycles or 2,200 flight hours, whichever occurs first. | 1,500 flight cycles or 3,400 flight hours, whichever occurs first. |
| A300–600 series airplanes | 1,600 flight cycles or 2,400 flight hours, whichever occurs first. | 1,500 flight cycles or 3,200 flight hours, whichever occurs first. |

**(m) Calculating the AFT**

For the purpose of this AD, the AFT must be established as specified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD.

(1) For the initial inspection, the average flight time is the total accumulated flight hours, counted from take-off to touch-down, divided by the total accumulated flight cycles at the effective date of this AD.

(2) For the first repeated inspection interval, the average flight time is the total accumulated flight hours divided by the total accumulated flight cycles at the time of the inspection threshold.

(3) For all inspection intervals onward, the average flight time is the flight hours divided by the flight cycles accumulated between the last two inspections.

**(n) New Requirement of This AD: Corrective Action**

If any crack is found during any inspection required by paragraph (l) of this AD: Before further flight, replace the flap beam 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). Replacement of the flap beam does not constitute terminating action for the inspections required by paragraph (l) of this AD.

**(o) Credit for Previous Actions**

(1) This paragraph provides credit for inspections required by paragraph (g) of this AD, if those inspections were performed before November 17, 1995 (the effective date of AD 95–21–09) using Airbus Service Bulletin A300–57–116, Revision 1, dated August 27, 1983; Revision 2, dated April 24, 1984; Revision 3, dated July 20, 1984; Revision 4, dated August 13, 1986; or Revision 5, dated July 10, 1989; as applicable.

(2) This paragraph provides credit for actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (o)(2)(i) through (o)(2)(x) of this AD.

(i) Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993, which was previously incorporated by reference on November 17, 1995 (60 FR 53847, October 18, 1995).

(ii) Airbus Service Bulletin A300–57–6005, Revision 03, dated November 25, 1997.

(iii) Airbus Service Bulletin A300–57–6005, Revision 04, dated October 25, 1999.

(iv) Airbus Service Bulletin A300–57–6005, Revision 05, dated April 25, 2013.

(v) Airbus Service Bulletin A300–57–116, Revision 1, dated August 27, 1983.

(vi) Airbus Service Bulletin A300–57–116, Revision 2, dated April 24, 1984.

(vii) Airbus Service Bulletin A300–57–116, Revision 3, dated July 20, 1984.

(viii) Airbus Service Bulletin A300–57–116, Revision 4, dated August 13, 1986.

(ix) Airbus Service Bulletin A300–57–116, Revision 5, dated July 10, 1989.

(x) Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993, which was previously incorporated by reference on November 17, 1995 (60 FR 53847, October 18, 1995).

**(p) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOCs approved previously for AD 95–21–09, are approved as AMOCs for the corresponding provisions of paragraphs (g) through (j) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (n) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(q) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2013–0234R2, dated October 7, 2013, 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–2015–8470.

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

**(r) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on November 22, 2016.

(i) Airbus Service Bulletin A300–57–0116, Revision 07, dated September 19, 2011, including Appendixes A and B. Only the first page of Appendixes A and B of this document are identified as appendixes.

(ii) Airbus Service Bulletin A300–57–6005, Revision 06, dated November 14, 2013.

(4) The following service information was approved for IBR on November 17, 1995 (60 FR 53847, October 18, 1995).

(i) Airbus Service Bulletin A300–57–116, Revision 6, dated July 16, 1993, which contains the following effective pages: Pages 1 through 11 of this document are identified as Revision 6, dated July 16, 1993.

(ii) Airbus Service Bulletin A300–57–128, Revision 3, dated January 26, 1990, which contains the following effective pages: Page 1 is identified as Revision 3, dated January 26, 1990; pages 2 through 5 are identified as Revision 1, dated February 7, 1986; and pages 6 through 14 are identified as the original issue, dated August 27, 1983.

(iii) Airbus Service Bulletin A300–57–141, Revision 7, dated July 16, 1993, which contains the following effective pages: Pages 1 through 24 of this document are identified as Revision 7, dated July 16, 1993.

(iv) Airbus Service Bulletin A300–57–6005, Revision 2, dated December 16, 1993, which contains the following effective pages: Pages 1 through 4 are identified as Revision 2, dated December 16, 1993; pages 5 through 7 and 9 are identified as Revision 1, dated February 26, 1993; and page 8 is identified as the original issue, dated August 13, 1986.

(v) Airbus Service Bulletin A300–57–6006, Revision 4, dated July 25, 1994, which contains the following effective pages: Pages 1, 2, 5, and 7 are identified as Revision 4, dated July 25, 1994; and pages 3, 4, 6, and 8 through 20 are identified as Revision 3, dated December 16, 1993.

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

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

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

Issued in Renton, Washington, on September 19, 2016.

**Dionne Palermo,**

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

[FR Doc. 2016–23261 Filed 10–17–16; 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–2015–8132; Directorate Identifier 2015–NM–127–AD; Amendment 39–18663; AD 2016–19–14]**

**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 A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. This AD was prompted by a report of cracks found during maintenance inspections on certain lugs of the 10VU rack side fittings in the cockpit. This AD requires repetitive inspections for cracking of the lugs on the 10VU rack side fittings, and repair of any cracking. We are issuing this AD to prevent reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

**DATES:** This AD is effective November 22, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 22, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8132.

### 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–2015–8132; 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:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on December 31, 2015 (80 FR 81792) (''the NPRM''). The NPRM was prompted by a report of cracks found during maintenance inspections on certain lugs of the 10VU rack side fittings in the cockpit. The NPRM proposed to require repetitive inspections for cracking of the lugs on the 10VU rack side fittings, and repair of any cracking. We are issuing this AD to prevent reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0170, dated August 18, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 and A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. The MCAI states:

During an unscheduled maintenance operation on an A330 aeroplane, the 10VU rack was removed for access and cracks were discovered on 10VU rack side fittings on lugs 1, 3, and 4. As a similar design is installed on A320 family aeroplanes, a sampling review was done to determine the possible fleet impact. The result showed that several aeroplanes had cracked or broken 10VU rack side fittings.

This condition, if not detected and corrected, could lead to a high vibration level on the primary flight- and navigation displays during critical flight phases (takeoff and landing), possibly creating reading difficulties for the crew.

Prompted by these findings, Airbus developed mod 35869 to reinforce the affected rack fitting lugs. For in-service aeroplanes, Airbus published Service Bulletin (SB) A320–92–1087 to provide inspection and repair instructions.

For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DET) of the affected 10VU rack fitting lugs and, depending on findings, accomplishment of a repair.

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–2015–8132.

**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 Clarify the Description of the Unsafe Condition**

Airbus asked that we revise the unsafe condition by stating that the NPRM is intended to prevent ''reading difficulties of flight-critical information,'' and not ''loss of flight-critical information.'' Airbus stated that this clarification would correspond with the language specified in EASA AD 2015–0170, dated August 18, 2015.

We agree with the commenter's request, for the reason provided. We have clarified the unsafe condition in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** Discussion sections in the preamble of this final rule and in paragraph (e) of the AD.

**Request To Extend Compliance Time**

Delta Airlines (DAL) asked that the compliance time specified in the NPRM be extended from 24 to 36 months. DAL stated that the subject cracking issue has been known for over five years; however, the FAA just recently took regulatory action. DAL added that there have been no in-service reports of issues related to safety of flight due to the cracking condition. DAL noted that the unsafe condition of vibration during a critical phase of flight is theoretical and not based on actual testing or experience. In light of this, DAL stated that the 24-month time limit is unwarranted, and should be extended to 36 months to allow more time so the inspection can be accomplished during a hangar visit.

We do not agree with the commenter's request. In developing an appropriate compliance time for the actions specified in this AD, we considered the safety implications and normal maintenance schedules for the timely accomplishment of the specified actions. We have determined that the proposed 24-month compliance time will ensure an acceptable level of safety and allow the actions to be done during scheduled maintenance intervals for most affected operators. However, affected operators may request an alternative method of compliance (AMOC) for an extension of the compliance time under the provisions of paragraph (i)(1) of this AD by submitting data and analysis substantiating that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

**Request To Remove Reporting Requirement**

DAL asked that the proposed mandatory reporting requirement in paragraph (h) of the proposed AD be removed. DAL understands that Airbus wants to gather necessary in-service information; however, the airworthiness of the airplane does not depend on mandatory reporting. DAL stated that the airplane would be airworthy and public safety would be maintained without the mandatory reporting requirement. DAL added that requiring reporting places an unfair burden on operators of Airbus airplanes compared to operators of airplanes produced by other manufacturers, particularly when there are no findings, because reporting is mandated for the benefit of the original equipment manufacturer. DAL concluded that the reporting should not be mandated through this regulatory action.

We do not agree with the commenter's request to remove the reporting requirement in paragraph (h) of this AD. We disagree that public safety would be maintained without the mandatory reporting requirement. Reporting is necessary for the airframe manufacturer to determine the extent of the cracking of the lugs on the 10VU rack side fittings, and to ascertain any necessary follow-up actions. Therefore, we have not changed this AD in this regard.

**Request To Clarify Reporting Requirements**

DAL asked for clarification of the format necessary to report the inspection results specified in paragraph (h) of the proposed AD. DAL asked if the reporting form located in the back of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, must be used or if the report can be submitted using another format.

While we recommend that operators use the form in Figure A–FRAAA—Sheet 02, titled ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, this AD does not require use of that form. We have changed paragraph (h) of this AD to clarify our intent.

DAL also noted that it disagrees with having to determine and report the supplemental type certificate (STC) status for equipment attached to the 10VU rack, as specified in Figure A–FRAAA—Sheet 02, titled ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. DAL stated that STC equipment should be addressed in a separate regulatory action.

We agree with the comment. As previously indicated, the referenced form is not specifically required by this AD, and we have changed paragraph (h) of this AD to clarify our intent.

**Request for Clarification on Returning Damaged Parts**

DAL and United Airlines (UAL) asked for clarification on returning damaged parts to Airbus. DAL stated that if the reporting form must be used, it disagrees with sending all damaged parts to Airbus. UAL stated that the NPRM proposes requiring reporting inspection findings to Airbus, and Figure A–FRAAA—Sheet 02, titled ''Inspection Report'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, specifies that damaged lugs are to be sent to Airbus for investigation. UAL noted that it will try to deliver damaged parts, but added that this should not be an AD requirement since parts shipment will increase cost and the operator cannot guarantee delivery.

We agree that clarification is necessary. Although the note contained in Figure A–FRAAA—Sheet 02, titled ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, specifies ''If lugs have been replaced the removed part should be sent to Airbus for investigation,'' this AD does not include that requirement. We have included this

exception in the reporting requirement in paragraph (h) of this AD.

**Request To Use a Certain Drawing**

UAL asked that we approve using the current version of the Airbus repair drawing, as called out in Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. UAL noted that this repair drawing is the latest version and may be revised without revision of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014.

For clarification, we agree that the current version of the repair drawing can be used. We have not changed this AD in this regard.

**Request To Change Costs of Compliance Section**

DAL asked that we change the repair estimate in the 'Costs of Compliance' section of the NPRM, as specified in Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. DAL stated that the service information does not provide the cost of the parts, and Airbus does have the price of each part listed in the COMPA01 components. DAL added that the parts cost is $9,140 per airplane to accomplish the repair work. DAL asked that this cost be included in the cost of the repair, for a total of $16,280 per airplane.

We agree with the commenter's request, for the reason provided. We have changed the repair estimate in the 'Costs of Compliance' 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 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 Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. The service information describes procedures for repetitive inspections for cracking of the lugs on the 10VU rack side fittings, and repair of any cracking. 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 959 airplanes of U.S. registry.

We also estimate that it takes about 2 work-hours per product to comply with the basic requirements of this AD, and 1 work-hour per product to report inspection findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $244,545, or $255 per product.

In addition, we estimate that any necessary repair takes about 84 work-hours and require parts costing $9,140, for a cost of $16,280 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 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):

**2016–19–14 Airbus:** Amendment 39–18663; Docket No. FAA–2015–8132; Directorate Identifier 2015–NM–127–AD.

**(a) Effective Date**

This AD is effective November 22, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category;

except airplanes on which Airbus Modification 35869 has been embodied in production.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

**(e) Reason**

This AD was prompted by a report of cracks found during maintenance inspections on certain lugs of the 10VU rack side fittings in the cockpit. We are issuing this AD to prevent reading difficulties of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery.

**(f) Compliance**

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

**(g) Repetitive Inspections and Repair**

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection for cracking of the lugs on the 10VU rack side fittings in the cockpit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. If any crack is found, before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles or 40,000 flight hours, whichever occurs first. Repair of the 10VU rack lugs does not terminate the repetitive inspections required by this paragraph.

(1) Before the accumulation of 30,000 total flight cycles or 60,000 total flight hours, whichever occurs first since the airplane's first flight.

(2) Within 24 months after the effective date of this AD.

**(h) Reporting Requirement**

Submit a report of any findings (positive and negative) of any inspection required by paragraph (g) of this AD to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*), at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. Where Figure A–FRAAA—Sheet 02, titled ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, specifies sending removed lugs to Airbus for investigation, this AD does not include that requirement. The form contained in Figure A–FRAAA—Sheet 02, titled ''Inspection Report,'' of Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014, may be used to meet this reporting requirement.

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

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

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or 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.

(4) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2015–0170, dated August 18, 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–2015–8132.

**(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) Airbus Service Bulletin A320–92–1087, Revision 02, dated November 25, 2014.

(ii) Reserved.

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

(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 September 14, 2016.

**Michael Kaszycki,**

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

[FR Doc. 2016–22837 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–13–P

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

## Order Establishing De Minimis Threshold Phase-In Termination Date

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** With respect to the *de minimis* exception to the swap dealer definition, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing an order (''Order''), pursuant to the applicable Commission regulation, to establish December 31, 2018 as the *de minimis* threshold phase-in termination date.

**DATES:** Issued October 13, 2016.

**FOR FURTHER INFORMATION CONTACT:** Eileen T. Flaherty, Director, 202–418–5326, *eflaherty@cftc.gov;* Erik Remmler, Deputy Director, 202–418–7630, *eremmler@cftc.gov;* Lauren Bennett, Special Counsel, 202–418–5290, *lbennett@cftc.gov;* Margo Dey, Special Counsel, 202–418–5276, *mdey@cftc.gov;* or Rajal Patel, Special Counsel, 202–418–5261, *rpatel@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Statutory and Regulatory Background*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] directed the CFTC and the U.S. Securities and Exchange Commission (''SEC'' and together with the CFTC, ''Commissions'') to jointly further define the term ''swap dealer'' and to include therein a *de minimis* exception.[2] The CFTC's further definition of swap dealer is provided in Regulation 1.3(ggg). The *de minimis* exception therein provides that a person shall not be deemed to be a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount threshold of $3 billion (measured over the prior 12-month period), subject to a phase-in period during which the gross notional amount threshold is set at $8 billion.[3] Absent further action by the Commission, the phase-in period would terminate on December 31, 2017, at which time the *de minimis* threshold would decrease to $3 billion.[4] This would require firms to start tracking their swap activity beginning January 1, 2017 to determine whether their dealing activity over the course of that year would require them to register as swap dealers.

When the $3 billion *de minimis* exception was established, the Commissions explained that the information then available regarding certain portions of the swap market was limited in certain respects, and that they expected that the implementation of swap data reporting may enable reassessment of the *de minimis* exception.[5] Accordingly, the Commission adopted Regulation 1.3(ggg)(4), which directed CFTC staff to issue a report, after a specified period of time, on topics relating to the *de minimis* exception ''as appropriate, based on the availability of data and information.'' [6] Regulation 1.3(ggg)(4) further provides that after giving due consideration to the report and any associated public comment, the Commission may issue an order to establish a termination date for the phase-in period or propose through rulemaking modifications to the *de minimis* exception.

### *B. Staff Reports*

Staff issued for public comment a preliminary report concerning the *de minimis* exception on November 18, 2015 (''Preliminary Report'').[7] After consideration of the public comments received, and further data analysis, staff issued the Swap Dealer *De Minimis* Exception Final Staff Report [8] on August 15, 2016 (''Final Report,'' and together with the Preliminary Report, ''Staff Reports''). The Staff Reports analyzed the available swap data [9] in conjunction with relevant policy considerations to assess alternative *de minimis* threshold levels and other potential changes to the *de minimis* exception.

### *C. Swap Data Analysis*

As discussed in the Staff Reports, the lack of certain metrics needed for evaluating different *de minimis* thresholds, as well as data validity issues, limited the analysis of the potential impact of changes to the current *de minimis* exception.[10] The Final Report further noted that, notwithstanding these data issues, the quality of the swap data that is reported to the Commission appears to be continually improving, and that the Commission is taking additional steps to enhance swap data quality.[11]

The data analysis in the Staff Reports provided some insights into the effectiveness of the *de minimis* exception as currently implemented. Staff analyzed the number of swap transactions involving at least one registered swap dealer, which is indicative of the extent to which swaps are subject to swap dealer regulation at the current $8 billion threshold. Data reviewed for the Final Report indicated that approximately 96% of all reported swap transactions involved at least one registered swap dealer. When considering individual swap asset classes, approximately 98% or more of swaps in each asset class, other than the Non-Financial Commodity asset class, involved at least one registered swap dealer. Approximately 89% of Non-Financial Commodity swaps involved a registered swap dealer.[12]

However, as discussed above, the data available was not sufficient to assess whether, and to what extent, specific changes to the *de minimis* threshold levels would increase or decrease the coverage of swaps by swap dealer regulation. In particular, the Staff Reports noted that reliable notional amount data was not available for Non-Financial Commodity, Equity, and FX Derivative swaps.

The Commission also notes that it has not yet adopted a regulation on capital requirements for swap dealers, which is a significant component of swap dealer registration. The Commission believes it

[1] Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act can be accessed on the Commission's Web site, at *www.cftc.gov.*

[2] *See* Dodd-Frank Act sections 712(d) and 721. The definition of ''swap dealer'' can be found in section 1a(49) of the Commodity Exchange Act and as further defined in Regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg). The Commodity Exchange Act is at 7 U.S.C. 1, *et seq.* (2014), and is accessible on the Commission's Web site, at *www.cftc.gov.*

[3] *See* 17 CFR 1.3(ggg)(4). *See also* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

This Order does not impact the *de minimis* threshold for swaps with ''special entities'' as defined in the Commodity Exchange Act, section 4s(h)(2)(C), 7 U.S.C. 6s(h)(2)(C).

[4] *See* 17 CFR 1.3(ggg)(4)(ii)(D).

[5] *See* 77 FR at 30634, 30640.

[6] SEC Regulation 240.3a71–2A similarly directs SEC staff to prepare a report on the security-based swap dealer *de minimis* exception. 17 CFR 240.3a71–2A.

[7] Swap Dealer *De Minimis* Exception Preliminary Report (Nov. 18, 2015), *available at http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.*

[8] Swap Dealer *De Minimis* Exception Final Staff Report (August 15, 2016), *available at http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf.*

[9] The data analysis broke down the data into the following asset classes: Interest rate swaps (''IRS''); credit default swaps (''CDS''); non-financial commodity (''Non-Financial Commodity'') swaps; equity (''Equity'') swaps; and foreign exchange derivatives (''FX Derivatives'').

[10] *See* Preliminary Report at 12–21; Final Report at 4–6, 19–20. For example, the data reported does not indicate whether either counterparty to a swap is acting as a dealer, and there are difficulties in calculating the notional amounts for certain types of swaps in a uniform manner useful for data analysis.

[11] *See* Final Report at 18–19. For example, in June 2016, the Commission finalized amendments related to the reporting of cleared swaps. *See* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

[12] *See* Final Report at 22.

is prudent to finalize the capital rule before addressing the *de minimis* threshold. In addition, the swap dealer requirements regarding margin for uncleared swaps, another important component of swap dealer registration, are currently being implemented. The Commission believes that a year's delay would allow it to finalize the swap dealer capital rule and assess the implementation of margin requirements for uncleared swaps. Having information on these aspects associated with swap dealer registration would be helpful in further assessing the impact of changing the *de minimis* threshold.

Accordingly, the Commission believes that it is prudent to extend the phase-in period by one year, which may provide additional time for more information to become available to reassess the *de minimis* exception. Adopting this Order at this time also provides clarity to market participants regarding when they would need to begin preparing for a change to the *de minimis* exception.

## II. Conclusion and Order

For the reasons discussed above, and pursuant to its authority under Regulation 1.3(ggg)(4)(ii)(C)(*1*), the Commission is establishing December 31, 2018 as the termination date for the *de minimis* threshold phase-in period. The Commission notes that prior to the termination of the phase-in period, the Commission may take further action regarding the *de minimis* threshold by rule amendment, order, or other appropriate action.[13]

## III. Related Matters

### *A. Paperwork Reduction Act*

The Paperwork Reduction Act (''PRA'')[14] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. This Order does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the PRA.

### *B. Cost-Benefit Considerations*

Section 15(a) of the Commodity Exchange Act (''CEA'') requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[15] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations. In this section, the Commission considers the costs and benefits resulting from its determinations with respect to the section 15(a) factors.

#### 1. Background

As discussed above, Regulation 1.3(ggg)(4)(i) provides an exception from the swap dealer definition for persons who engage in a *de minimis* amount of swap dealing activity. Currently, under Regulation 1.3(ggg)(4)(i), a person shall not be deemed to be a swap dealer unless its swap dealing activity exceeds an aggregate gross notional amount threshold of $3 billion (measured over the prior 12-month period), subject to a phase-in period during which the gross notional amount threshold is set at $8 billion.[16] The phase-in period would have terminated on December 31, 2017, and the *de minimis* threshold would have decreased to $3 billion, absent this Order.[17] This would have required firms to start tracking their swap activity beginning January 1, 2017 to determine whether their dealing activity over the course of that year would require them to register as swap dealers.

The $3 billion threshold, which, absent this Order, would be effective on December 31, 2017, sets the baseline for the Commission's consideration of the costs and benefits of this Order.[18] Accordingly, the Commission considers the costs and benefits that will result from an extended phase-in period.

#### 2. General Cost and Benefit Considerations

There are several policy objectives underlying swap dealer regulation and the *de minimis* exception to swap dealer registration. The primary policy objectives of swap dealer regulation include the reduction of systemic risk, increased counterparty protections, and market efficiency, orderliness, and transparency.[19] Registered swap dealers are subject to a broad range of requirements, including, *inter alia,* registration, internal and external business conduct standards, reporting, recordkeeping, risk management, posting and collecting margin, and chief compliance officer designation and responsibilities. As noted in the Regulation 1.3(ggg) adopting release, generally, the lower the *de minimis* threshold, the greater the number of entities that are subject to these requirements, which could decrease systemic risk, increase counterparty protections, and promote swap market efficiency, orderliness, and transparency.[20]

The Commission also considers policy objectives furthered by a *de minimis* exception, which include regulatory certainty, allowing limited ancillary dealing, encouraging new participants to enter the swap dealing market, and regulatory efficiency.[21] Generally, the higher the *de minimis* threshold, the greater the number of entities that are able to engage in dealing activity without being required to register, which could increase competition and liquidity in the swap market.[22] In addition, because competitive markets may be more efficient, a higher *de minimis* threshold might improve swap market efficiency. Further, the Commission notes that it has been suggested that a higher threshold could allow the Commission to expend its resources on entities with larger swap dealing activities warranting more oversight. An alternative view is that the *de minimis* threshold should be set based on policy independent of consideration of the Commission's resources.

Extending the phase-in period by one year will delay realization of the policy benefits associated with the $3 billion *de minimis* threshold, but will also extend the policy benefits associated with a higher *de minimis* threshold. The additional time to adjust to the $3 billion *de minimis* threshold also would potentially increase regulatory certainty for some market participants. Given that the *de minimis* exception is subject to a 12-month look-back, extending the phase-in period to December 31, 2018 would allow entities that would potentially have to register as swap dealers additional time to adjust their activities and prepare for the compliance obligations related to swap dealer registration.

#### 3. Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its

[13] *See* 17 CFR 1.3(ggg)(4)(v).

[14] 44 U.S.C. 3501 *et seq.*

[15] 7 U.S.C. 19(a).

[16] 17 CFR 1.3(ggg)(4)(i). *See generally* 77 FR at 30626–35. *See also* note 3, *supra.*

[17] 17 CFR 1.3(ggg)(4).

[18] *See* 77 FR at 30702–14 (discussing the cost-benefit considerations with regard to the final swap dealer definition).

[19] *Id.* at 30628–30, 30707–08.

[20] *Id.* at 30628–30, 30703, 30707–08.

[21] *Id.* at 30628–30, 30707–08.

[22] Alternatively, the Commission notes that a lower *de minimis* threshold may lead to potential changes in market behavior, including, for example, product innovation.

actions in light of the following five factors. This Order will delay the potential costs and benefits discussed below by one year.

(i) Protection of Market Participants and the Public

Providing regulatory protections for swap counterparties who may be less experienced or knowledgeable about the swap products offered by swap dealers (particularly end-users who use swaps for hedging or investment purposes) is a fundamental policy goal advanced by the regulation of swap dealers. The Commission recognizes that the $3 billion *de minimis* threshold may result in more entities being required to register as swap dealers compared to an $8 billion threshold, thereby extending counterparty protections to a greater number of market participants. Further, swap dealer regulation is intended to reduce systemic risk in the swap market. Pursuant to the Dodd-Frank Act, the Commission has proposed or adopted regulations for swap dealers—including margin and risk management requirements—designed to mitigate the potential systemic risk inherent in the swap market. Therefore, the Commission recognizes that a lower *de minimis* threshold may result in more entities being required to register as swap dealers, thereby potentially further reducing systemic risk.

(ii) Efficiency, Competitiveness, and Financial Integrity of Markets

Other goals of swap dealer regulation are swap market transparency, orderliness, and efficiency. These benefits are achieved through regulations requiring, for example, swap dealers to keep trading records and report trades, provide counterparty disclosures about swap risks and pricing, and undertake portfolio reconciliation and compression exercises. Accordingly, the Commission notes that a lower *de minimis* threshold may have a positive effect on the efficiency and integrity of the markets.

However, the Commission also recognizes that the efficiency and competitiveness of the swap market may be negatively impacted if the *de minimis* threshold is set too low by potentially increasing barriers to entry that may stifle competition and reduce swap market efficiency. For example, if entities choose to reduce or cease their swap dealing activities so that they would not need to register if the *de minimis* threshold decreases to $3 billion, the number or availability of market makers for swaps may be reduced, which could lead to increased costs for potential counterparties and end-users.

(iii) Price Discovery

The Commission preliminarily believes that a $3 billion *de minimis* threshold may discourage participation of new swap dealers and ancillary dealing. If there are fewer entities engaged in dealing, there may be a negative effect on price discovery.

(iv) Sound Risk Management

The Commission notes that a $3 billion *de minimis* threshold could lead to better risk management practices because a greater number of entities would be required by regulation to: (i) Develop and implement detailed risk management programs; (ii) adhere to business conduct standards that reduce operational and other risks; and (iii) satisfy margin requirements for uncleared swaps.

(v) Other Public Interest Considerations

The Commission has not identified any other public purpose considerations for this Order.

*C. Antitrust Considerations*

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation. The Commission does not anticipate that the Order discussed herein will result in anti-competitive behavior.

## IV. Order

In light of the foregoing, *it is ordered*, pursuant to the Commission's authority under Regulation 1.3(ggg)(4)(ii)(C)(*1*), that the *de minimis* threshold phase-in termination date shall be December 31, 2018. Absent further action by the Commission, the phase-in period would terminate on December 31, 2018, at which time the *de minimis* threshold will be $3 billion.

The Commission retains the authority to condition further, modify, suspend, terminate, or otherwise restrict any of the terms of the Order provided herein, in its discretion.

Issued in Washington, DC, on October 13, 2016, by the Commission.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

## Appendices To Order Establishing *De Minimis* Threshold Phase-In Termination Date Pursuant to Commission Regulation 1.3(ggg)(4)(ii)(C)(*1*)—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

### Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Timothy G. Massad

I thank my fellow Commissioners for unanimously supporting this order, which extends the phase-in of the *de minimis* threshold for swap dealing by one year.

The *de minimis* threshold determines when an entity's swap dealing activity requires registration with the CFTC. Registration triggers capital and margin requirements as well as other responsibilities, such as disclosure, recordkeeping, and documentation requirements. In 2012, the CFTC set the threshold initially at $8 billion in notional amount of swap dealing activity over the course of a year, and provided that it would fall to $3 billion at the end of 2017.

This registration requirement is a pillar of the framework for swap regulation mandated by the Dodd-Frank Act. Congress required this framework because excessive risk related to over-the-counter derivatives contributed to the intensity of the worst financial crisis since the Great Depression, one which resulted in millions of American families losing their jobs, their homes and their savings. At the same time, Congress recognized that derivatives play an important role in enabling businesses to hedge risk. Therefore, getting this framework right is very important.

There are now more than 100 swap dealers provisionally registered with the CFTC, which include most of the largest global banking entities. Absent our action today, the threshold would have dropped from $8 billion to $3 billion at the end of 2017. That means firms would have been required to start determining whether their activity exceeds that lower threshold just a few months from now—in January of next year. Pushing back this date is a sensible and responsible step for several reasons.

First, our staff has completed the study required by the rule on the threshold. They estimated that lowering the threshold would not increase significantly the percentage of interest rate swaps (IRS) and credit default swaps (CDS) covered by swap dealer regulation, but it would require many additional firms to register. This might include some smaller banks whose swap activity is related to their commercial lending

business. At the same time, the study notes that the data has certain shortcomings, particularly when it comes to nonfinancial commodity swaps. This market is very different than the IRS and CDS markets, and I know there is much concern about the threshold with respect to it. This delay will allow us to consider all these issues further.

In addition, I believe it makes sense to adopt a rule setting capital requirements for swap dealers before addressing the threshold. This rule, which is required by Dodd-Frank, is one of the most important in our regulation of swap dealers, and I am hoping the Commission can act on a reproposal of it soon. This one-year delay will also allow us to more fully assess how the new margin requirements are working.

These are just some of the reasons we have taken this action. I thank the CFTC staff for their hard work on this order and on this issue generally. And I again thank my fellow Commissioners for their support.

## Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

While we might disagree on the details of today's order, I think we can all agree on one thing: Today's action is very important to how the swaps industry operates and our system of financial regulation functions. If we do not accurately and appropriately set the mandatory level of trading for swap dealer registration, our entire regulatory regime for the swaps market will be weakened.

I know that a great deal has been said about the subject of the *de minimis* threshold, and I expect that just about everyone reviewing today's decision to extend the current phase-in of the $3 billion threshold by one year is all-too familiar with its substance. Yet, given the amount of prior actions that the Commission has taken on this topic, I think we cannot fully consider how to view today's action without first reviewing how we got here. Following the 2008 financial crisis, which was exacerbated by the absence of regulation of the swaps market, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among the many things in that Act were a raft of robust regulatory requirements on the swaps market, including mandatory clearing, a system of data reporting, and a mandate to trade many products on Swap Execution Facilities (SEFs).

Some of the most significant new regulatory requirements were crafted for what we now call swap dealers, those entities which had significant involvement in the swaps market.[1] For instance, along with major swap participants, swap dealers were at the heart of our new regulation regarding margin for uncleared swaps and the related cross-border rulemaking. Swap dealers will similarly be substantially impacted by our upcoming rule proposal on capital.

Who has to register as a swap dealer is therefore one of the linchpins of the entire swaps regulatory regime. If the level of swap dealing activity is not sufficient to capture entities that should be registered as swap dealers, then many of our other rules, including margin and capital, will not apply to these entities, and the markets may not be adequately protected. On the other hand, if the level of swap dealing activity is too low, many entities, that do not pose a meaningful risk to the financial system, will be required to register as swap dealers, thereby unnecessarily burdening markets.

It was with this concern in mind that Congress required that we create a threshold for swap dealer registration. Dodd-Frank requires that the Commission shall exempt from designation as a swap dealer an entity that engages in a *de minimis* quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.[2] We are thus required to give entities an exemption from swap dealer registration if the quantity of their swap transactions falls below a certain level.

As required, the Commission set that level in 2012. As part of a rulemaking released in May 2012, the Commission set the level of the *de minimis* exemption at $3 billion, with a temporary phase-in level of $8 billion during the first few years.[3] The Commission also agreed to release a report within the next few years as more data from the various industry participants involved in the swaps market was reported to the CFTC.[4] The Commission further committed, once nine months had passed after the report was published ''and after giving due consideration to the report and any associated public comment,'' to give itself three options for how to deal with the threshold.[5] First, we could terminate the phase-in period and have the threshold immediately drop to $3 billion. Second, if we decided it was ''necessary or appropriate in the public interest'' to propose a new threshold limit, we could do so via our typical rulemaking authority.[6] Third, if we failed to pursue either the first or second options before a date certain—December 31, 2017, the phase-in period would automatically and immediately end, and the threshold would simply be $3 billion.[7]

We have now published our final staff report on the *de minimis* threshold and the nine month period of considering whether to change the threshold has formally begun. I am grateful for the staff for all their hard work and appreciate that it has not been an easy undertaking. I am also grateful to market participants and the public for the comments and opinions that they have provided on the first and final drafts of the report. That said, it is clear from the report that our staff does not have sufficient data to make a fully informed decision.

Today, the Commission is augmenting our efforts to get better data on this issue by extending the phase-in period of the threshold by one year. Because of the Commission's action, the threshold will continue to be at $8 billion until December 31, 2018. At that point, absent additional action by the Commission, the phase-in period will end and the threshold will be $3 billion.

I support this initiative to get additional data on this subject, and I do not support changing the threshold at this time. But I wish to make something clear: We need to see hard data backing up the opinions we will receive during this delay about why we should not just allow the threshold to be $3 billion as established in the rule. I know that there is a great deal of disagreement about this issue, and I do not think we will be able to reach a consensus unless we have real economic analysis and evidence to back up people's comments. If you believe the threshold should be changed to $8 billion, or some other amount, because of market conditions, please, provide us with supporting data. Or, if you believe that the threshold should be even lower, as low as the $150 million threshold that was once contemplated, please provide us with supporting data. If we stay focused on hard, economic analysis and an objective view about the state of the market, the final determination of the threshold will be more understandable and transparent. Given the years of existing discussion and analysis and the established process the Commission has created, we would do both a disservice to the industry and to the public to change the threshold now absent strong evidence for doing so.

I am sympathetic to the concerns that there may be onerous impacts on the market just because of this threshold. We know that cleared swaps are safer than uncleared swaps, which is why we have tried to encourage increased clearing of swaps. As such, I think there is some merit to modifying the threshold in the future by exempting cleared swaps from being counted in calculations of whether a firm is above it. If market participants or observers have strong thoughts on this idea or other ways that we might help make the $3 billion threshold less arduous, I encourage you to reach out to my office and my staff.

I believe we should receive empirical data that can justify where the threshold number needs to be. I therefore expect that, near the start of 2017, we will start to collect additional data from market participants regarding those portions of the swaps market for which we still lack full and detailed

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), section 721(49)(A), available at: *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.* That provision states that the term ''swap dealer'' means any person who holds itself out as a dealer in swaps; makes a market in swaps; regularly enters into swaps with counterparties as an ordinary course of business for its own account; or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps, with the proviso that, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

[2] Dodd-Frank section 721(49)(D).

[3] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012), available at: *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-10562a.pdf.*

[4] *Id.* at 30756.

[5] *Id.*

[6] *Id.*

[7] *Id.*

information. Absent that, I will have no basis from which to change the phase-in or move the threshold to something other than $3 billion.

[FR Doc. 2016–25143 Filed 10–17–16; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 890

**[Docket No. FDA–2016–N–2829]**

## Medical Devices; Physical Medicine Devices; Classification of the Upper Extremity Prosthesis Including a Simultaneously Powered Elbow and/or Shoulder With Greater Than Two Simultaneous Powered Degrees of Freedom and Controlled by Non-Implanted Electrical Components

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the Upper Extremity Prosthesis Including a Simultaneously Powered Elbow and/or Shoulder with Greater Than Two Simultaneous Powered Degrees of Freedom and Controlled by Non-Implanted Electrical Components into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components' classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective October 18, 2016. The classification was applicable on May 9, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael Hoffmann, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2640, Silver Spring, MD, 20993–0002, 301–796–6476, *Michael.Hoffmann@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1), the person requests a classification under section 513(f)(2) of the FD&C Act. Under the second procedure, rather than first submitting a premarket notification under section 510(k) and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA shall classify the device by written order within 120 days. This classification will be the initial classification of the device. In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on May 18, 2012, classifying the DEKA Arm System into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II.

On June 15, 2012, DEKA Integrated Solutions Corporation submitted a request for classification of the DEKA Arm System under section 513(f)(2) of the FD&C Act. In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 9, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 890.3450.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components will need to comply with the special controls named in this final order. The device is assigned the generic name upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components, and it is identified as a prescription device intended for medical purposes, and intended to replace a partially or fully amputated or congenitally absent upper extremity. It uses electronic inputs (other than simple, manually controlled electrical components such as switches) to provide greater than two independent and simultaneously powered degrees of freedom and includes a simultaneously

powered elbow and/or shoulder. Prosthetic arm components that are intended to be used as a system with other arm components must include all degrees of freedom of the total upper extremity prosthesis system.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1.

TABLE 1—UPPER EXTREMITY PROSTHESIS INCLUDING A SIMULTANEOUSLY POWERED ELBOW AND/OR SHOULDER WITH GREATER THAN TWO SIMULTANEOUS POWERED DEGREES OF FREEDOM AND CONTROLLED BY NON-IMPLANTED ELECTRICAL COMPONENTS RISKS AND MITIGATION MEASURES

| Identified risk | Mitigation measures |
|---|---|
| Unintended Motion | Electronic Input Testing.<br>Software Verification, Validation, and Hazards Analysis.<br>Wireless Testing.<br>Electromagnetic Compatibility (EMC) Testing.<br>Non-clinical Performance Testing.<br>Water/Particle Ingress Testing.<br>Durability Testing.<br>Battery Testing.<br>Labeling. |
| Adverse Tissue Reaction | Biocompatibility Assessment. |
| Battery Failure | Battery Testing.<br>Water/Particle Ingress Testing.<br>Labeling. |
| Electromagnetic Incompatibility | EMC testing.<br>Labeling. |
| Electrical Safety Issues (e.g., shock) | Electrical Safety Testing.<br>Labeling. |
| Gripping Malfunction | Non-clinical Performance Testing.<br>Software Verification, Validation, and Hazards Analysis.<br>Labeling. |
| High Risk Activities (e.g., driving) | Labeling. |
| Malfunction Due to Environmental Conditions | Non-clinical Performance Testing.<br>Battery Testing.<br>Water/Particle Ingress Testing.<br>Wireless Testing.<br>EMC Testing.<br>Flammability Testing.<br>Labeling. |
| Use Error | Clinical Studies.<br>Human Factors Studies.<br>Labeling. |

FDA believes that the special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

An upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components is not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109, *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components they intend to market.

## II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

## List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

## PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for part 890 is revised to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 890.3450 to subpart D to read as follows:

**§ 890.3450 Upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components.**

(a) *Identification.* A upper extremity prosthesis including a simultaneously powered elbow and/or shoulder with greater than two simultaneous powered degrees of freedom and controlled by non-implanted electrical components, is a prescription device intended for medical purposes, and is intended to replace a partially or fully amputated or congenitally absent upper extremity. It uses electronic inputs (other than simple, manually controlled electrical components such as switches) to provide greater than two independent and simultaneously powered degrees of freedom and includes a simultaneously powered elbow and/or shoulder. Prosthetic arm components that are intended to be used as a system with other arm components must include all degrees of freedom of the total upper extremity prosthesis system.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Appropriate analysis/testing must validate electronic compatibility, electrical safety, thermal safety, mechanical safety, battery performance and safety, and wireless performance, if applicable.

(2) Appropriate software verification, validation, and hazard analysis must be performed.

(3) Non-clinical performance data must demonstrate that the device performs as intended under anticipated conditions of use. Performance testing must include:

(i) Mechanical bench data, including durability testing, to demonstrate that the device will withstand forces, conditions, and environments encountered during use.

(ii) Simulated use testing to demonstrate performance of arm commands and available safeguard(s) under worst case conditions and after durability testing.

(iii) Verification and validation of force sensors and hand release button, if applicable, are necessary.

(iv) Device functionality in terms of flame retardant materials, liquid/particle ingress prevention, sensor and actuator performance, and motor and brake performance.

(v) The accuracy of the device features and safeguards.

(4) Non-clinical and clinical performance testing must demonstrate the accuracy of device features and safeguards.

(5) Elements of the device that may contact the patient must be demonstrated to be biocompatible.

(6) Documented clinical experience and human factors testing must demonstrate safe and effective use, capture any adverse events observed during clinical use and demonstrate the accuracy of device features and safeguards.

(7) Labeling for the Prosthetist and User Guide must include:

(i) Appropriate instructions, warning, cautions, limitations, and information related to the necessary safeguards of the device, including warning against activities that may put the user at greater risk (*e.g.,* driving).

(ii) Specific instructions and the clinical training needed for the safe use of the device, which includes:

(A) Instructions on assembling the device in all available configurations,

(B) Instructions on fitting the patient,

(C) Instructions and explanations of all available programs and how to program the device,

(D) Instructions and explanation of all controls, input, and outputs,

(E) Instructions on all available modes or states of the device,

(F) Instructions on all safety features of the device, and

(G) Instructions for maintaining the device.

(iii) Information on the patient population for which the device has been demonstrated to be effective.

(iv) A detailed summary of the non-clinical and clinical testing pertinent to use of the device.

Dated: October 11, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–25001 Filed 10–17–16; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2016–0610]**

## Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Wrightsville Beach, NC and Northeast Cape Fear River, Wilmington, NC

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedules that govern the S.R. 74 (Wrightsville Beach) Bridge across the Atlantic Intracoastal Waterway (AIWW), mile 283.1, at Wrightsville Beach, NC and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, at Wilmington, NC. The deviation is necessary to facilitate the 2016 PPD IRONMAN North Carolina ''Beach2Battleship'' Triathlon. This deviation allows these bridges to remain in their closed-to-navigation position.

**DATES:** The deviation is effective from 6:30 a.m. to 6 p.m. on October 22, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–0610] 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. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** PPD Ironman North Carolina, on behalf of the North Carolina Department of Transportation, who owns the S.R. 74 (Wrightsville Beach) Bridge across the Atlantic Intracoastal Waterway (AIWW), mile 283.1, at Wrightsville Beach, NC and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, at Wilmington, NC, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.821(a)(4) and 33 CFR 117.829(a), respectively, to ensure the safety of the participants and spectators associated with the 2016 PPD IRONMAN North Carolina ''Beach2Battleship'' Triathlon.

Under this temporary deviation, the S.R. 74 (Wrightsville Beach) Bridge will be maintained in the closed-to-navigation position from 6:30 a.m. to 11

a.m. on October 22, 2016, and the Isabel S. Holmes Bridge will be maintained in the closed-to-navigation position from 9:30 a.m. to 6 p.m. on October 22, 2016. These bridges are both double bascule drawbridges and have vertical clearances in the closed-to-navigation position of 20 feet and 40 feet, respectively, above mean high water.

The Atlantic Intracoastal Waterway is used by a variety of vessels including, small commercial fishing vessels and recreational vessels. The Northeast Cape Fear River is used by a variety of vessels including, small commercial fishing vessels, recreational vessels, and tug and barge traffic. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through these bridges in their closed positions may do so at any time. These bridges will be able to open for emergencies and there are no immediate alternative routes for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedules for these bridges so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 13, 2016.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2016–25183 Filed 10–17–16; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 33

**[EPA–HQ–OA–2016–0457; FRL–9954–30–OA]**

**RIN 2090–AA40**

### Participation by Disadvantaged Business Enterprises in Procurements Under EPA Financial Assistance Agreements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Because EPA received comments which could be construed as adverse, we are withdrawing the direct final rule to amend Part 33—Participation by Disadvantaged Business Enterprises in Procurements under EPA Financial Assistance Agreements published on July 28, 2016.

**DATES:** Effective October 18, 2016 the rule published in the **Federal Register** of July 28, 2016 (81 FR 49539) (FRL–9946–27–OA) is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Teree Henderson, Office of the Administrator, Office of Small Business Programs (mail code: 1230A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–2222; fax number: 202–566–0548; email address: *henderson.teree@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On July 28, 2016, we published a direct final rule (81 FR 49539) and a parallel proposal (81 FR 49591) amending the provisions for Part 33—Participation by Disadvantaged Business Enterprises in Procurements under EPA Financial Assistance Agreements. These amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because EPA received comments which could be construed as adverse, we are withdrawing the direct final rule to amend the general provisions for part 33 published on July 28, 2016.

We stated in the direct final rule that if we received adverse comment by August 29, 2016, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received comments that could be construed as adverse on that direct final rule. We will address those comments in a subsequent final action based on the parallel proposal published on July 28, 2016 (81 FR 49591). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

### List of Subjects in 40 CFR Part 33

Environmental protection, Grant programs.

Dated: October 12, 2016.

**Gina McCarthy,**

*Administrator.*

[FR Doc. 2016–25169 Filed 10–17–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 52, 55, 70, 71 and 124

**[EPA–HQ–OAR–2015–0090; FRL–9954–10–OAR]**

**RIN 2060–AS59**

### Revisions to Public Notice Provisions in Clean Air Act Permitting Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is revising the public notice rule provisions for the New Source Review (NSR), title V and Outer Continental Shelf (OCS) permit programs of the Clean Air Act (CAA or Act) and corresponding onshore area (COA) determinations for implementation of the OCS air quality regulations. This final rule removes the mandatory requirement to provide public notice of a draft air permit (as well as certain other program actions) through publication in a newspaper. Instead, this final rule requires electronic notice (e-notice) for EPA actions (and actions by permitting authorities implementing the federal permitting rules) and allows for e-notice as an option for actions by permitting authorities implementing EPA-approved programs. When e-notice is provided, the final rule requires, at a minimum, electronic access (e-access) to the draft permit. However, this final rule does not preclude a permitting authority from supplementing e-notice with newspaper notice and/or additional means of notification to the public. The EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. The EPA further anticipates that e-access will expand access to permit-related documents.

**DATES:** The effective date of this final rule is November 17, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2015–0090. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Mr. Peter Keller, U.S. EPA, Office or Air Quality Planning and Standards, Air Quality Policy Division (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–2065, email *keller.peter@epa.gov,* or Mr. Ben Garwood, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–1358, email *garwood.ben@epa.gov;* or Ms. Grecia Castro, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–1351, email at *castro.grecia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

Entities potentially affected by this final rule include permitting authorities responsible for the permitting of stationary and OCS sources of air pollution or for determining COA designation for implementation of the OCS air regulations. This includes the EPA Regions and both EPA-delegated and EPA-approved air permitting programs that are operated by state, local or tribal agencies. Entities also potentially affected by this final rule include owners and operators of stationary and OCS sources that are subject to air pollution permitting under the CAA, as well as members of the general public who would have an interest in knowing about permitting actions, public hearings and other agency actions.

### *B. Where can I obtain a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this document will be posted at: *http://www3.epa.gov/nsr/actions.html* and *http://www3.epa.gov/airquality/permits/actions.html.*

Upon its publication in the **Federal Register**, only the published version may be considered the final official version of the rule and will govern in the case of any discrepancies between the **Federal Register** published version and any other version.

### *C. How is this document organized?*

The information presented in this document is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I obtain a copy of this document and other related information?
- C. How is this document organized?

II. Background for Final Rulemaking
III. Summary of the Final Rule Requirements
- A. E-Notice Provisions
- B. E-Access Provision
- C. EPA and Delegated Permitting Authorities Subject to Mandatory E-Notice and E-Access Requirements
- D. Permitting Authorities Not Subject to Mandatory E-Notice and E-Access Requirements
- E. Mailing Lists
- F. Updated Information Regarding E-Notice and E-Access for Minor NSR Permits
- G. Other Final Rule Provisions

IV. Implementation of E-Notice and E-Access
- A. Permitting Authorities Implementing Federal Preconstruction Permit Program Rules
- B. Permitting Authorities Implementing EPA-Approved Preconstruction Permit Program Rules
- C. Permitting Authorities Implementing EPA-Approved Operating Permit Programs
- D. Permitting Authorities With EPA-Delegated Authority To Administer the Federal Operating Permit Program
- E. Implementation in an Affected Indian Country
- F. Best Practices for E-Notice and E-Access

V. Responses to Significant Comments on the Proposed Rule
- A. General Comments on the EPA's Proposal To Remove the Mandatory Newspaper Publication Requirement From Certain Regulations and Instead Provide for E-Notice
- B. Comments on Requirement That Permitting Authorities Use a Consistent Noticing Method
- C. Comments on Requirement To Make E-Notice Mandatory for Federal Permit Actions
- D. Comments on Mandatory E-Access for Programs That Use E-Notice
- E. Comments on Final E-Notice Rule Implementation Timeframe/Transition
- F. Comments on Temporary Use of Alternative Noticing Methods
- G. Comments on Documentation/Certification of E-Notices
- H. Additional Guidance on E-Notice and E-Access for Minor NSR Permit Actions

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

VIII. Statutory Authority

## II. Background for Final Rulemaking

The CAA requires stationary sources of air pollution to obtain permits and authorizes the EPA to administer and oversee the permitting of such sources. To implement the CAA, the EPA promulgated permitting regulations for construction of sources pursuant to the NSR program under title I of the CAA, for operation of major and certain other sources of air pollutants under title V of the CAA and for sources located on the OCS under CAA section 328. These regulations are contained in 40 Code of Federal Regulations (CFR) parts 51, 52, 55, 70, 71 and 124, and cover the requirements for federal permit actions (*i.e.,* when the EPA or a delegated air agency is the permitting authority [1]) and the minimum requirements for EPA approval of state or tribal implementation plans (SIPs) [2] and title V permitting programs.[3] These rules contain, among other things, requirements for public notice and availability of supporting information to allow for informed public participation in permit actions. These regulatory requirements for public participation in

[1] In lieu of ''permitting authority,'' in this preamble and rule, we sometimes use the terms ''permitting agency'' and ''reviewing authority.'' These terms generally denote all forms of air permitting authorities, including EPA Regions, EPA-delegated air programs, and air agencies that are operated by state, local and tribal governments and permitting authorities that implement their own rules under an EPA-approved implementation plan. Furthermore, the rules for the federal permit programs sometimes use the terms ''Administrator'' and ''Director'' in referring to the permitting authority.

[2] SIPs, as used in this preamble, includes state and tribal implementation plans (SIPs and TIPs).

[3] NSR includes the minor NSR, Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) permitting programs. Requirements for the NSR programs are contained in 40 CFR part 51 for approved state/tribal permitting programs and in 40 CFR part 52 for federal PSD permit programs. 40 CFR part 52 references part 124 for additional requirements. Requirements for approved title V operating permit programs are contained in 40 CFR part 70 and for federal operating permit programs in 40 CFR part 71. Requirements for the permitting of OCS sources and COA determinations are contained in 40 CFR part 55.

permitting and other actions are the subject of this final rule. The final rule revisions apply to the following: (1) Major source [4] air permits and permits for certain minor sources subject to title V issued by the EPA or by state, local, or tribal air agencies exercising federal authority delegated by the EPA; (2) the requirements for obtaining EPA-approval of state, local, or tribal air permitting programs; and (3) OCS permits and COA determinations for implementation of the OCS air quality regulations.

While the CAA requires permitting authorities to offer the opportunity for public participation in the processing of air permits and other actions, it does not specify the best or preferred method for providing notice to the public. *See, e.g.,* CAA sections 165(a)(2) and 502(b)(6). In the late 1970s and early 1980s, when the EPA first developed air permitting regulations to provide public notice for the major NSR program, newspaper advertisement was the most commonly accepted method for providing notice to the public of permit actions under those programs and other agency actions. Over the years, however, the availability of and access to the Internet and other forms of electronic media have increased significantly in the United States. One effect of this development is that circulation of newspapers and other print media has declined, making printed newspaper notice less effective in providing widespread public notice of permit actions in many cases. Many permitting authorities electronically post permit notices on their agency Web sites. For example, many state title V programs regularly provide electronic postings to assure adequate public notice. 40 CFR 70.7(h)(1). Such electronic notice mechanisms provide an effective, convenient and cost-efficient way to communicate permitting-related information to the majority of the public.

Given these developments, the EPA has recognized that newspaper notice is no longer the only, or in many cases the most effective, method of communicating permitting actions to the public and has issued rules allowing alternate methods of communication. For example, in 2011, the EPA issued the Tribal NSR rules that contained, among other things, requirements for noticing of permits in Indian country that provided for options other than newspaper and print media. 76 FR 38748 (July 1, 2011). The July 2011 Tribal NSR rule provides options such as Web posting and email lists among the methods that the permitting authority may use to provide adequate public notice of such permits. *Id.* at 38764.

Based on the foregoing and the EPA's objective to modernize, enhance and improve consistency in the public noticing provisions applicable to air permit actions, in December 2015 the EPA issued a proposed rule. 80 FR 81234 (Dec. 29, 2015). In that proposed rule, the EPA proposed to remove the mandatory requirement that draft permits for sources subject to the major NSR, title V or OCS programs and certain other actions be noticed in a newspaper of general circulation and instead allow (or in some cases require) the use of Internet postings to provide notice (*i.e.,* e-notice). We also proposed these same revisions for COA designations in the OCS program, permit rescissions under the federal PSD program and for giving notice of EPA part 71 program effectiveness or delegation. In the case of permits issued by the EPA or other permitting authorities implementing 40 CFR parts 52, 55 or 71, we proposed to require that the permitting authority provide e-notice for all draft permits.[5] For permits issued by other permitting authorities—specifically, agencies that implement an approved program meeting the requirements of 40 CFR parts 51 or 70—we proposed that those permitting authorities would have the option to adopt either e-notice or retain the newspaper noticing method. We proposed that these permitting authorities must, however, select either e-notice or newspaper notice as their consistent noticing method. In addition, for all their draft permits, they must provide notice to the public through the noticing method selected and must indicate the consistent noticing method selected in their permitting rules. We also proposed to require that, when a permitting authority adopts e-notice, it also must provide e-access. In the context of this rule, e-access means that the permitting authority must make the draft permit available electronically (*i.e.,* on the agency's public Web site or on a public Web site identified by the permitting authority) for the duration of the public comment period. This final rulemaking notice does not repeat all of the discussion from the proposed rule, but refers interested readers to the preamble of the proposed rule for additional background.

## III. Summary of the Final Rule Requirements

This section provides a brief summary of the requirements of the final rule. Further discussion of these requirements, including implementation and summaries of our responses to significant comments received on the proposed rule, are provided in subsequent sections.

In this final action, the EPA is revising the public notice provisions for the NSR, title V and OCS programs to remove the mandatory requirement to provide public notice of a draft permit (and certain other program actions) through publication in a newspaper of general circulation. This final rule requires the use of e-notice to provide public notice of draft permits for federal permits while allowing e-notice as an option for permits issued under EPA-approved programs. More specifically, to implement the shift from mandatory newspaper noticing to e-notice, this final rule includes revisions to the public notice provisions in 40 CFR 51.161 (state/tribal plan requirements); 40 CFR 51.165 (state/local/tribal NNSR permits); 40 CFR 51.166 (state/local/tribal PSD permits); 40 CFR 52.21 (EPA/delegated agency-issued PSD permits); 40 CFR part 70 (state/local/tribal title V operating permits); 40 CFR part 71 (EPA/delegated agency-issued title V operating permits); 40 CFR part 55 (EPA-issued OCS permits and COA designations); and the portions of 40 CFR part 124 applicable to EPA-issued PSD and OCS permits. This final action also requires that a permitting authority provide e-access when it adopts the e-notice method to provide public notice of a draft permit.

### *A. E-Notice Provisions*

In order to satisfy the provision for e-notice of a draft permit, the permitting authority shall electronically post, for the duration of the public comment period, the following information on a publicly accessible Web site identified by the permitting authority: (1) Notice of availability of the draft permit for public comment; (2) Information on how to access the permit record (either electronically and/or physically); (3) Information on how to request and/or attend a public hearing on the draft permit; and (4) All other information currently required to be included in the public notice under the existing regulations. In addition, where already required by the current rules, the permitting authority shall maintain a mailing list of persons who request to be

[4] The term ''major source'' in the title V program rules includes any ''major stationary source'' under the NSR program rules. *See, e.g.,* 40 CFR 52.21(b)(1)(i) and 40 CFR 71.2. In this preamble, we use the terms ''major source'' and ''major stationary source'' interchangeably.

[5] We did not propose nor are we finalizing any changes to the public notice requirements for OCS permits issued by delegated permitting authorities pursuant to 40 CFR 55.11.

notified of the permitting activity and shall distribute (*e.g.,* by email, postal service) the notice to those persons. While this final rule expressly requires that the draft permit notice direct interested parties to information on how to request and/or attend a public hearing and how to access additional information relevant to the draft permit, it does not alter any existing requirements regarding the content of the public notice. Requirements regarding additional information in the notice vary across the different sections of the permitting rules and may further vary among different individual permitting authorities. This final rule does not amend or affect regulatory requirements pertaining to the provision of notice of final permit decisions. *See e.g.,* 40 CFR 124.15(a).[6]

*B. E-Access Provision*

In order to satisfy the requirement for e-access when e-notice is provided, the permitting authority shall electronically post, for the duration of the public comment period, the draft permit on a publicly accessible Web site identified by the permitting authority, which may include the permitting authority's public Web site, an online state permits register, or a publicly-available electronic document management Web site that allows for downloading documents. It is important to note that, while e-access in this final rule pertains to the availability of and access to the draft permit during the public comment period, nothing in this rule alters the requirement for a permitting authority to maintain a record of the permit action and to make it available to the public. Furthermore, nothing in this final rule affects a permitting authority's record retention policies and requirements. A permitting authority that is satisfying the rule requirements for e-access by posting the draft permit on a Web site must also provide the public with reasonable access to the other materials that support the permit decision (*e.g.,* the permit application, statement of basis, fact sheet, preliminary determination, final determination, and response to comments) as required by existing regulations. This final rule clarifies that access to the other materials comprising the permit record may be provided either electronically or at a physical location (such as a public library), or a combination of both methods, given that some documents (such as air quality modeling data) may be too large to post online on a Web site but may be made available as part of the permit record either as hardcopy or on a data storage device. The electronic posting of draft and final permits, including information supporting the permit decisions (*e.g.,* permit applications), is subject to the applicable policies on CBI and requirements of the permitting authority. Consequently, some permit-related documents may be redacted or otherwise withheld from viewing on a Web site or public library if it is determined that the document contains CBI.

*C. EPA and Delegated Permitting Authorities Subject to Mandatory E-Notice and E-Access Requirements*

For permits that are issued by the EPA or by a permitting authority that implements the EPA's federal permitting rules (*i.e.,* 40 CFR parts 52, 55, 71 or 124) under delegated federal authority, this final rule removes the mandatory requirements to provide newspaper notice and access to the draft permit information at a physical address, and replaces those requirements with mandatory e-notice and mandatory e-access, as those terms are defined in this rule, as the consistent noticing method for draft permit actions[7] under the federal rules for NSR and title V, and for all EPA-issued OCS permits. While this final rule requires e-notice as the primary form of public notice for such draft permit actions under the federal regulations, permitting authorities may, when appropriate, supplement the e-notice with an additional form (or forms) of notice (*e.g.,* newspaper publication, fliers, or social media postings). Nothing in this final rule precludes the use of supplemental notice mechanisms.

*D. Permitting Authorities Not Subject to Mandatory E-Notice and E-Access Requirements*

For the noticing of draft permits issued by permitting authorities with their own EPA-approved rules under 40 CFR part 51 or 70, this final rule removes the mandatory newspaper notice requirement for these programs and provides the option for the agency rules to require either: (1) E-notice and e-access as these terms are used in the context of this rule, or (2) newspaper notice with either electronic access (*e.g.,* Web site) and/or physical access (*e.g.,* a public library). A key aspect of this approach is that the permitting authority is required to adopt one noticing method—known as the ''consistent noticing method''—to be used for all of its permit notices. Thus, if a permitting authority selects e-notice as its consistent noticing method, it must provide e-notice (along with e-access) for all of its draft permit notices in order to ensure that the public has a consistent and reliable resource to turn to for all draft permit notices. There is a requirement in 40 CFR part 51 to make available, in at least one location in each region in which the proposed source would be constructed, a copy of certain elements of the permit record. We are clarifying that this requirement may be met by making such materials available at a physical location or on a public Web site identified by the permitting authority. Consistent with the requirements for notices issued by the EPA and delegated permitting authorities implementing the federal regulations, as discussed previously, nothing in this final rule precludes permitting authorities operating under EPA-approved rules from using additional forms of notice. Thus, if a permitting authority elects to use e-notice as its consistent noticing method, it may provide additional means of notice as appropriate, including newspaper publication or any other mechanism. Similarly, a permitting authority providing e-access may elect to also provide access to the elements of the administrative record for which e-access was provided at a physical location. The EPA encourages all permitting authorities to consider facility-specific and permit-specific facts such as expected public interest

[6] The Environmental Appeals Board (EAB) has held that the notification requirements of 40 CFR 124.15(a) (and similar provisions) cannot be fulfilled by posting the final decision regarding a draft permit on a Web site. *See In Re Hillman Power Co., LLC,* 10 E.A.D. 673, 680 n. 4 (EAB 2002). Where there is an identified participant in the proceeding who has commented, the EPA reads section 124.15(a) to require that the permitting authority mail a copy of the final permit decision to the participant or provide some other form of personal notification. This may include email notification. For additional detail on the EAB's reasoning in the *Hillman Power* case, *see* Order Directing Service of PSD Permit Decision on Parties That Filed Written Comments on Draft PSD Permit, Denying Motions to Dismiss, and Directing Briefing on the Merits (May 24, 2002), available at: *https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/0CCE572C43D92F218525706C0067DACA/$File/hillman.pdf.* While the EAB expressed concern in this order regarding the possibility that some parties may not see an Internet post immediately, this was in the context of providing identified persons with a right to appeal a permit decision. Further, the Board was contrasting the merits of Internet posting and direct personal notification, rather than comparing the merits of Internet and newspaper notice. As discussed elsewhere in this rule, posting notices of draft permits on the Internet offers some benefits that are not provided from a one-time publication in a print newspaper. In addition, this rule retains and enhances the option for interested persons to be placed on a list to receive personal notification of draft permits.

[7] As used here and from this point forward in this final rule preamble, the term ''permit'' or ''permit action'' includes any major source or major modification preconstruction permit and title V permit actions subject to the public notice provisions affected by this final rule.

and environmental justice considerations in determining the appropriate method(s) for public notice and access to the administrative record for draft permits.

*E. Mailing Lists*

Some of the regulatory sections affected by this final rule have a mailing list requirement and some do not. This rule includes regulatory revisions to amend the EPA's solicitation obligations associated with required mailing lists, but otherwise keeps the mailing list requirements in place. With respect to the EPA's mailing list obligations for the federal title V program, we are removing the specific language within 40 CFR 71.11(d)(3)(i)(E) and 71.27(d)(3)(i)(E) that requires the EPA to solicit mailing list membership through area lists and periodic publication in the public press.[8] We are making similar changes to 40 CFR 124.10(c), which contains public notice method requirements applicable to PSD and OCS permits. The rules now say that the permitting authority may use generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency Web site or a sign-up sheet at a public hearing) that enable parties to subscribe to a mailing list.

*F. Updated Information Regarding E-Notice and E-Access for Minor NSR Permits*

Through guidance to permitting authorities issued in 2012, the EPA clarified its view on what constitutes public notice for minor NSR permit programs and what is considered adequate to meet the requirement of notice by prominent advertisement in 40 CFR 51.161(b)(3). *See* ''EPA's 2012 Memorandum.'' [9] Specifically, the EPA's 2012 Memorandum clarified that the regulatory requirement for notice by prominent advertisement was media neutral and thus sufficiently broad to allow for e-notice. In the proposed rule, the EPA stated that it intended to clarify that the EPA's interpretation of 40 CFR 51.161(b)(3) also applies to the requirement in 40 CFR 51.161(b)(1) to make available for public inspection, in at least one location in the affected area, the information submitted by the owner or operator and the state or local agency's analysis of the proposed source's effect on air quality. Specifically, we proposed to clarify that allowing e-access to this information by way of a Web site identified by the permitting authority satisfies the 40 CFR 51.161(b)(1) public inspection requirement. The EPA received no adverse comments regarding this proposed clarification. Therefore, in this final rule the EPA is revising 40 CFR 51.161(b)(1) to add the following: ''This requirement may be met by making these materials available at a physical location or on a public Web site identified by the State or local agency.''

In addition, the EPA has determined that the limitation in Footnote 1 in the EPA's 2012 Memorandum, excluding synthetic minor permits, is no longer appropriate.[10] The EPA will attach a notification to the electronic version of the EPA's 2012 Memorandum indicating that the media neutral interpretation also applies to synthetic minor permits.

*G. Other Final Rule Provisions*

As proposed, the EPA is extending the use of e-notice methods to three non-permitting actions in this final rule. In each of the following cases, the regulatory provisions have previously required notice of the action by way of newspaper publication:

- The OCS air regulations in 40 CFR part 55 apply to more than just OCS permitting actions. Specifically, when the EPA makes a COA designation determination, it must do so by way of a process that allows for public comment on the draft determination. Through this final action, we are requiring e-notice of the COA designation determination.
- The existing federal PSD regulations contain a provision for permit rescission that only refers to newspaper notification. Specifically, paragraph 40 CFR 52.21(w)(4) requires that, if an agency rescinds a permit, it shall give adequate notice of the rescission, and that newspaper publication shall be considered adequate notice. In this final rule, the EPA is replacing the requirement for newspaper publication with a requirement that the Administrator notify the public of a permit rescission by e-notice.
- When the EPA takes action to administer and enforce an operating permits program in accordance with 40 CFR 71.4(g), it will publish a notice in the **Federal Register** and, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation. In this final rule, the EPA is replacing the newspaper publication provision with the provision for e-notice.

As proposed, the EPA is not in this final rule revising the public participation requirements in the plantwide applicability limitation regulations, which reference the public participation procedures in 40 CFR 51.161; 40 CFR 51.165(f)(5); 40 CFR 51.166(w)(5); Appendix S to part 51 section IV.K.5; and 40 CFR 52.21(aa)(5). Additionally, this final rule does not change the requirements for NNSR, minor NSR, and synthetic minor NSR permits in Indian country that are contained in 40 CFR part 49 and already provide means of public noticing other than newspaper publication. *See* 40 CFR 49.157 (minor NSR and synthetic minor NSR permits) and 40 CFR 49.171 (NNSR permits).

The EPA is not finalizing certain proposed revisions to paragraphs in 40 CFR parts 55, 51 and 71 that sought to clarify that the terms ''send,'' ''mail'' and ''in writing'' and variants of those terms may include email. Specifically, the EPA proposed to revise 40 CFR 51.166(q)(2)(iv), 40 CFR 55.5(f)(2) and (f)(4), 40 CFR 71.11(d)(3)(i) introductory text and 40 CFR 71.27(d)(3)(i) introductory text by adding a parenthetical indicating that those terms may include email. Without necessarily commenting on these specific provisions, one commenter generally urged EPA to avoid language in the rules that might limit the use of new communications tools and require subsequent revisions to enable permitting authorities to use them. With this idea in mind, upon further consideration, the EPA determined that the existing rule language in the subject paragraphs can reasonably be interpreted to include email and other forms of communication. The EPA also determined that adding the proposed parentheticals could unintentionally limit flexibility to apply additional communications tools or imply a different meaning elsewhere in the regulations where those same terms are used and EPA did not propose adding the parenthetical. Therefore, we are not finalizing those proposed revisions.

[8] The proposed rule had a minor typographical error stating that it was revising 40 CFR 71.27(d)(4)(i)(G). In the final rule, the EPA is adding 40 CFR 71.27(d)(4)(i)(H) with the text that was proposed in 40 CFR 71.27(d)(4)(i)(G).

[9] Memorandum from Janet McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, ''Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)'' (April 17, 2012). *See http://www2.epa.gov/sites/production/files/2015-07/documents/pubnot.pdf.* The EPA's rules generally require less extensive public participation procedures for the permitting of minor sources and minor modifications.

[10] A synthetic minor permit is a permit that contains restrictions to avoid applicability of major NSR requirements. Under the NSR program, such restrictions must be legally and practically enforceable. *See, e.g.,* 67 FR 80186, 80191 (December 31, 2002).

## IV. Implementation of E-Notice and E-Access

This section addresses implementation of this final rule and also recommends ''best practices'' for e-notice and e-access. As discussed in our responses to comments in Section V of this document, the EPA has expanded the list of best practices included in the proposed rule to address e-notice and e-access documentation and certification and measures to address periods of Web site unavailability (*e.g.,* outages and emergencies), including the use of temporary alternative noticing methods. These best practices are not requirements under this final rule. Instead, they comprise recommendations intended to foster improved communication and outreach of permit notices beyond the minimum requirements.

### *A. Permitting Authorities Implementing Federal Preconstruction Permit Program Rules*

Air permitting programs that implement the amended federal public notice provisions under 40 CFR parts 52, 55 and 124 are required to implement e-notice and e-access by the effective date of this final rule on November 17, 2016. This includes EPA Regions, air agencies that are delegated federal authority by the EPA to issue permits on behalf of the EPA (via a delegation agreement) [11] and any air agencies that have their own rules approved by the EPA in a SIP and the SIP incorporates by reference the federal program rules amended in this action and automatically updates when these EPA rules are amended. However, in the case of SIP rules that incorporate by reference the federal noticing provisions, the agency may instead select newspaper notice as their consistent noticing method by revising their SIP rules consistent with the part 51 provisions promulgated here.

As described in our responses to comments in Section V of this document, the EPA did not receive any comments that identified specific details about technical issues that affected permitting authorities are facing that would likely impede their ability to implement e-notice and e-access by the effective date of this rule. While we acknowledge that certain air agencies may need time to change their respective statutes, rules, programs or policies to fully implement e-notice (*i.e.,* to remove mandatory newspaper publication from their own program requirements), we believe that these agencies are in a position to comply with the requirements for e-notice and e-access on or before the date this final rule becomes effective. Since many of the affected programs already use e-notice and e-access as part of their public notice practices, little or no change would be necessary for those programs to comply with this final rule. Therefore, in order to avoid delay in implementation, we are not extending the effective date of this final rule for the EPA and other air agencies that implement the federal program rules.

### *B. Permitting Authorities Implementing EPA-Approved Preconstruction Permit Program Rules*

To the extent a permitting authority with an approved program, meeting the requirements of 40 CFR part 51, is using a consistent noticing method and wants to retain the same noticing method, there is no need to revise the applicable program rules. A permitting authority with an approved program that chooses e-notice and e-access as its consistent noticing method may need to revise its applicable program rules and seek the EPA's approval of the revision in order to begin to implement e-notice. Similarly, a permitting authority that implements rules that incorporate by reference the procedural requirements in the EPA's federal program regulations (40 CFR part 52), but does not provide that its rules automatically update upon the EPA amending its rules, will need to amend its regulations and seek the EPA's approval of those revisions in order to implement e-notice and e-access in lieu of newspaper notice. However, permitting authorities with NNSR programs approved under 40 CFR 51.165 have been subject to the public participation requirements at 40 CFR 51.161 and thus may be able to interpret their existing rules to currently allow for implementing e-notice in lieu of newspaper notice.[12]

Under this final rule, it is voluntary for these permitting authorities to move to e-notice and e-access. Likewise, nothing in the final 40 CFR part 51 rules prevents a permitting authority from continuing or beginning to implement e-notice and e-access methods. However, depending on the permitting authority's rules, there may be ongoing obligations to continue with newspaper notices until the agency revises its permitting rules.

### *C. Permitting Authorities Implementing EPA-Approved Operating Permit Programs*

In accordance with 40 CFR 70.4(i), a program revision may be necessary when the relevant federal regulations are modified or supplemented. When 40 CFR part 70 is revised after the permitting authority program is approved, the EPA determines the need for conforming revisions. However, the approved program may initiate a program revision on its own initiative if the program revision is required to implement the revised 40 CFR part 70 rules. *See, e.g.,* 40 CFR 70.4(a) and (i). The EPA is not soliciting program revisions for any approved programs in response to this final rule. Under this final rule, permitting authorities implementing part 70 have a choice as to whether or not to adopt e-notice as their consistent method of public notice of air permits. If a permitting authority chooses the e-notice approach and a program revision is necessary (*e.g.,* additional authority is needed), then the permitting authority must initiate a program revision by undergoing a state rule change and submitting a program revision package to the EPA for review and approval as per 40 CFR 70.4(i)(2). Consistent with the duty to keep the EPA apprised of such proposed changes, if the permitting authority plans to change its implementation practice from newspaper to e-notice and e-access based on its analysis that its approved rules allow for e-notice and e-access without any changes, the permitting authority must forward the appropriate language to the Regional office prior to changing its practice. Upon review, the Regional office may request a formal submittal for a program revision.

In this final rule, the EPA supports the position that program revisions for converting part 70 programs to e-notice will generally be nonsubstantial given that the permitting authority needs only to revise its permitting rules to clarify its implementation of e-notice and e-access. It does not need to seek additional authority for giving notice by ''other means.'' In many cases, the permitting authority's current practice includes electronic posting of public notices and the draft permit, showing that it has adequate resources for implementing the revised 40 CFR part 70 notice requirements. Accordingly, we note that EPA Regional offices would generally expect to process approvals of these program revisions using

[11] With the exception of permitting authorities that are delegated authority to issue permits under 40 CFR part 55.

[12] Although this rule adds public participation requirements to section 51.165 in new paragraph (i), this additional paragraph does not require a revision to a state NNSR program that already provides for a consistent noticing method by either newspaper or internet posting. Since section 51.161 does not address public hearings, this final rule does not include the language that was in the proposed version of 40 CFR 51.165(i) about providing information on requesting and/or attending a public hearing.

procedures for nonsubstantial program revisions.[13]

With regard to 40 CFR part 70, these final rule revisions remove only the mandatory aspect of newspaper noticing, allowing for the use of that method as a consistent method for general public notice, but also allowing e-notice as an alternative consistent method. All other obligations, such as the requirement to have or maintain a mailing list and provide notice by other means, as appropriate, remain unchanged. The EPA interprets the existing mailing list obligations to include either electronic or hardcopy mailing list or both.

*D. Permitting Authorities With EPA-Delegated Authority To Administer the Federal Operating Permit Program*

With regard to the 40 CFR part 71 program revisions, a permitting authority that has delegated federal authority to administer the 40 CFR part 71 program will likely need to update its delegation agreement to update its notice procedures consistent with the e-notice requirement in the federal rules.

*E. Implementation in an Affected Indian Country*

This final rule changes the requirements for PSD permits that the EPA issues in Indian country, as well as PSD permits that are issued by a tribe through a delegation agreement or by any tribe that has an approved TIP that incorporates by reference the public noticing requirements for PSD permits in the federal rules in 40 CFR part 124 (through incorporation of 40 CFR 52.21(q)). Since this final rule revises the noticing requirements in 40 CFR part 71, which applies to Indian country absent an approved 40 CFR part 70 program, the revisions would affect the public notice procedures for the majority of title V operating permits in tribal lands.[14] A tribal agency with an approved 40 CFR part 70 program will have the option to implement e-notice under the same terms that apply to other approved 40 CFR part 70 programs (*i.e.,* when a conforming revision clarifying the consistent method becomes effective for the program).

*F. Best Practices for E-Notice and E-Access*

This section contains EPA-recommended best practices for e-notice and e-access. These best practices are not required to satisfy the e-notice and e-access provisions in this final rule, but may be helpful in the course of providing communication to the public about permitting actions. The recommended best practices for e-notice and e-access include:

- Providing notice of the final permit issuance on the Web site.[15]
- Soliciting for the mailing list on the Web site (*e.g.,* Web site equipped with radio button, hyperlink of ''click here'' function to subscribe).
- Providing options for email notification that enable subscribers to tailor the types of notifications they receive (*e.g.,* a person may request notification of only draft permit notices for major source actions rather than receiving notice of all permitting activity by the permitting authority).
- Providing, where practicable, hyperlinks on the Web site that refers users to e-notice postings and/or newspaper postings, access to draft permit Web postings and postings of other permitting actions.
- Continued posting of the draft permit on the Web site beyond the date of the end of the public comment period (*e.g.,* until the issuance of the final permit or until the permit application has been denied or withdrawn).
- Posting the final permit on the Web site for a specific period of time after the issuance of the permit (*e.g.,* through the permit appeal period or petition period).[16]
- Posting (or hyperlinking to) other key permit support documents on the agency Web site or on a publicly-available online document management site (*e.g.,* Federal Docket Management System (FDMS[17])), such as the permit application, statement of basis, fact sheet, preliminary determination, final determination, and response to comments.[18]
- Providing evidence or a certification of the posting of the e-notice and draft permit to the Web site in the permit record indicating the date(s) of the availability of the notice and draft permit on the Web site pursuant to applicable permitting authority regulations or policies. One example of such certification would be providing a printout of the applicable Web site pages and a ''Memorandum to the File'' by the permit writer documenting the date the e-notice was posted, the Web site address where the e-notice was posted and the date through which the posting remained available.
- Providing for alternative notice methods or public comment period extension in the event of prolonged Web site unavailability (*e.g.,* due to malfunctions, transitions to a different Web site platform, or emergency situations that result in prolonged e-notice and e-access system outages) during the public comment period.

Since mid-2015, the EPA has been developing a National Public Notices Web site for publishing public notices for all EPA actions subject to such notice requirements. This project is expected to be completed and implemented by the end of 2016, providing a single location for all EPA public notices (*https://www.epa.gov/publicnotices*). Each individual public notice Web page will be listed on the EPA National Public Notices Web site's dynamic list throughout the public comment period, and the list will be searchable and filterable. The public notice Web pages will be designed to contain all related documents or a link to such documents and may include a sign-up option for the public to receive email notifications. We welcome other permitting authorities to explore the forthcoming EPA National Public Notices Web site when it is deployed and to use it as a guide to designing and implementing, or improving, their own e-notice and e-access platforms.

[13] See 40 CFR 70.4(i)(2)(iv).

[14] All states, certain local permitting agencies and currently one tribe have approved part 70 programs. The EPA administers the 40 CFR part 71 federal program in most areas of Indian country (one tribe has been delegated implementation authority) and on the OCS (where there is no delegated state permitting authority).

[15] Noticing a final permit decision on the Web site is not a substitute for complying with the regulatory requirements for the provision of notice on final permit decisions. *See* footnote 6, *supra,* referencing the EAB's decision in *In Re Hillman Power Co., LLC.*

[16] Noticing a final permit decision on the Web site is not a substitute for complying with the regulatory requirements for the provision of notice on final permit decisions. *See* footnote 6, *supra,* referencing the EAB's decision in *In Re Hillman Power Co., LLC.*

[17] The FDMS at *http://www.regulations.gov* is a Web-based docket system used for, among other things, federal permitting actions that require public notice and comment. This searchable docket system allows for public access and downloading of the draft permit and permit-related documents. The Web site also allows the public to register to receive email alerts to track activity on selected dockets. Similar online data management systems exist in a number of states and allow permitting agencies to provide electronic access to permits and other records.

[18] While the EPA believes it is a best practice to electronically post as many of the key permit decision related documents and information as possible, we recognize that air quality modeling runs and other permit data files may not be compatible with e-access. These documents typically cannot be uploaded to an electronic format due to the size and storage requirements in the electronic posting. In some cases, permitting authorities may choose to upload a description of these documents with directions on how to access the files.

In addition, permitting authorities may wish to consider the recommendations provided by the National Environmental Justice Advisory Council (NEJAC) in a 2011 report [19] for improving noticing methods for reaching underserved and environmental justice (EJ) communities. These recommendations emphasize direct communication in appropriate languages and include many of the practices identified above, as well as press releases, radio announcements and posting of signs.

## V. Responses to Significant Comments on the Proposed Rule

The EPA received 29 comments on the proposed rule. In this section, we summarize the major comments and our responses. For details of all the significant comments and our responses, please refer to the Response to Comments document in the docket for this rulemaking.

### *A. General Comments on the EPA's Proposal To Remove the Mandatory Newspaper Publication Requirement From Certain Regulations and Instead Provide for E-Notice*

#### 1. Summary of Proposal

The EPA proposed to revise the public notice rule provisions for the NSR, title V and OCS permit programs of the CAA and the corresponding COA determinations for implementation of the OCS air quality regulations by removing the mandatory requirement to provide public notice of a draft air permit, as well as certain other program actions, through publication in a newspaper and instead provide for e-notice of these actions.

#### 2. Brief Summary of Comments

The EPA received numerous comments supporting the transition from newspaper publication to e-notice and the vast majority of commenters supported the proposal in general. All state and local agency commenters generally supported the proposal, stating that e-notice would: (1) Significantly improve communication with the public on permit actions in comparison to a one-day newspaper notice; (2) result in broader and better informed public participation; (3) reduce costs and conserve air agency resources; (4) improve public access by making permit actions immediately available through convenient and reliable electronic media outlets; (5) improve communication with EJ communities and other target audiences; (6) allow for information to be made available for an extended time period; and (7) provide flexibility for permitting authorities and sources by avoiding time delays associated with newspaper publication and allowing for faster correction of errors and rescheduling of events. Several of the state and local air agency commenters indicated that they currently provide e-notice and e-access for their draft permits and had realized many of the benefits cited. State agency commenters cited specific costs associated with newspaper publication of permit notices, ranging from $13,500 to $24,000 per year, and stated that they anticipated cost savings of similar magnitude after implementing e-notice.

Several commenters supported the EPA's conclusion that there have been substantial changes in technology, the media and the way the public accesses information. Commenters noted that electronic media, such as the Internet, have become the predominant means of communicating, generally making such media a more effective means of public notification than newspaper publication. Commenters noted that this conclusion applied not only to the public in general, but also for EJ communities. One commenter noted that EJ communities today obtain and share more information through the Internet than through newspaper circulation. One state commenter noted that they have been e-noticing draft PSD and title V permits in the same manner the EPA proposed for more than 10 years, and that they found e-notice to be a highly effective mechanism for communicating actions to the general public. Another commenter noted that they believe e-notices have been an effective and convenient way to communicate permitting-related information to the public, enabling broader and faster dissemination of information to the public as compared to newspaper notices. Another commenter noted that their district had already been encouraged to provide e-notice by EJ advocates, noting that such notices improve the level of available information and customer service offered to the public, including disadvantaged communities, by allowing the district to immediately make available bilingual copies of permitting action notices. Further, the commenter noted that public outreach initiatives cannot be nearly as effective with just newspaper notification.

Several commenters urged the EPA not to require permitting authorities that implement the federal permitting regulations to use solely e-notice, and rather to allow such agencies to retain the ability to provide alternative forms of notice, such as newspaper, in addition to the mandatory e-notice provisions. One commenter indicated that it was not entirely clear in the proposed language in 40 CFR 124.10 that such supplemental noticing methods were not precluded.

Three commenters, including a newspaper industry association (newspaper group), opposed the proposal to remove the mandatory newspaper publication requirements from the regulations and instead allow for e-notice. The newspaper group, while supporting the EPA's intention to provide e-notice of draft permits and certain other actions under the CAA, objected to the removal of mandatory newspaper publication requirements for public notices on several grounds. The commenter did not believe that e-notice constitutes sufficient notice and felt that the proposal would result in less public awareness of permits issued under the CAA. The commenter opined that the newspaper industry specialized in noticing and would generally provide a better method for noticing due to a much broader readership and ability to reach certain audiences. The commenter stated that relying solely on the Internet to provide public notice would disadvantage significant numbers of rural, elderly, low-income and/or less-educated Americans without Internet access. The commenter also contended that the proposal runs counter to over 200 years of tradition, suggesting that a public notice should be published by an independent third party, provide archiving ability, be accessible and be verifiable. The commenter further thought that the government's Web sites will not be as user-friendly as some newspapers that provide print and Internet notification. Finally, the commenter thought that the cost savings from eliminating newspaper notices is most likely illusory. Another commenter, representing a neighborhood organization, believed that e-notice would result in less notification and less citizen engagement in the decision process and that e-notice has not been shown to meet or exceed the standards established by newspaper publication.

#### 3. EPA Response

We agree with the majority of commenters that e-notice meets the public notice requirements and that, compared to newspaper notice, e-notice is at least as effective and, in most cases, more effective, to provide notice to the public about draft air permits and other

[19] "*Enhancing Environmental Justice in EPA Permitting Programs,*" National Environmental Justice Advisory Council (April, 2011), pages 20–21, available at *https://www.epa.gov/sites/production/files/2015-02/documents/ej-in-permitting-report-2011.pdf.*

subject actions. E-notice is more efficient and will result in cost savings to permitting authorities. Therefore, the EPA is finalizing the e-notice rule provisions substantially as proposed. We found the comments from air agencies particularly compelling. These air agencies (who serve as permitting authorities) found that e-notice and e-access have been an effective and convenient way to communicate permitting-related information to the public, enabling broader and faster dissemination of information to the public as compared to newspaper notices. In particular, air agencies found that e-notices improve the level of available information and customer service offered to the public, including EJ communities. In response to commenter concerns that the proposed rule would preclude the use of supplemental noticing methods for any affected permitting authorities, we would like to clarify that this is not the case. The EPA indicated in the proposed rule and reiterates in this final rule that all affected permitting authorities, including those that implement the federal program regulations (*i.e.,* the EPA, delegated programs and programs that incorporate by reference the federal regulations), will continue to have the authority to use additional means of public notice as appropriate, including newspaper publication or any other communication means. Nothing in this final rule precludes such supplemental notice measures when appropriate and the EPA encourages it. In response to the request for more clarity that 40 CFR 124.10 provides discretion for supplemental notice, we note that 40 CFR 124.10(c)(4) already provides for the use of any other noticing method.

With regard to the comments received opposing our proposal to remove the mandatory newspaper notice requirement for permit actions, we disagree that this shift will diminish the public notice process and its effectiveness. To the contrary, as noted previously, the majority of comments received support the shift to e-notice to meet the public notice regulatory requirements. Many of those commenters were state and local air agencies that cited specific experience in implementing e-notice that resulted in significant benefits in the public notice process, including reaching target communities such as EJ communities. The newspaper group alleges that e-notices are insufficient and cite to several studies that they claim support the effectiveness of newspaper advertisement. The EPA does not dispute the fact that newspaper advertisements, including public notices, may be effective in some cases, and this final rule does not preclude the use of newspaper public notices under any circumstances. However, recent studies strongly support the EPA's position that newspaper circulation has declined, and continues to decline, and that the Internet has become the predominant medium by which the public obtains information. The Pew Research Center estimates that daily circulation of printed newspapers declined 30 percent, from 62.3 million in 1990 to 43.4 million in 2010.[20] More recent data from the Pew Research Center show that this trend has continued through 2015, with average weekday newspaper circulation, print and digital combined, falling 7 percent in 2015, the greatest decline since 2010.[21] While digital circulation crept up 2 percent in 2015, it accounted for only 22 percent of total newspaper circulation.[22] Conversely, Internet use among the public in the United States has expanded tremendously and continues to penetrate all demographic groups. The Department of Commerce reports that as of July 2015, about 75 percent of all adults and children aged 3 years and older use the Internet.[23] Internet use through libraries provides the most widespread availability of free regular Internet access to the general public. The American Library Association's (ALA) ''Public Library Funding & Technology Access Study (2010–2011)'' reports that 99.3 percent of public libraries offer public access to computers and the Internet.[24]

During the last decade, the federal government and many state governments have been gravitating toward Internet publishing of notices, announcements and other information, further supporting the adequacy of Internet publication of such notices. In the federal sphere, this trend is exemplified by: (1) The E-Government Act of 2002,[25] which generally requires and encourages federal agencies to better manage and promote Internet and information technology use to bring about improvements in government operations and customer service; (2) Executive Order 13563 (January 18, 2011), *Improving Regulation and Regulatory Review,* which directs the federal government to modify and streamline outmoded and burdensome regulations and specifically states that each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation; and (3) Executive Order 13576 (June 13, 2011), *Delivering an Efficient, Effective, and Accountable Government,* which encourages federal agencies to cut waste, streamline structure and operations, and reinforce performance and management reform. With these actions, Congress and the President have demonstrated their interest in making government more efficient and effective through information technology, and several federal agencies (including the EPA) have promulgated rules that provide for publishing public notices on a government Web site in lieu of newspaper publication.[26] As mentioned previously, the EPA issued a tribal minor NSR rule in 2011 that provided for e-notice.[27] Each of these rules, consistent with this rule, was justified based on the effectiveness and efficiency of Internet publication and associated cost savings.

[20] Pew Research Center, The State of the News Media 2011, available at *http://www.stateofthemedia.org/2011/newspapers-essay/data-page-6.*

[21] Pew Research Center, The State of the News Media 2016, page 4, available at *http://www.journalism.org/2016/06/15/state-of-the-news-media-2016/.*

[22] *Id.*

[23] U.S. Department of Commerce, National Telecommunications & Information Administration, Digital National Data Explorer, available at *https://www.ntia.doc.gov/other-publication/2016/digital-nation-data-explorer.*

[24] *See* Executive Summary of the ALA study, page 7, available at *http://www.ala.org/research/sites/ala.org.research/files/content/initiatives/plftas/2010_2011/plftas11-execsummary.pdf.*

[25] Public Law 107–347, 116 Stat. 2899. The E-Government Act of 2002 establishes in the Office of Management and Budget (OMB), an Office of Electronic Government and imposes responsibilities on various high-level government officials including heads of Federal Government agencies. The Act defines ''electronic Government'' as ''the use by the Government of Web-based Internet applications and other information technologies, combined with processes that implement these technologies, to: (A) Enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or (B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation.'' 44 U.S.C. 3601(3). While the Act does not mandate Internet publication of the EPA's or other agencies' public notices, it evidences the inexorable movement to broader Internet use by the federal government under congressional direction.

[26] *See, e.g.,* Consolidation of Seizure and Forfeiture Regulations, Department. of Justice, Drug Enforcement Administration, 77 FR 56093 (September 12, 2012); Internet Publication of Administrative Seizure and Forfeiture Notices, Department of Homeland Security, U.S. Customs and Border Protection, 78 FR 6027 (January 29, 2013); National Oil and Hazardous Substances Pollution Contingency Plan (NCP): Amending the NCP for Public Notices for Specific Superfund Activities, Environmental Protection Agency, 80 FR 17703 (April 2, 2015); and Medicaid Program; Methods for Assuring Access to Covered Medicaid Programs, Department of Health and Human Services, Centers for Medicare and Medicaid Services, 80 FR 67576 (November 2, 2015).

[27] 76 FR 38748 (July 1, 2011).

The EPA believes that in those instances when Internet posting is the sole notice provided, it will be fully adequate to meet the purpose for which notice is intended—to provide, to as many of the public at large as can reasonably be expected to be interested, access to important information regarding draft permits. In addition, Internet publishing provides the potential to reach unknown interested parties. Residents in a local jurisdiction may not subscribe to a local paper or happen to see a one-day posting in the legal notices section of the newspaper. At any given time, residents may be out of town and/or relying on the Internet for news. The fact that e-notices will remain on the Internet for the duration of the public comment period vastly increases the likelihood that interested parties will receive notice about draft permits. In addition, interested parties would not have the burden of traveling to a physical location to review a copy of the draft permit since that document would also be posted on the Internet. Given the widespread use of the Internet in our mobile society, the EPA believes that e-notice's reach will improve the public notice process and yield positive results. In addition, the EPA believes that e-access to draft permits will expand access to permit-related documents.

With regard to the comment that relying solely on the Internet to provide public notice would disadvantage significant numbers of rural, elderly, low-income and/or less-educated Americans without Internet access, the EPA is sensitive to this concern but does not agree that using the Internet to provide public notice of draft permits will adversely affect these groups. As previously noted, Internet access is widely available even for those who do not own a computer. According to a 2010 University of Washington study, those living below the poverty line had the highest use of library computers, with 44 percent having reported using public library computers and Internet access during the previous year.[28] We do not dispute that some individuals may continue to rely on newspapers rather than the Internet to obtain information and that there may be greater concentrations of such persons in some communities. However, even if newspapers remain an effective means for reaching some individuals, this does not take away the added benefits cited by other commenters of reaching additional individuals through the Internet and providing notice continuously during the public comment period. Furthermore, this rule does not preclude supplemental means of public notice to reach populations that do not have access to or use the Internet. Permitting authorities that are required to provide e-notice and e-access may continue to employ newspaper notice routinely as a parallel mechanism with e-notice or to supplement e-notice on a permit-by-permit basis. The same is true for permitting authorities that are not required to, but may select, e-notice as their consistent noticing method.

The newspaper group claims that government Internet posting of public notices does not comport with a ''long tradition'' that a public notice must include four elements: The notice must be published by an independent third party, the publication must be capable of being archived at a reasonable cost, the notice must be accessible, and the notice must be verifiable. The newspaper group does not reference any statutory authority or case law to support the proposition that a public notice must include these four elements. The EPA notes that the applicable requirements for notice are encompassed in the constitutional due process standard governing public notice. The Supreme Court has held that, in providing public notice of governmental action, due process requires only that ''the Government's effort be 'reasonably calculated' to apprise a party of the pendency of the action.'' *Dusenbery* v. *United States,* 534 U.S. 161, 170–71 (2002) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 315 (1950)). Although *Dusenbery* involved direct notice of an administrative forfeiture, the same due process standard applies to published notices as well. *See, e.g., United States* v. *Young,* 421 Fed. Appx. 229, 230–31, 2011 U.S. App. LEXIS 6741, at *4 (3d Cir. Apr. 1, 2011). The CAA does not specify the means by which public notice shall be provided under the programs affected by this final rule.[29] However, the CAA permitting provisions do reflect a goal to provide adequate opportunities for informed public participation.[30] Publication of draft permit notices via the Internet, with its widespread and broad availability within and well beyond the limits of the local jurisdiction, is clearly in compliance with this standard. The Internet's ability to provide unlimited access to public notices throughout the duration of the public comment period is, in this Internet era, much less limiting than a single day's posting in a local newspaper, which has been found to meet due process requirements.

The element referenced in the newspaper group's comment requiring that notice be published by an independent third party presumes that newspapers, being independent of the government, provide the public with ''an extra layer of confidence'' in the notice compared to the government publishing the notice itself. But this argument mistakes why newspapers were used in the past and the role they serve in the notice process. Newspapers were historically used to provide public notice because, until the Internet, there was no comparable alternative method that was ''reasonably calculated'' to apprise a party of the pendency of a draft permit or other subject action. It had nothing to do with their status as an ''independent and neutral third party.'' In fact, for these purposes, there is nothing inherently beneficial about newspapers being independent from the government given that they merely act as a vehicle for publishing notices prepared and provided by the permitting authority. The commenter has not demonstrated that newspapers generally exercise independent editorial control over the content of legal notices or classified advertisements or that newspaper staff otherwise seek to check the veracity of what the newspaper company is paid to print in these sections of its publication.

In response to newspaper group's comments about the preservation of e-notices for future reference and verification of the e-notice posting, we note that permitting authorities have been required to keep and retain permit records (including, for example, a copy of the newspaper notice), and are required to continue to do so, in accordance with applicable record retention requirements. Therefore, we have included a best practice suggestion of evidence to include in the permit record, when e-notice and e-access are provided, to certify the date(s) of availability of the e-notice and draft permit postings on the Web site. In addition, in response to the newspaper group's claim that the EPA's Web site does not include hyperlinks to refer users to public notices, we have included a best practice suggestion that, where practicable, permitting authorities include hyperlinks on their Web site to e-notice and/or newspaper postings, postings of draft permits and other permitting actions. We also identified, in Section IV of this

[28] Samantha Becker, et al., *Opportunity for All: How the American Public Benefits From Internet Access at U.S. Libraries,* at pages 1–2, available at *http://impact.ischool.washington.edu/documents/OPP4ALL_FinalReport.pdf.*

[29] *See, e.g.,* CAA sections 165(a)(2) and 502(b)(6).

[30] *See, e.g.,* CAA section 160(5).

document, a forthcoming National Public Notices Web site that the EPA will utilize for all EPA public notices and stated that we welcome other permitting authorities to review that platform for these and other best practices. The EPA notes that the process of providing legal verification of Internet notice is dramatically streamlined when it is the government that can retrieve the required data from its own Web site, as opposed to seeking such verification from newspapers. Finally, the EPA notes that this regulatory change should correspondingly decrease the burden on newspapers of having to provide such information.

The newspaper group claims that many newspapers have adopted a marketing strategy to publish print issues on the newspaper's Internet site. They believe the government's Internet sites will not be as user-friendly as the newspaper's dual method of print and Internet notification. They also claim that state press associations aggregate printed notices and post them on statewide public-notice Web sites. The EPA does not agree that posting draft permit notices on newspaper Web sites or press association Web sites is superior to posting them on a permitting authority's Web site. Online posting is not part of the EPA's contracts for publication of draft permit notices, so newspapers are under no obligation to make them freely available to the public online. Newspapers are likewise under no obligation to contract with state press associations for online posting of draft permit notices. Moreover, some newspaper Web sites restrict access to the full online version of the newspaper to print subscribers or those who pay for full online access. A potential interested party searching for a draft permit notice on such a Web site would either need a subscription to the newspaper that is publishing the Internet notice or would have to pay a daily access fee. The EPA believes it is unrealistic to assume that such a process would provide more effective notice than a freely available Web site that posts the desired notice as well as a copy of the draft permit, 24 hours a day, for the duration of the public comment period, in a searchable database.

The EPA disagrees with the newspaper group's claim that the cost savings to eliminate mandatory newspaper notices is illusory. The commenter makes a valid point that there are also costs involved in maintaining a Web site and posting information on the Internet. However, the commenter did not quantify the costs or show that they are greater than the costs of newspaper advertisements. Many state regulatory agencies have established Web sites for the purpose of serving broader communication objectives. So an appropriate cost comparison for purposes of this rule is the cost of adding e-notices for specific actions to a Web site infrastructure that an agency already maintains or might create for other reasons. State regulatory agencies with Web sites have budgets to cover the costs of running a Web site for various reasons (not just permitting). To the extent that there could be some additional cost to add permit notices to a Web site, those marginal costs would be offset by the savings realized by eliminating newspaper notices. As noted previously in the summary of comments in this section, air agency commenters cited specific costs associated with newspaper notices and anticipated cost-savings after implementing e-notice. In addition, most permitting authorities commented positively about the cost and other efficiencies that e-notice provides. The EPA believes it has demonstrated earlier how providing public notice through the Internet can—and indeed already does—reach more people, more easily, and more directly, than newspaper notice. Data from permitting authorities with real-world experience implementing pubic notice requirements under the current regulations (in many cases also including e-notice) supports the EPA's conclusion that e-notice will be at least as effective, and in most cases more effective, and cheaper overall than notice by newspaper.[31]

*B. Comments on Requirement That Permitting Authorities Use a Consistent Noticing Method*

1. Summary of Proposal

In lieu of newspaper publication, we proposed to require e-notice for the noticing of air permits issued by the EPA and other permitting authorities that implement the federal air permitting rules. For permits issued by permitting authorities that implement their own rules approved by the EPA, the proposed rule provided the option for permitting authorities to use either e-notice or traditional newspaper notice. However, those permitting authorities must adopt a single, consistent noticing method for all of their affected permit actions in their air rules. Thus, we proposed that where a permit agency opts to post notices of draft permits on a Web site in lieu of newspaper publication, it must post all notices to that Web site in order to ensure that the public has a consistent and reliable location for all permit notices.

2. Brief Summary of Comments

The majority of commenters supported the EPA's proposal to require a consistent noticing method. Several commenters indicated that it was critical for permitting authorities to use a consistent noticing method to avoid inconsistency in implementation and confusion on the part of the public in understanding how to access permit information. Several commenters also noted that it is important for permitting authorities to be allowed to use supplementary noticing methods when appropriate. Although two of these commenters indicated that they understood that the rule language, as proposed, would not preclude the use of additional, supplemental means of public notice, others seemed to be confused on this point and therefore objected to the proposed consistent noticing method requirement on the same grounds.

Some commenters did not support the proposed requirement to use a consistent noticing method and instead favored alternative approaches or increased flexibility. One of these commenters indicated that, in some cases, traditional newspaper publication may be appropriate or necessary, and that some permitting authorities may have technical or budgetary constraints affecting their ability to provide e-notice and e-access while some may also have a statutory requirement for newspaper notice. That commenter urged the EPA to provide flexibility for a permitting authority to choose the type of notice that is appropriate for the location and circumstances of a project. Another commenter stated that forcing a state to make a formal commitment to a single form of public notice, whether electronic or print, defeats the purpose of public notice and also questioned how a state would ''adopt'' a ''consistent noticing method.'' Two commenters supported media neutral, flexible approaches based on a ''method reasonably likely to provide routine and ready access to the public'' as opposed to only one ''consistent noticing method.'' Finally, one commenter favoring a flexible approach indicated that a consistent noticing method does not work in states with diverse

[31] A survey of EPA Regional offices indicated an average newspaper advertising cost per permit (not including indirect costs) of approximately $1,034. *See* Memorandum: ''U.S. EPA Regional Office NSR, title V and OCS Newspaper Public Notice Cost Estimates: FY 2013, 2014 and 2015'' contained in this rulemaking docket. To the extent any additional costs are incurred as a result of implementing e-notice and e-access, such costs would be *de minimis* in comparison.

populations that benefit from different noticing methods, and that restrictions may inhibit effectively communicating important information to diverse communities. Further, the commenter indicated that a consistent notice approach does not allow the flexibility to transition from newspaper to e-notice.

3. EPA Response

The EPA is finalizing the requirement for authorities to use a consistent noticing method as proposed. We agree with commenters that believe that the random use of alternative notice methods for different permit actions could confuse the public in their efforts to access air permit public notices. In response to the negative comments received that seem to have interpreted the requirement for using a consistent noticing method for public notice of draft permit actions as precluding the use of additional noticing mechanisms, we would like to clarify that, consistent with the proposed rule, nothing in this final rule prohibits or precludes a permitting authority from using additional, supplemental forms of notice, including newspaper publication. Indeed, several state and local permitting agency commenters indicated that they already practice multiple forms of public notice on such permit actions, including both e-notice and newspaper publication and in some cases additional parallel forms of notice. Such permitting authorities that implement EPA-approved permitting rules would be required to adopt a consistent noticing method (*i.e.,* e-notice or newspaper publication), but could continue to use any and all additional forms of notice, either consistently or on a permit-by-permit basis, as appropriate. Additionally, we would like to clarify that for permitting authorities that implement EPA-approved permitting rules, adopting rule changes and submitting a plan or program revision incorporating the final e-notice rule provisions is optional. Such air agencies may choose to continue to operate under their existing EPA-approved rules and regulations that require newspaper notification in all cases. This would qualify as a ''consistent noticing method'' under the revised regulations.

Those commenters who argued for flexibility to choose the noticing method on a permit-by-permit basis have not shown how the ''consistent noticing method'' requirement frustrates the goals they seek to achieve through this flexibility. As discussed previously, the rule does not preclude using multiple methods of public notice, as long as the consistent method is still one of the methods used. These commenters have not shown any detrimental effect that would result to the commenters or the public from requiring permitting authorities to use one consistent method of notice for all draft permits. The benefits derived from the flexibility sought by these commenters does not eliminate the benefits that result from a consistent noticing method—ensuring that interested parties can rely on one form of notice in all cases and will not miss notices because of continuous changes in noticing methods.

The EPA does not intend for the rule to preclude a permitting authority from subsequently changing its ''consistent noticing method'' on a programmatic basis. For example, if a state permitting authority follows a particular noticing method and then decides that a different form of notice would be more effective going forward, the state may revise its regulations to change its consistent method. Regarding the concern about how a state would ''adopt'' a consistent method, this rule makes clear that such method should be specified in EPA-approved permitting regulations for the appropriate jurisdiction.

*C. Comments on Requirement To Make E-Notice Mandatory for Federal Permit Actions*

1. Summary of Proposal

The EPA proposed that permitting authorities that implement the federal permitting rules, including the EPA and other permitting authorities that have been delegated the authority to implement the federal permitting rules, would be required to adopt e-notice as the consistent noticing method. We proposed this approach because we believe that e-notice represents the best current practice for noticing major source air permit actions. Accordingly, while the proposed rule made e-notice optional for permitting authorities implementing EPA-approved permitting rules, we did not extend the same flexibility to the EPA and other air agencies that implement the federal permitting rules.

2. Brief Summary of Comments

We received one comment opposing the requirement that permitting authorities implementing the federal permitting rules be required to adopt e-notice as the consistent noticing method. The commenter believed that such programs should have the same option as EPA-approved programs to choose e-notice or newspaper on a programmatic basis, allowing the permitting agency to determine the best method for communicating with the public. The same commenter further indicated that providing this option would allow for transition to e-notice at a pace consistent with available resources.

3. EPA Response

We are maintaining the requirement that permitting authorities implementing the federal permitting rules use e-notice as their consistent noticing method consistent with the proposal and our stated objective to implement these best practices. As discussed further in Section V of this document, the EPA did not receive any comments demonstrating that one or more affected permitting authorities have infrastructure and/or resource constraints that would render them unable to implement e-notice and e-access as of the effective date of the final rule or that implementation would cause a significant additional burden. With regard to the equity point raised by the commenter, delegated permitting authorities are, by definition, not the same as EPA-approved permitting authorities. A permitting authority that elects to administer the federal program under a delegation agreement accepts the obligation to apply the EPA's regulations.

*D. Comments on Mandatory E-Access for Programs That Use E-Notice*

1. Summary of Proposal

The EPA proposed to require that, when a permitting authority adopts the e-notice approach, it also must provide e-access. In the context of this rule, e-access means that the permitting authority must make the draft permit available electronically (*i.e.,* on the agency's public Web site or on a public Web site identified by the permitting authority) for the duration of the public comment period.

2. Brief Summary of Comments

Several commenters supported e-notice with e-access and further recommended that e-access be provided using commonly available, free software. One commenter noted that e-access was important to increasing overall project awareness and providing for more effective public review and comment. Another commenter agreed with the EPA's proposed approach to limit e-access to the draft permit, and agreed that the method of making available other elements of the permit record should be left to the permitting authority to avoid potential resource constraints.

Commenters opposed to the proposed mandatory e-access requirement generally cited resource and information technology infrastructure constraints, stating that the requirement should be for e-notice only due to the added burden associated with posting additional records without sufficient time, infrastructure or economic capability to do so. Two commenters noted that the addition of e-access makes the rule more stringent than existing law.

3. EPA Response

The EPA is finalizing the requirement that permitting authorities that adopt e-notice also adopt e-access consistent with the proposed rule. The EPA believes that coupling e-notice and e-access provides the affected public with ready and efficient access to both the notice and the draft permit, and that such access supports informed public participation in the permitting process. Further, the EPA believes that the additional scanning and/or uploading of the draft permit to meet the e-access requirement would be minimally burdensome. We agree with the commenters that recommended that e-access be provided using commonly available, free software, and our assessment indicates that this is the current practice of permitting authorities that provide e-access to elements of their draft permit records. Therefore, we do not believe that rule language requiring the use of commonly available, free software for providing e-access is necessary and the final rule does not contain such a requirement.

We disagree with the comments that the requirement to provide e-access makes the noticing rules more stringent in a way with which permitting authorities are not readily capable of complying or that is contrary to law. The CAA does not prescribe the means or content of a public notice under the permitting programs addressed in the final rule. Comments received from state and local air agencies confirm that many of these agencies already provide e-access, and in some cases provide e-access to significantly more elements of the permit record than just the draft permit. Thus, we see the requirement for e-access as a logical and appropriate extension of the current requirement to make elements of the permit record available at a location. In addition, the EPA notes that the rule provides that access to documents supporting a draft permit may be provided at a physical location such as a public library. Based on comments received, the EPA believes that the e-access requirement for simply providing, at a minimum, e-access to the draft permit can be readily met by permitting authorities.

*E. Comments on Final E-Notice Rule Implementation Timeframe/Transition*

1. Summary of Proposal

The EPA did not propose a transition period for technological or other reasons, and proposed instead that once the e-notice rule becomes effective, e-notice and e-access would be required for covered actions by permitting authorities that implement the federal program rules under 40 CFR parts 52, 55, 71 and 124. This includes EPA Regions, permitting authorities that are delegated authority by the EPA to issue permits on behalf of the EPA (via a delegation agreement), and permitting authorities that have their own rules approved by the EPA in a SIP where the SIP incorporates by reference the federal program procedures and automatically updates when the EPA's rules are amended. Under this rule, these programs will be required to implement e-notice and e-access, with the exception of states that are delegated authority to issue permits under part 55.

2. Brief Summary of Comments

The EPA received three comments expressing concern about the proposed effective date of the final rule and the need for additional transition time for implementation. One industry association commenter stated that establishing electronic notification systems and Web sites for e-access requires careful planning, development and testing, and recommended a one year implementation timeframe. Another industry association commenter noted that the support of e-access capabilities typically necessitates substantive changes to an agency's Web site which will stretch far past the effective date of the rule. Another commenter indicated that a local air agency has several rules that mandate newspaper notice and requested a six month transition to allow for amendment of its rules.

3. EPA Response

The EPA is retaining the proposed effective date of the final rule. As discussed previously, the EPA did not receive any comments demonstrating that one or more affected permitting authorities have infrastructure and/or resource constraints that would render them unable to implement e-notice and e-access as of the effective date of the final rule or that implementation would cause a significant additional burden. Industry commenters only conveyed a general concern and did not identify any specific affected permitting authorities that would be unable to meet the final rule requirements in accordance with the proposed effective date. The other commenter, a local air agency with a partially-delegated permitting program, said a transition is necessary to allow for agency rule changes. However, that same commenter indicated that the agency already practices e-notice and e-access on its own Web site. Therefore, it seems this air agency would not be required to implement any changes to its rules to comply with its obligations as a delegated permitting program after the final rule becomes effective. To the extent that a delegated permitting authority must separately comply with a state requirement to provide notice via a newspaper, nothing in this rule precludes a permitting authority from continuing to comply with such a state requirement while at the same time satisfying the federal requirement for e-notice under this regulation. This rule does not preclude delegated permitting authorities from continuing to provide newspaper notice, either on a discretionary basis or as required separately by state law and/or rule. Under the amended rules, such a permitting authority should be able to transition away from mandatory newspaper noticing over a period of time without any need for a delay in realizing the benefits of e-notice for EPA-issued permits or permits issued by other air agencies that administer delegated programs.

With regard to permitting authorities that administer EPA-approved permitting programs, this rule does not necessarily require any changes to those programs, and air agencies that wish to make changes have discretion to do so. An approved state whose rules currently require newspaper publication for all draft permits is not required by the rule to make any changes to its public notice requirements. To the extent such a state elects to replace newspaper notice with e-notice, this rule establishes no timetable for the state to make this transition. The state may continue providing newspaper notices until it can complete changes to its regulations to remove a mandatory newspaper publication requirement. Thus, with respect to rule changes by air agencies with EPA-approved programs that elect to implement e-notice alone (*i.e.,* to no longer be required by state or local rules to publish notices in a newspaper), such agencies are free to pursue such changes on their own schedule. A delay in the effective date in this final rule is not necessary to accommodate air agencies

with EPA-approved programs that may need time to adopt e-notice into their rules. The fact that a state may need time to move to e-notice if they choose that as their consistent noticing method does not justify delaying the effective date of this rule for other air agencies with EPA-approved programs that may be able to adopt e-notice more quickly.

*F. Comments on Temporary Use of Alternative Noticing Methods*

1. Summary of Proposal

In the proposed rule, the EPA noted that there may be temporary instances of Web site failure or failure in the availability for public review of the posted e-notice and the draft permit (e-access). This raises the question about what constitutes a significant interruption in time sufficient to require an extension of the public comment period or other measure(s) to cover the period of interruption. The EPA stated in the proposal that the requirement that e-notice and e-access postings be maintained ''for the duration of the comment period'' should not be interpreted as a requirement for uninterrupted access. However, we sought comment on the EPA's proposed approach for the phrase ''for the duration of the comment period.'' The EPA also solicited comments regarding whether we should include a provision in the regulations that allows a permitting authority to use an alternative noticing (and/or access) method to reach the affected public when the Web site is unavailable.

2. Brief Summary of Comments

Several commenters indicated that they felt temporary alternative notice methods were unnecessary. Some of these commenters recommended that the notice be extended for the duration of the downtime of the Web site. Several commenters noted that having the draft permit and public notice available on the Web site during the comment period, compared to the single day publication in the newspaper, results in a significant increase in public access to the proposed permitting action, even if Web site outages occur, and thus temporary alternative notice/access methods should not be required. Commenters also believed that any inability to provide e-notice would likely be resolved quickly and the public would have sufficient access to a draft permit during the comment period despite temporary Web site outages. Several commenters supported the EPA's position that ''for the duration of the comment period'' should not be interpreted as a requirement for uninterrupted access. One commenter suggested that the requirement for 30-day notice is satisfied when the notice first appears and noted that there is nothing in the statute or current regulations that requires continuous notice.

Several commenters also favored rule requirements for temporary alternative noticing. One commenter suggested that alternative noticing criteria should be built into the rules to ensure that Web site interruptions do not have a significant impact on public's ability to review and comment or on the permitting schedule, and that it was critical that agencies have the flexibility to choose their own approach and not be left with the sole option of extending the public notice period when there is a significant Web site interruption. Two commenters suggested that a definition of ''the duration of the public comment period'' should be added to the rule.

3. EPA Response

The EPA is not finalizing any specific requirements regarding temporary alternative noticing of permit actions to address the temporary unavailability of the notice and/or draft permit due to Web site outages, nor are we specifically defining ''the duration of the public comment period.'' We do not believe that, in general, there are, or will be, significant issues with e-notice and e-access availability on Web sites used by permitting authorities, and we believe that permitting authorities are in the best position to determine the appropriate methods to address any situations that may arise on specific permitting actions. In addition, we agree that there is no statutory requirement for continuous notice of a draft permit during the entire duration of the comment period. While there is significant added value in posting a notice throughout the comment period, we do not see a need for the EPA to define ''the duration of the public comment period'' as a requirement for uninterrupted access. We support the flexibility for the permitting authority to enact measures to address Web site unavailability, including possibly extending the public comment period. We have addressed this in the ''best practices'' in Section IV of this document.

*G. Comments on Documentation/ Certification of E-Notices*

1. Summary of Proposal

The proposed rule did not specifically address documenting and/or certifying the posting of an e-notice to a Web site for the duration of the comment period. However, the EPA received comments on this topic.

2. Brief Summary of Comments

Several commenters supported the need for documentation and/or certification of the e-notice in the administrative record for the draft permit, further stating that it is critical that states document this information in the event the decision is challenged. Two commenters suggested that the EPA could address this issue in ''best practices'' and provided specific examples.

3. EPA Response

We agree with commenters that it is important for permitting authorities to establish a record that they have provided notice of a draft permit and the opportunity for public comment, but we do not believe a specific certification requirement is necessary. EPA rules have not required a certification of public notice and nothing in the CAA requires it. The EPA has addressed documentation of e-notices in the ''best practices'' in Section IV of this document. We support flexibility for permitting authorities to comply with their specific statutory, policy or regulatory provisions for e-notice and e-access and to ensure that there is adequate documentation of the notice in the administrative record for the draft permit.

*H. Additional Guidance on E-Notice and E-Access for Minor NSR Permit Actions*

1. Summary of Proposal

In the proposed rule, we indicated our intent to clarify that the EPA's 2012 Memorandum's interpretation of prominent advertisement in 40 CFR 51.161(b)(3) as media neutral also applies to 40 CFR 51.161(b)(1). More specifically, we proposed that allowing e-access (*i.e.,* Web site access) to the information submitted by the owner or operator and access to the agency's analysis of the effect on air quality would satisfy the requirement that this information be available for public inspection in at least one location in the area affected. We believe this approach is consistent with the EPA's 2012 Memorandum with respect to allowing the use of electronic and other methods to provide notice of minor NSR actions, and it is reasonable, for reasons discussed in this preamble, to allow e-access to permit documents for major NSR permits.

In addition, in issuing the EPA's 2012 Memorandum, the EPA indicated that our interpretation of the term prominent

advertisement in 40 CFR 51.161(b)(3) applies only to minor sources and not to synthetic minor sources.[32] Given the statement in the memorandum, which raised uncertainty about the flexibility to use media neutral methods for synthetic minor NSR permits, the EPA has now determined that it is not appropriate to exclude such synthetic minor permits in this regard, and the Agency proposal clarified that the limitation established in Footnote 1 of the EPA's 2012 Memorandum is no longer appropriate.

2. Brief Summary of Comments

All commenters supported the extension of the interpretation in the EPA's 2012 Memorandum to synthetic minor NSR permits. One commenter recommended that the EPA either propose changes to 40 CFR 51.161(b)(1) similar to what was proposed for the other sections of the CFR in the rule proposal or expand the EPA's existing interpretation of ''media neutral'' notification for minor NSR programs to specifically indicate that information available electronically meets the requirements of 40 CFR 51.161(b)(1).

3. EPA Response

The EPA agrees that we should revise the text of 40 CFR 51.161(b)(1) similar to what was proposed for other sections of the CFR. This better communicates our view that Internet posting of this information is sufficient to meet the subject records availability requirements under the existing rule language. The EPA does not agree, however, that it needs to propose the revised text before adopting it in this final rule. The proposed rule provided adequate notice of the EPA's intent to clarify that the requirements of 40 CFR 51.161(b)(1) are satisfied by making the information available electronically. We received no adverse comments on this point. The text the EPA is adding to 40 CFR 51.161(b)(1) is similar to the text the EPA proposed to add to 40 CFR 51.166(q)(2)(ii). We received no adverse comments regarding that text. Therefore, in this final rule, the EPA is revising 40 CFR 51.161(b)(1) to add the following: ''This requirement may be met by making these materials available at a physical location or on a public Web site identified by the State or local agency.''

This final rule preamble also serves to extend the EPA's media neutral interpretation of prominent advertisement under 40 CFR 51.161 to synthetic minor permits. The EPA will attach a notification to the electronic version of the EPA's 2012 Memorandum indicating that the media neutral interpretation also applies to synthetic minor permits.

## VI. Environmental Justice Considerations

The 1990 CAA Amendments generally require that the EPA or the permitting authority provide adequate procedural opportunities for the general public to have informed participation in the air permitting process in the areas affected by a proposed permit. These areas include EJ communities.

The effectiveness of noticing methods for reaching underserved and EJ communities is a substantial concern to the EPA. A 2011 report issued by the NEJAC found that publication in the legal section of a regional newspaper is antiquated and ineffective, and is not ideal for providing notice to affected EJ communities. Regarding public participation, the report recommends the following to the EPA: ''To ensure meaningful public participation, the public notice and outreach process must include direct communication in appropriate languages through telephone calls and mailings to EJ and tribal communities, press releases, radio announcements, electronic and regular mail, Web site postings and the posting of signs.'' [33] Thus, the NEJAC specifically listed Web site postings as a method to ensure meaningful public participation. Furthermore, several comments received on the proposed rule, including comments from air agencies with practical experience implementing e-notice and e-access, strongly supported these mechanisms as more effective in providing public notice of permitting actions to EJ communities. However, notwithstanding our conclusion that e-notice and e-access are a viable and effective means of making information widely available to the public, including EJ communities, we strongly encourage permitting authorities to provide additional notice and access to the draft permit (and other elements of the administrative records for which they choose to provide e-access) where they determine that a specific jurisdiction or population would be better served with supplemental notice in the newspaper and/or another noticing method, such as those suggested by the NEJAC, and access to elements of the administrative record (for which e-access was provided) at a physical location.

## VII. Statutory and Executive Order Reviews

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

This action is not a significant action and was, therefore, not submitted to the OMB for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. This final rule revises regulations to address public noticing method requirements for draft permits for certain sources of air pollution. It is important to note that the final rule revisions do not require air agencies that implement the permitting program through an EPA-approved title V program or SIP to use e-notice. These agencies may continue to provide notice by newspaper publication or they may adopt e-notice as their consistent notification method. Only in the latter case would an air agency be required to revise the title V program rules or undertake a SIP revision. For EPA-delegated agencies, and for agencies that incorporate by reference the federal rules and their rules automatically update, no rulemaking action is required by the agency to adopt the e-notice requirements. However, if any of these agencies decides to retain newspaper publication as their consistent notification method, they could request removal of delegation, revise their program rules consistent with the rules for state programs (*e.g.,* 40 CFR 51.166), and undertake a SIP revision. In addition, an agency delegated a 40 CFR part 71 program may need to update its delegation agreement. An air agency delegated the 40 CFR part 71 program may have to choose between implementing e-notice, obtaining approval for implementing a 40 CFR part 70 program, or relinquishing their title V program. To the extent that a SIP revision or a title V program revision is necessary to effect the changes being proposed, we believe that the burden to revise SIPs is already accounted for under the PSD and NNSR information collection request (ICR) No. 1230.29 (OMB Control No. 2060–0003) and the burden to revise title V programs is included in ICR Nos. 1587.13 and 1713.11 (OMB Control Nos. 2060–0243 and 2060–0336).

[32] Synthetic minor sources are those sources that have the potential to emit regulated NSR pollutants at or above the major source thresholds, but that have taken enforceable limitations to restrict their potential to emit below such thresholds.

[33] ''*Enhancing Environmental Justice in EPA Permitting Programs,*'' National Environmental Justice Advisory Council (April, 2011), pages 20–21, available at *https://www.epa.gov/sites/production/files/2015-02/documents/ej-in-permitting-report-2011.pdf.*

This action has no burden on industry sources since permitting authorities are responsible for the noticing of permits. Therefore, the final rule revisions do not contain any information collection activities.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements directly on small entities. This final rule revises regulations to address public noticing method requirements for draft permits for certain sources of air pollution.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly affect small governments. This final action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This final action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This 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*

The final rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in Section VI of this document titled ''Environmental Justice Considerations.''

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of any nationally applicable regulation, or any action the Administrator ''finds and publishes'' as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**. This final rule is nationally applicable, as it revises the rules for public notice under the minor NSR, PSD, NNSR, title V and OCS permitting programs in 40 CFR 51.161, 40 CFR 51.166, 40 CFR 51.165, 40 CFR 52.21, 40 CFR part 124, 40 CFR part 70, 40 CFR part 71 and 40 CFR part 55. As a result, petitions for review of this rule must be filed in the United States Court of Appeals for the District of Columbia Circuit within December 19, 2016. CAA section 307(d)(7)(B) further provides that ''[o]nly an objection to a rule or procedure that was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to reconsider the rule ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to all person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this final rule, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

## VIII. Statutory Authority

The statutory authority for this action is provided by 23 U.S.C. 101; 42 U.S.C. 6901, *et seq.;* 42 U.S.C. 300f, *et seq.* 33 U.S.C. 1251, *et seq.;* 42 U.S.C. 7401, *et seq.*

## List of Subjects

*40 CFR Part 51*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

*40 CFR Part 52*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

*40 CFR Part 55*

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

*40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

*40 CFR Part 71*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

*40 CFR Part 124*

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 5, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

### Subpart I—Review of New Sources and Modifications

■ 2. Section 51.161 is amended by revising paragraph (b)(1) to read as follows:

**§ 51.161 Public availability of information.**

* * * * *

(b) * * *

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality. This requirement may be met by making these materials available at a physical location or on a public Web site identified by the State or local agency;

* * * * *

■ 3. Section 51.165 is amended by adding paragraph (i) to read as follows:

**§ 51.165 Permit requirements.**

* * * * *

(i) *Public participation requirements.* The reviewing authority shall notify the public of a draft permit by a method described in either paragraph (i)(1) or (2) of this section. The selected method, known as the ''consistent noticing method,'' shall comply with the public participation procedural requirements of § 51.161 of this chapter and be used for all permits issued under this section and may, when appropriate, be supplemented by other noticing methods on individual permits.

(1) Post the information in paragraphs (i)(1)(i) through (iii) of this section, for the duration of the public comment period, on a public Web site identified by the reviewing authority.

(i) A notice of availability of the draft permit for public comment;

(ii) The draft permit; and

(iii) Information on how to access the administrative record for the draft permit.

(2) Publish a notice of availability of the draft permit for public comment in a newspaper of general circulation in the area where the source is located. The notice shall include information on how to access the draft permit and the administrative record for the draft permit.

■ 4. Section 51.166 is amended by revising paragraphs (q)(2)(ii), (iii), (vi), and (viii) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

* * * * *

(q) * * *

(2) * * *

(ii) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement may be met by making these materials available at a physical location or on a public Web site identified by the reviewing authority.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as through written public comment. Alternatively, these notifications may be made on a public Web site identified by the reviewing authority. However, the reviewing authority's selected notification method (*i.e.,* either newspaper or Web site), known as the ''consistent noticing method,'' shall be used for all permits subject to notice under this section and may, when appropriate, be supplemented by other noticing methods on individual permits. If the reviewing authority selects Web site notice as its consistent noticing method, the notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit, information on how to access the administrative record for the draft permit and how to request and/or attend a public hearing on the draft permit.

* * * * *

(vi) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. The reviewing authority shall make all comments available for public inspection at the same physical location or on the same Web site where the reviewing authority made available preconstruction information relating to the proposed source or modification.

* * * * *

(viii) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location or on the same Web site where the reviewing authority made available preconstruction information and public comments relating to the proposed source or modification.

* * * * *

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart A—General Provisions

■ 6. Section 52.21 is amended by revising paragraphs (q) and (w)(4) to read as follows:

**§ 52.21 Prevention of significant deterioration of air quality.**

* * * * *

(q) *Public participation.* The administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

* * * * *

(w) * * *

(4) If the Administrator rescinds a permit under this paragraph, the Administrator shall post a notice of the rescission determination on a public Web site identified by the Administrator within 60 days of the rescission.

* * * * *

## PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 7. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 8. Section 55.5 is amended by revising paragraphs (f)(1)(i) and (ii) to read as follows:

**§ 55.5 Corresponding onshore area designation.**

* * * * *

(f) * * *

(1) * * *

(i) Make available, in at least one location in the NOA and in the area requesting COA designation, which may be a public Web site identified by the Administrator, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making the preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation or on a public Web site identified by the Administrator, of a 30-day opportunity for written public comment on the available information and the Administrator's preliminary COA designation.

* * * * *

■ 9. Section 55.6 is amended by revising paragraph (a)(3) to read as follows:

**§ 55.6 Permit requirements.**

(a) * * *

(3) *Administrative procedures and public participation.* The Administrator will follow the applicable procedures of 40 CFR part 71 or 40 CFR part 124 in processing applications under this part. When using 40 CFR part 124, the Administrator will follow the procedures used to issue Prevention of Significant Deterioration (''PSD'') permits.

* * * * *

■ 10. Section 55.7 is amended by revising paragraphs (f)(4)(ii) and (iii) to read as follows:

**§ 55.7 Exemptions.**

* * * * *

(f) * * *

(4) * * *

(ii) Make available, in at least one location in the COA and NOA, which may be a public Web site identified by the Administrator or delegated agency, a copy of all materials submitted by the requester, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA or on a public Web site identified by the Administrator or delegated agency, of a 30-day opportunity for written public comment on the information submitted by the owner or operator and on the preliminary determination.

* * * * *

## PART 70—STATE OPERATING PERMIT PROGRAMS

■ 11. The authority citation for part 70 continues to read as follows:

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

■ 12. Section 70.7 is amended by revising paragraphs (h)(1) and (2) to read as follows:

**§ 70.7 Permit issuance, renewal, reopenings, and revisions.**

* * * * *

(h) * * *

(1) Notice shall be given by one of the following methods: By publishing the notice in a newspaper of general circulation in the area where the source is located (or in a State publication designed to give general public notice) or by posting the notice, for the duration of the public comment period, on a public Web site identified by the permitting authority, if the permitting authority has selected Web site noticing as its ''consistent noticing method.'' The consistent noticing method shall be used for all draft permits subject to notice under this paragraph. If Web site noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public comment period, on a public Web site identified by the permitting authority. In addition, notice shall be given to persons on a mailing list developed by the permitting authority using generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe. The permitting authority may use other means to provide adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or Web site address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in § 70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority (except for publicly-available materials and publications) that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled);

* * * * *

## PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

### Subpart A—Operating Permits

■ 14. Section 71.4 is amended by revising paragraph (g) to read as follows:

**§ 71.4 Program implementation.**

* * * * *

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program as set forth in § 71.4(a), (b), (c), or (d)(1)(ii). The publication of this part in the **Federal Register** on July 1, 1996 serves as the notice for the part 71 permit programs described in § 71.4(d)(1)(i) and (e). The EPA will also publish a notice in the **Federal Register** of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the **Federal Register** under this paragraph (g), the Administrator will, to the extent practicable, post a notice on a public Web site identified by the Administrator of the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

* * * * *

■ 15. Section 71.11 is amended by revising paragraphs (d)(3)(i)(E), (d)(3)(ii), and (d)(4)(i)(G) to read as follows:

**§ 71.11 Administrative record, public participation, and administrative review.**

* * * * *

(d) * * *

(3) * * *

(i) * * *

(E) Persons on a mailing list, including those who request in writing to be on the list. As part of this requirement, the permitting authority shall notify the public of the opportunity to be put on the mailing list by way of generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.

(ii) By posting a notice on a public Web site identified by the permitting authority for the duration of the public comment period. The notice shall be consistent with paragraph (d)(4)(i) of this section and be accompanied by a copy of the draft permit.

* * * * *

(4) * * *

(i) * * *

(G) The physical location and/or Web site address of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

* * * * *

## Subpart B—Permits for Early Reductions Sources

■ 16. Section 71.27 is amended by revising paragraphs (d)(3)(i)(E), (d)(3)(ii), and (d)(4)(i)(F) and (G) and adding paragraph (d)(4)(i)(H) to read as follows:

**§ 71.27 Public participation and appeal.**

* * * * *

(d) * * *

(3) * * *

(i) * * *

(E) Persons on a mailing list, including those who request in writing to be on the list. As part of this requirement, the Administrator shall notify the public of the opportunity to be put on the mailing list by way of generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to the mailing list. The Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Administrator may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe;

* * * * *

(ii) By posting a notice on a public Web site identified by the Administrator for the duration of the public comment period. The notice shall be consistent with paragraph (d)(4)(i) of this section and be accompanied by a copy of the draft permit.

* * * * *

(4) * * *

(i) * * *

(F) A brief description of the comment procedures required by paragraphs (e) and (f) of this section and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) Any additional information considered necessary or proper; and

(H) The physical location and/or Web site address of the administrative record, the times at which the record will be open for public inspection and a statement that all data submitted by the applicant are available as part of the administrative record.

* * * * *

## PART 124—PROCEDURES FOR DECISIONMAKING

■ 17. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

## Subpart A—General Program Requirements

■ 18. Section 124.10 is amended by adding paragraph (c)(2)(iii) to read as follows:

**§ 124.10 Public notice of permit actions and public comment period.**

* * * * *

(c) * * *

(2) * * *

(iii) For PSD permits:

(A) In lieu of the requirement in paragraphs (c)(1)(ix)(B) and (C) of this section regarding soliciting persons for ''area lists'' and notifying the public of the opportunity to be on a mailing list, the Director may use generally accepted methods (*e.g.,* hyperlink sign-up function or radio button on an agency Web site, sign-up sheet at a public hearing, etc.) that enable interested parties to subscribe to a mailing list. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.

(B) In lieu of the requirement in paragraph (c)(2)(i) of this section to publish a notice in a daily or weekly newspaper, the Director shall notify the public by posting the following information, for the duration of the public comment period, on a public Web site identified by the Director: A notice of availability of the draft permit for public comment (or the denial of the permit application), the draft permit, information on how to access the administrative record, and information on how to request and/or attend a public hearing on the draft permit.

(C) In lieu of the requirement in paragraph (d)(1)(vi) of this section to specify a location of the administrative record for the draft permit, the Director may post the administrative record on an identified public Web site.

* * * * *

[FR Doc. 2016–24911 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2015–0522; FRL–9954–21–Region 5]**

## Air Plan Approval; Ohio; Removal of Gasoline Vapor Recovery Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, as a revision under the Clean Air Act (CAA) to the Ohio state implementation plan (SIP), submittals from the Ohio Environmental Protection Agency (Ohio EPA) dated July 15, 2015, and February 29, 2016. The revision addresses the state's Stage II vapor recovery (Stage II) program for the Cleveland, Cincinnati, and Dayton ozone areas in Ohio. The revision removes Stage II requirements for the three areas as a component of the Ohio ozone SIP. The revision also includes a demonstration that addresses emission

impacts associated with the removal of the Stage II program. EPA proposed to approve the state's submittal on June 30, 2016, and received no comments.

**DATES:** This final rule is effective on November 17, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0522. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

## I. What is being addressed by this document?

On June 30, 2016, at 81 FR 42597, EPA proposed to approve amendments to OAC 3745–21–09 (DDD) that remove Stage II requirements from the Ohio ozone SIP and allow gasoline dispensing facilities currently implementing Stage II in the Cleveland, Cincinnati and Dayton areas to decommission their systems by 2017. The revision included amended copies of OAC 3745–21–09 (DDD), as adopted on April 29, 2013, and January 17, 2014; a summary of Ohio-specific calculations, based on EPA guidance, used to calculate program benefits and demonstrate widespread use of onboard refueling vapor recovery (ORVR) in Ohio; and a CAA section 110(l) demonstration that includes documentation that analyzes the period, 2013–2017, when Stage II requirements were waived in Ohio but widespread use of ORVR has not yet occurred.

## II. What comments did we receive on the proposed SIP revision?

EPA provided a 30-day review and comment period on the proposed action. The comment period closed on August 1, 2016. EPA received no comments.

## III. What action is EPA taking?

EPA is approving revisions to the Ohio ozone SIP submitted by the state dated July 15, 2015, and February 29, 2016, for the state's Stage II program in Ohio. EPA finds that the revisions will not interfere with any applicable requirement concerning attainment, reasonable further progress or any other applicable CAA requirement.

## IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

[1] 62 FR 27968 (May 22, 1997).

circuit by December 19, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: October 5, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870 the table in paragraph (c) is amended under ''Chapter 3745–21 Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements'' by revising the entry for 3745–21–09 ''Control of Emissions of Volatile Organic Compounds from Stationary Sources and Perchloroethylene from Dry Cleaning Facilities'' to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

| Ohio citation | Title/subject | Ohio effective date | EPA approval date | Notes |
|---|---|---|---|---|
| * | * | * | * | * |
| **Chapter 3745–21** | **Carbon Monoxide, Ozone, Hydrocarbon Air Quality Standards, and Related Emission Requirements** | | | |
| * | * | * | * | * |
| 3745–21–09 ... | Control of Emissions of Volatile Organic Compounds from Stationary Sources and Perchloroethylene from Dry Cleaning Facilities. | 1/17/2014 | 10/18/2016, [Insert **Federal Register** citation]. | except (U)(1)(h). |
| * | * | * | * | * |

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[FR Doc. 2016–24912 Filed 10–17–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2015–0558; FRL–9951–78]**

## Metaldehyde; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances with regional registration for residues of metaldehyde in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective October 18, 2016. Objections and requests for hearings must be received on or before December 19, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0558, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0558 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 19, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0558, by one of the following methods:

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

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

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, September 9, 2015 (80 FR 54257) (FRL–9933–26), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8377) by Interregional Research Project Number 4 (IR–4), IR–4 Headquarters, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.523 be amended by establishing tolerances for residues of the molluscicide metaldehyde, 2,4,6,8-tetramethyl-1,3,5,7-tetroxocane, in or on beet, garden, roots at 0.05 parts per million (ppm); beet, garden, tops at 0.08 ppm; hop, dried cones at 0.05 ppm; rutabaga, roots at 0.05 ppm; turnip, greens (tops) at 0.08 ppm; turnip, roots at 0.05 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.05 ppm; wheat, hay at 0.05 ppm and wheat, straw at 0.05 ppm. That document referenced a summary of the petition prepared by Lonza, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made certain modifications to the petitioned-for crop tolerances. The reason for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

*A. Toxicological Profile*

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

The toxicity profile of metaldehyde shows that the principal toxic effects are clinical signs of neurotoxicity. The dog is the most sensitive species for the neurotoxic effects. The nervous system effects observed in subchronic and chronic oral toxicity studies include: (1) Neurotoxic signs, *i.e.,* ataxia; tremor; twitching; salivation; emesis; and rapid respiration in dogs and maternal rats; and (2) neuropathology, *i.e.,* limb paralysis, spinal cord necrosis, and hemorrhage in maternal rats.

The liver is a target organ following subchronic and chronic oral exposure to metaldehyde as evidenced by increased liver weight, increased incidence of liver lesions, *i.e.,* hepatocellular necrosis, hepatocellular hypertrophy, inflammation, and an increased incidence of hepatocellular adenomas/carcinomas in female rats and hepatocellular adenomas in both sexes of mice. The testes and prostate are also target organs following subchronic and chronic exposure as evidenced by atrophy of both organs in dogs.

Developmental toxicity was not observed in the rat or rabbit developmental toxicity studies. Maternal toxicity was not observed in the rabbit, although maternal toxicity was observed in the rat, as evidenced by clinical signs including ataxia, tremors, and twitching at the highest dose tested (HDT). In the rat reproductive toxicity study, mortality and clinical signs, *i.e.,* limb paralysis, spinal cord necrosis and hemorrhage were observed in the maternal animals, and the effects on the offspring consisted of decreased pup body weight and body weight gains. Reproductive toxicity was not observed.

In chronic feeding studies in mice and rats, benign liver tumors were seen in both sexes of mice and in female rats. The Agency has determined that quantification of risk using a non-linear Reference Dose (RfD) approach for metaldehyde will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to metaldehyde. That conclusion is based on the following considerations: (1) The tumors found are commonly seen in the mouse; (2) the liver tumors (adenomas) in both species were benign; (3) metaldehyde is not mutagenic; (4) no carcinogenic response was seen in the male rat; (5) incidence of adenomas at the high-dose in the

female rat was within the historical control range of the testing lab; and (6) both the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the chronic rat study on which the chronic RfD/population-adjusted dose (PAD) was based are well below the dose at which adenomas were seen.

Specific information on the studies received and the nature of the adverse effects caused by metaldehyde as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Metaldehyde; Human Health Risk Assessment for Proposed New Uses on Garden Beets, Hops, Rutabaga, Turnips and Wheat with Regional Registration in the Pacific Northwest,'' in docket ID number EPA– HQ–OPP–2015–0558.

*B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a PAD or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for metaldehyde used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of November 27, 2013 (78 FR 70864) (FRL–9388–8).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to metaldehyde, EPA considered exposure under the petitioned-for tolerances as well as all existing metaldehyde tolerances in 40 CFR 180.523. EPA assessed dietary exposures from metaldehyde in food as follows:

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

Such effects were identified for metaldehyde. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID), Version 3.16, which incorporates 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues for all commodities and 100 percent crop treated (PCT). In addition, the Agency assumed processing factors to be 1.0 for all commodities except for tomato, dried; tomato, juice; cranberry, juice; and high fructose corn syrup; for these commodities, DEEM default processing factors were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID, Version 3.16, which incorporates 2003–2008 food consumption data from the USDA's, NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues for all commodities and 100 PCT. Processing factors were assumed to be 1.0 for all commodities except for tomato, dried; tomato, juice; cranberry, juice; and high fructose corn syrup; for these commodities, DEEM default processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA concluded that quantification of risk using a non-linear RfD approach will adequately account for all chronic toxicity, including carcinogenicity. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk was not conducted.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for metaldehyde. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.*

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for metaldehyde in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of metaldehyde. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of metaldehyde for acute exposures are estimated to be 205 parts per billion (ppb) for surface water and 1880 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 136 ppb for surface water and 915 ppb for ground water.

For acute dietary risk assessment, the full distribution of ground water concentrations from the PRZM–GW model was used to assess the contribution from drinking water.

For chronic dietary risk assessment, the water concentration of value 915 ppb was used to assess the contribution from drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metaldehyde is currently registered for the following uses that could result in residential exposures: Residential ornamentals and lawn/turf applications. EPA assessed residential exposure using the following assumptions and exposure factors: For adult residential handlers, EPA conducted a short-term exposure assessment of metaldehyde for adults based on the inhalation route, incorporating the maximum labeled application rate, and unit exposure values and estimates for area treated/amount handled taken from the 2012 Residential Standard Operating Procedures (SOPs). The scenario resulting in the highest adult exposure in a residential setting was hand dispersal of granules, which was used in the short-term aggregate assessment. Additional scenarios assessed included; loading and applying distinct metaldehyde product types, *i.e.,* liquid ready-to-use products applied manually via pressurized hand wands, hose-end sprayers, and sprinkler cans, as well as

applying granular products via push-type rotary spreaders, belly grinders, spoons, cups, hands, and shaker cans.

For children, the highest estimated metaldehyde exposure resulted from post-application incidental oral exposures of short-term duration from hand-to-mouth and object-to-mouth contact with treated turf, and short- and intermediate-term exposures from treated soil. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

EPA has not found metaldehyde to share a common mechanism of toxicity with any other substances, and metaldehyde does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that metaldehyde does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

### *D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* Developmental toxicity was not observed in the rat or rabbit developmental toxicity studies and no maternal toxicity observed in the rabbit. Maternal toxicity was observed in the rat, as evidenced by clinical signs, *i.e.,* ataxia, tremors, and twitching, however these effects were observed only at the highest dose tested. In the rat reproductive toxicity study, mortality and clinical signs, *i.e.,* limb paralysis, spinal cord necrosis and hemorrhage were observed in the maternal animals, and the effects on the offspring consisted of decreased pup body weight and body weight gains. Reproductive toxicity was not observed.

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

i. The toxicity database for metaldehyde is complete;

ii. Although there are indications of neurotoxicity from exposure to metaldehyde, there are clear NOAELs/LOAELS for these effects, and Points of Departure selected for risk assessment are protective for these effects. EPA has determined that the acute and developmental neurotoxicity studies are not needed, nor are additional uncertainty factors (UFs) necessary to account for neurotoxicity. There were no indications of neurotoxic effects in developing rats or rabbits in either the developmental or reproductive studies. Although there were some effects in adult rats, those effects occurred at doses much higher than in the dog study. The dog is the more sensitive species for neurotoxic effects and points of departure (30 mg/kg/day and 10 mg/kg/day) are based on the chronic dog oral toxicity study, which EPA considers to be protective of any neurotoxicity at higher dose levels.

iii. There is no evidence that metaldehyde results in increased susceptibility following *in utero* exposure to metaldehyde in either the rat or rabbit developmental toxicity study, and there is no evidence of increased susceptibility following *in utero* and/or pre-/post-natal exposure in the 2-generation reproduction study in rats.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on established and proposed tolerance-level residues, 100 PCT, default processing factors, and EDWCs from chronic ground water (worst case) models to assess exposure to metaldehyde in drinking water. EPA used similarly conservative assumptions to assess exposure to adult handlers, and post application exposure of children (including incidental oral exposure of toddlers). These assessments will not underestimate the exposure and risks posed by metaldehyde based on the current and proposed use patterns.

### *E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to metaldehyde will occupy 18% of the aPAD for the general population, and 55% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to metaldehyde from food and water will utilize 22% of the cPAD for the general population, and 52% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of metaldehyde is not expected.

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

Metaldehyde is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to metaldehyde. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1400 for adults and 580 for children. Because EPA's level of concern for metaldehyde

is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Metaldehyde is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to metaldehyde. Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 270 (for children only). Because EPA's level of concern for metaldehyde is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the data summarized in Unit III, EPA believes that quantification of metaldehyde risk using a non-linear RfD approach will adequately account for all related chronic toxicity, including carcinogenicity. Based on the chronic risk assessment, EPA concludes that aggregate exposure to metaldehyde will not pose a cancer risk.

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

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromatography with mass spectrometry (GC/MS) method (EN–CAS™ Method No. ENC–3/99, Revision 1) is available to enforce the tolerance expression. The limit of quantitation (LOQ) for this method is 0.05 ppm for all plant commodities except hops, for which it is 0.10 ppm.

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

### *B. International Residue Limits*

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

The Codex has not established a MRL for metaldehyde.

### *C. Revisions to Petitioned-for Tolerances*

For hop, dried cones, the analytical method was not successfully validated at the proposed tolerance level of 0.05 ppm. Therefore, EPA is establishing the tolerance level for this commodity at the lowest validated LOQ for hops of 0.10 ppm. In addition, the commodity definition proposed as ''beet, garden, tops'' is corrected to read: ''beet, garden, leaves''.

## V. Conclusion

Therefore, tolerances are established for residues of metaldehyde, 2,4,6,8-tetramethyl-1,3,5,7-tetroxocane, in or on beet, garden, leaves at 0.08 ppm; beet, garden, roots at 0.05 ppm; hop, dried cones at 0.10 ppm; rutabaga, roots at 0.05 ppm; turnip, greens at 0.08 ppm; turnip, roots at 0.05 ppm; wheat, forage at 0.05 ppm; wheat, grain at 0.05 ppm; wheat, hay at 0.05 ppm and wheat, straw at 0.05 ppm.

## VI. Statutory and Executive Order Reviews

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

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

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

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

## VII. Congressional Review Act

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

**List of Subjects in 40 CFR Part 180**

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

Dated: September 30, 2016.

**Michael L. Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.523, add alphabetically the commodities ''beet, garden, leaves''; ''beet, garden, roots''; ''hop, dried cones''; ''rutabaga, roots''; ''turnip greens''; ''turnip, roots''; ''wheat, forage''; ''wheat, grain''; ''wheat, hay''; and ''wheat, straw'' to the table in paragraph (c) to read as follows:

**§ 180.523 Metaldehyde; tolerances for residues.**

* * * * *

(c) * * *

| Commodity | Parts per million |
|---|---|
| Beet, garden, leaves | 0.08 |
| Beet, garden, roots | 0.05 |
| * * * * * | |
| Hop, dried cones | 0.10 |
| Rutabaga, roots | 0.05 |
| * * * * * | |
| Turnip greens | 0.08 |
| Turnip, roots | 0.05 |
| Wheat, forage | 0.05 |
| Wheat, grain | 0.05 |
| Wheat, hay | 0.05 |
| Wheat, straw | 0.05 |

* * * * *

[FR Doc. 2016–25166 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1816, 1823, 1832, 1845, and 1852

## NASA Federal Acquisition Regulation Supplement

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Technical amendments.

**SUMMARY:** NASA is making technical amendments to the NASA FAR Supplement (NFS) to provide needed editorial changes.

**DATES:** *Effective:* October 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** Manuel Quinones, NASA, Office of Procurement, Contract and Grant Policy Division, via email at *manuel.quinones@nasa.gov,* or telephone (202) 358–2143.

**SUPPLEMENTARY INFORMATION:**

### I. Background

As part of NASA's retrospective review of existing regulations NASA is conducting periodic reviews of the NASA FAR Supplement (NFS) to ensure the accuracy of information disseminated to the acquisition community. This rule makes administrative changes to the NFS to correct typographical errors as well as inadvertent omissions from prior rulemaking actions. A summary of changes follows:

- Section 1816.406–70(c) is revised to correct a typographical error.
- Section 1823.7001(c) is revised by replacing the word ''clause'' with the word ''provision.''
- Section 1832.908 is revised to add a clause prescription inadvertently omitted.
- Section 1845.107–70(e) is revised to replace the word ''property'' with ''equipment'' and paragraph (m) is revised to replace the term ''NASA owned property'' with ''NASA real property.''
- Section 1852.217–72 is revised to correct the clause date.
- Section 1852.223–73 is revised to replace the word ''clause'' with the word ''provision.''
- Section 1852.231–71 is revised to correct the clause date.

**List of Subject in 48 CFR Parts 1816, 1823, 1832, 1845, and 1852**

Government procurement.

**Manuel Quinones,**

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1816, 1823, 1832, 1845, and 1852 are amended as follows:

■ 1. The authority citation for parts 1816, 1823, 1832, and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

## PART 1816—TYPES OF CONTRACTS

**1816.406–70 [Amended]**

■ 2. Amend section 1816.406–70(e) by removing the words ''in cost an award fee'' and adding ''in award fee'' in its place.

## PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

**1823.7001 [Amended]**

■ 3. Amend section 1823.7001(c) by removing the word ''clause'' and adding word ''provision'' wherever it occurs.

## PART 1832—CONTRACT FINANCING

■ 4. Amend section 1832.908 by adding paragraph (c)(2) to read as follows:

**1832.908 Contract clauses.**

(c)(2) When the clause at FAR 52.232–25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert ''17th'' in lieu of ''30th'' in paragraphs (a)(1)(i)(A) and (B) and (a)(1)(ii).

## PART 1845—GOVERNMENT PROPERTY

■ 5. The authority citation for part 1845 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

**1845.107–70 [Amended]**

■ 6. Amend section 1845.107–70—

■ a. In paragraph (e) introductory text, by removing ''Government Property'' and adding ''Government Equipment'' in its place; and

■ b. In paragraph (m), by removing ''NASA owned property'' and adding ''NASA real property'' in its place.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**1852.217–72 [Amended]**

■ 7. Amend section 1852.217–72 by removing ''MAY 2000'' and adding ''NOV 2011'' in its place.

**1852.223–73 [Amended]**

■ 8. Amend section 1852.223–73 by removing the word ''clause'' and adding in its place the word ''provision'' wherever it occurs.

**1852.231–71 [Amended]**

■ 9. Amend section 1852.231–71 by removing ''MAR 1994'' and adding ''APR 2015'' in its place.

[FR Doc. 2016–25014 Filed 10–17–16; 8:45 am]

BILLING CODE 7510–13–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 150121066–5717–02]**

**RIN 0648–XE963**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

**SUMMARY:** NMFS is transferring 18 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Harpoon category and 67 mt from the Reserve category to the General category for the remainder of the 2016 fishing year. These transfers result in adjusted 2016 quotas of 676.7 mt, 20.6 mt, and 8.6 mt for the General, Harpoon, and Reserve category quotas, respectively. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit from four large medium or giant BFT per vessel per day/trip to two large medium or giant BFT per vessel per day/trip for the remainder of the 2016 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

**DATES:** The quota transfer is effective October 14, 2016, through December 31, 2016. The General category retention limit adjustment is effective October 17, 2016, through December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January through March, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Based on the General category base quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. On December 14, 2015, NMFS published an inseason action transferring 24.3 mt of BFT quota from the December 2016 subquota to the January 2016 subquota period (80 FR 77264). To date this year, NMFS has published three actions that have adjusted and/or distributed the available 2016 Reserve category quota, which is currently 75.6 mt (81 FR 19, January 4, 2016; 81 FR 60286, September 1, 2016; and 81 FR 70369, October 12, 2016).

The 2016 General category fishery was open January 1, 2016, through March 31, 2016, reopened June 1, 2016, and remains open until December 31, 2016, or until the adjusted General category quota is reached, whichever comes first.

NMFS recently took a similar action (81 FR 70369, October 12, 2016) which reduced the daily retention limit from five to four large medium or giant BFT per vessel as well as transferred 125 mt of BFT quota to the General category from the Reserve category to meet the same objectives stated below. Based on continued fish availability, catch rates, effort, as well as other determination criteria, NMFS is taking this action with the same intent.

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering 14 determination criteria provided under § 635.27(a)(8), including five new criteria added in Amendment 7.

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer and change in retention limit in the General category fishery. The criteria and their application are discussed below.

### Transfer of 85 mt to the General Category

For the inseason quota transfer, NMFS considered the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)). Biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General Category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). As of October 11, 2016, the General category has landed approximately 537 mt of its adjusted 2016 quota of 591.7 mt. Without a quota transfer, NMFS would have to close the 2016 General category fishery for the remainder of the year, while unused quota remains in the Harpoon and Reserve categories. Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered catches during the winter fishery in the last several years. General category landings in the winter BFT fishery, which typically begins in December or January each year, are highly variable and depend on availability of commercial-sized BFT. Commercial-sized BFT have continued to be available to General category vessels currently, and General category vessels should be able to harvest the additional amount (85 mt) of quota before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2016 landings and dead discards. Overall, approximately 60 percent of the total of the currently available commercial BFT

subquotas for 2016 has been harvested. Activity in the Harpoon category has stopped for the year. NMFS will need to account for 2016 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations and anticipates having sufficient quota to do that even with this transfer from the Harpoon and Reserve categories. These quota transfers would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the fall/winter BFT fishery.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (§ 635.27(a)(8)(vi)). This transfer is consistent with the quotas established and analyzed in the most recent BFT quota final rule (80 FR 52198, August 28, 2015) and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents (§ 635.27(a)(8)(v) and (x)).

Based on the considerations above, NMFS is transferring 18 mt of Harpoon category quota and 67 mt of Reserve category quota to the General category for the remainder of 2016, resulting in adjusted General, Harpoon, and Reserve category quotas for 2016 of 676.7 mt, 20.6 mt, and 23.6 mt, respectively. NMFS will close the 2016 General category fishery for the remainder of the year when the adjusted General category quota of 676.7 mt has been reached.

## Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS adjusted the daily retention limit for the 2016 January subquota period (which closed March 31) from the default level of one large medium or giant BFT to three large medium or giant BFT in December 2016 (80 FR 77264, December 14, 2015). NMFS adjusted the daily retention limit to five large medium or giant BFT for the June through August 2016 subquota period (81 FR 29501, May 12, 2016), and again for the September, October through November, and December periods (81 FR 59153, August 29, 2016); and recently to four large medium or giant BFT (81 FR 70369, October 12, 2016). NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the remainder of the fishing year.

As described above with regard to the quota transfer, additional opportunity to land BFT would support the continued collection of a broad range of data for the biological studies and for stock monitoring purposes (§ 635.27(a)(8)(i)). Regarding the effects of the adjustment on BFT stock rebuilding and the effects of the adjustment on accomplishing the objectives of the fishery management plan (§ 635.27(a)(8)(v) and (x)), this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which established the current range over which NMFS may set the General category daily retention limit (*i.e.,* from zero to five fish) (76 FR 74003, November 30, 2011).

As described above, a principal consideration is the objective of providing opportunities to harvest the available U.S. BFT quota without exceeding that quota, based on the goals of the 2006 Consolidated HMS FMP and Amendment 7. The retention limit currently is four fish. NMFS is setting the retention limit at two fish through this action because, given the expected level of fishing effort and catch rates, a continued level of four fish may lead to exceeding the adjusted category quota, and less than two would likely result in underharvest.

Based on these considerations, NMFS has determined that a two-fish General category retention limit is warranted for the remainder of the year. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its available quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from four to two large medium or giant BFT per vessel per day/trip, effective October 17, 2016, through December 31, 2016.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example (and specific to the limit that will apply through the end of the year), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of two fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

### *Monitoring and Reporting*

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov.* Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*i.e.,* quota and/or daily retention limit adjustment, or closure) is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

## Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and an opportunity for public comment to implement the quota transfer and daily retention limit for the remainder of the year is impracticable as NMFS must react as quickly as possible to updated data and information that then requires

immediate action to be effective on the fishing grounds and thus efficiently manage the fishery. NMFS could not effectively react to this data if, in implementing the retention limit, it allowed a public comment period, which, for both the quota transfers, would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria.

Delays in adjusting the retention limit may result in the available quota being exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under a lower limit. This could adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest BFT under retention limits set in response to the most recent data available. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 14, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–25309 Filed 10–14–16; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 160301164–6694–02]**

**RIN 0648–XE955**

## Fisheries of the Northeastern United States; Northeast Skate Complex; Adjustment to the Skate Bait Inseason Possession Limit

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

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** We announce the reduction of the commercial per-trip skate bait possession limit from 25,000 lb (11,340 kg) to 9,307 lb (4,222 kg) whole weight through October 31, 2016. This action is required to prevent the skate bait Season 2 quota from being exceeded. This announcement informs the public that the skate bait possession limit is reduced.

**DATES:** Effective October 17, 2016, through October 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, 978–281–9182.

**SUPPLEMENTARY INFORMATION:**

### Background

The bait skate fishery is managed primarily through the Northeast Skate Complex Fishery Management Plan. The regulations describing the process to adjust inseason commercial possession limits of skate bait are described at 50 CFR 648.322(b) and (d). When the National Marine Fisheries Service Regional Administrator, Greater Atlantic Region projects that 90 percent of the skate bait fishery seasonal quota has been landed, the Regional Administrator is required to reduce the skate bait trip limit unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL. The current skate bait trip limit is 25,000 lb (11,340 kg) and the current skate wing trip limit is 9,307 lb (4,222 kg) whole weight, 4,100 lb (1,860 kg) skate wings.

### Inseason Action

Based on commercial landings data reported through October 1, 2016, the skate bait fishery is projected to reach or exceed 90 percent of the Season 2 quota on or around October 15, 2016. Further, catch projections indicate that retaining the current skate bait possession limits would result in 109 percent of the Season 2 quota being harvested. Additional projections indicate that the annual TAL is likely to be attained in Season 3, even with this season 2 possession limit reduction. Therefore, consistent with § 648.322(b) and (d) we are reducing the skate wing trip limit from 25,000 lb (11,340 kg) to 9,307 lb (4,222 kg) whole weight [4,100 lb (1,860 kg) skate wings] to prevent the season 2 quota from being exceeded. Beginning October 17, 2016, no person may possess on board or land more than 9,307 lb (4,222 kg) of skate bait per trip for the remainder of Season 2 (*i.e.,* through October 31, 2016). The 25,000 lb (11,340 kg) skate bait trip limit is reinstated on November 1, 2016, the start of Season 3.

### Classification

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

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

Dated: October 13, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–25139 Filed 10–13–16; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 150818742–6210–02]**

**RIN 0648–XE966**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of the incidental catch allowance for Pacific Ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2016 total allowable catch of Pacific Ocean perch apportioned to the incidental catch allowance in the Central Regulatory Area of the GOA has been reached.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), October 14, 2016, through 2400 hours, A.l.t., December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 total allowable catch (TAC) of Pacific Ocean perch apportioned to the incidental catch allowance in the Central Regulatory Area of the GOA is 1,500 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740; March 18, 2016).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of Pacific Ocean perch apportioned to the incidental catch allowance in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that catches of the incidental catch allowance for Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This closure does not apply to fishing by vessels participating in the cooperative fishery of the Rockfish Program for the Central GOA.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting retention of the incidental catch allowance for Pacific Ocean perch in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 12, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 13, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–25140 Filed 10–13–16; 4:15 pm]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 150818742–6210–02]**

**RIN 0648–XE967**

## Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2016 total allowable catch of sablefish allocated to vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA has been reached.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), October 14, 2016, through 2400 hours, A.l.t., December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 total allowable catch (TAC) of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA is 391 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 TAC of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This closure does not apply to fishing by vessels participating in the cooperative fishery of the Rockfish Program for the Central Regulatory Area of the GOA.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 12, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 13, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–25138 Filed 10–13–16; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
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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.

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2641

**RIN 3209–AA14**

### Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

**AGENCY:** Office of Government Ethics.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Government Ethics (OGE) is issuing a proposed rule to revise the component designations of two agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, OGE is proposing to revoke two existing component designations and add five new component designations, based on the recommendations of the agencies concerned.

**DATES:** Written comments are invited and must be received on or before November 17, 2016.

**ADDRESSES:** You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209–AA14, by any of the following methods:

*Email: usoge@oge.gov.* Include the reference ''Proposed Rule Revising Departmental Component Designations'' in the subject line of the message.

*Fax:* (202) 482–9237.

*Mail/Hand Delivery/Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: ''Proposed Rule Revising Departmental Component Designations.''

*Instructions:* All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA14, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE's Web site, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Kimberly L. Sikora Panza, Associate Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339; FAX: (202) 482–9237.

**SUPPLEMENTARY INFORMATION:**

### I. Substantive Discussion; Revocation and Addition of Departmental Components

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a ''parent'' department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director ''shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent. 5 CFR 2641.302(c).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), two agencies have forwarded written requests to OGE to amend their listings in appendix B. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant these requests and amend appendix B as explained below.

The Department of Labor has requested that OGE revoke the designation of the Employment Standards Administration (ESA) in appendix B to part 2641, and in the place of ESA designate the Office of Federal Contract Compliance Programs (OFCCP), Office of Labor Management Standards (OLMS), Office of Workers' Compensation Programs (OWCP), and the Wage and Hour Division (WHD) as distinct and separate components of the Department of Labor for purposes of 18 U.S.C. 207(c). These four entities were the major program components of ESA until November 8, 2009, when the Secretary of the Department of Labor dissolved ESA into its constituent components. OFCCP, OLMS, OWCP,

and WHD are each headed by a director who now reports directly to the Secretary of Labor.

OFCCP enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal Government (Government contractors and subcontractors). Specifically, OFCCP administers and enforces three legal authorities requiring equal employment opportunity: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. These authorities prohibit Federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, and protected veteran status, and also require Federal contractors and subcontractors to take affirmative action to ensure equal employment opportunity in their employment processes.

OLMS administers and enforces most provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The LMRDA is a law that promotes union democracy and financial integrity in private sector labor unions through standards for union officer elections and union trusteeships and safeguards for union assets, and also promotes labor union and labor-management transparency through certain reporting and disclosure requirements. In addition to the LMRDA, OLMS administers provisions of the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 relating to standards of conduct for Federal employee organizations, which are comparable to LMRDA requirements. OLMS' role as an independent enforcement agency overseeing unions gives it a unique and critical role within the Department of Labor with a key stakeholder.

OWCP administers four major disability compensation programs that provide wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to certain workers or their dependents who experience work-related injury or occupational disease. Specifically, the OWCP administers the Energy Employees Occupational Illness Compensation Program, the Federal Employees' Compensation Program, the Longshore and Harbor Workers' Compensation Program, and the Coal Mine Workers' Compensation Program, each of which serve specific employee groups by mitigating the financial burden resulting from workplace injury.

WHD enforces the federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, the wage garnishment provisions of the Consumer Credit Protection Act, and various employment standards and worker protections provided in several immigration-related statutes. WHD also administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act, and other statues applicable to federal contracts for construction and the provision of goods and services.

According to the Department of Labor, the functions of OFCCP, OLMS, OWCP, and WHD are distinct and separate from each other, and also distinct and separate from every other agency within the Department. This distinction was previously recognized when OGE designated the now-abolished parent agency, ESA, as a separate component of the Department of Labor for purposes of 18 U.S.C. 207(c). The action that abolished the ESA left OFCCP, OLMS, OWCP, and WHD in its place. The four departments were each created by distinct authorities that are separate not only from each other but also from the organic statute for the Department of Labor; have been explicitly delegated distinct responsibilities following dissolution of the ESA; exercise distinct and separate functions to implement and enforce distinct and separate statutes; as noted above, are each headed by a political appointee who reports directly to the Secretary of Labor; and are relatively the same size as other components designated by the Department of Labor in appendix B to part 2641. Given the manner in which OFCCP, OLMS, OWCP, and WHD work independently from other component agencies and the general management of the Department of Labor, there exists no potential for the use of undue influence or unfair advantage based on past Government service.

Accordingly, OGE is proposing to grant the request of the Department of Labor and is proposing to amend the agency's listing in appendix B to part 2641 to remove the ESA from the component designation list and to designate OFCCP, OLMS, OWCP, and WHD as new components for purposes of 18 U.S.C. 207(c).

The Department of Transportation has requested that OGE designate the Pipeline and Hazardous Materials Safety Administration (PHMSA) as a distinct and separate component of the Department of Transportation for purposes of 18 U.S.C. 207(c). Created pursuant to the Norman Y. Mineta Research and Special Programs Improvements Act of 2004, PHMSA is responsible for regulating safety in pipeline transportation and hazardous materials transportation, *see* 49 U.S.C. 108, and administers the Natural Gas Pipeline Safety Act of 1968, among other authorities. PHMSA is headed by an Administrator who reports directly to the Secretary of Transportation. The Administrator is statutorily authorized to carry out the duties and powers related to pipeline and hazardous materials transportation and safety, as well as other duties and powers prescribed by the Secretary.

According to the Department of Transportation, PHMSA is responsible for exercising functions that are distinct and separate from the Department of Transportation and from the functions of other Operating Administrations within the agency. PHMSA is the only mode within DOT charged with regulating pipeline safety. It is also the only mode with the primary delegated authority to regulate hazardous material packaging, and is responsible for drafting all hazardous material regulations. In light of the distinct and separate functions of PHMSA, there is no potential for the use of undue influence or unfair advantage based on based on past Government service. PHMSA is comparable in size to several other Department of Transportation divisions that are currently designated as separate components in appendix B to part 2641, and with the designation of PHMSA, each of the Operating Administrations of the Department of Transportation will be designated as separate components for purposes of 18 U.S.C. 207(c).

Accordingly, OGE is proposing to grant the request of the Department of Transportation and amend the listing in appendix B to part 2641 to designate the Pipeline and Hazardous Materials Safety Administration as a new component for purposes of 18 U.S.C. 207(c).

The Department of Transportation also has requested revocation of the designation of the Surface Transportation Board (STB) in appendix B to part 2641. The STB, the successor to the Interstate Commerce Commission, was established in 1996 as an independent entity within the Department of Transportation. On December 28, 2015, the Surface Transportation Board Reauthorization Act of 2015 (Pub. L. 114–110) established the STB as a wholly-

independent federal agency. Because the STB is now an independent agency and is no longer administratively aligned with the Department of Transportation, OGE is proposing to grant the request of the Department of Transportation and amend the listing in appendix B to part 2641 to remove STB from the component designation list.

As indicated in 5 CFR 2641.302(f), a designation ''shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date.'' Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this proposed rule would be effective on the date the final rule is published in the **Federal Register**.

As also indicated in 5 CFR 2641.302(f), revocation of a component designation is effective 90 days after the publication in the **Federal Register** of the rule that revokes the designation. Accordingly, the component designation revocations proposed in this rule would take effect 90 days after the publication of the final rule effectuating these proposed changes. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

## II. Matters of Regulatory Procedure

*Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

*Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

*Congressional Review Act*

The proposed rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

*Executive Orders 12866 and 13563*

In promulgating this rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a ''significant'' regulatory action for the purposes of that order.

*Executive Order 12988*

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

**List of Subjects in 5 CFR Part 2641**

Conflict of interests, Government employees.

Approved: October 12, 2016.

**Walter M. Shaub, Jr.,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2641, as set forth below:

## PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend appendix B to part 2641 as follows:

■ a. Revise the listings for Parent: Department of Labor and Parent: Department of Transportation.

■ b. Effective [DATE 90 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], remove the Employment Standards Administration component from the listing for Parent: Department of Labor.

■ c. Effective [DATE 90 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], remove the Surface Transportation Board component from the listing for Parent: Department of Transportation.

The revisions read as follows:

### Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

*Parent: Department of Labor*

Components:

Bureau of Labor Statistics.

Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).

Employment and Training Administration.

Employment Standards Administration (expires 90 days after the date of publication of the final rule in the **Federal Register**).

Mine Safety and Health Administration.

Occupational Safety and Health Administration.

Office of Disability Employment Policy (effective January 30, 2003).

Office of Federal Contract Compliance Programs (effective upon publication of the final rule in the **Federal Register**).

Office of Labor Management Standards (effective upon publication of the final rule in the **Federal Register**).

Office of Workers' Compensation Programs (effective upon publication of the final rule in the **Federal Register**).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Wage and Hour Division (effective upon publication of the final rule in the **Federal Register**).

* * * * *

*Parent: Department of Transportation*

Components:

Federal Aviation Administration.

Federal Highway Administration.

Federal Motor Carrier Safety Administration (effective January 30, 2003).

Federal Railroad Administration.

Federal Transit Administration.

Maritime Administration.

National Highway Traffic Safety Administration.

Pipeline and Hazardous Materials Safety Administration (effective upon publication of the final rule in the **Federal Register**).

Saint Lawrence Seaway Development Corporation.

Surface Transportation Board (effective May 16, 1997; expires 90 days after the date of publication of the final rule in the **Federal Register**).

* * * * *

[FR Doc. 2016–25054 Filed 10–17–16; 8:45 am]

BILLING CODE 6345–03–P

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 110**

**[Notice 2016–13]**

## Internet Communication Disclaimers; Reopening of Comment Period and Notice of Hearing

**AGENCY:** Federal Election Commission.

**ACTION:** Reopening of comment period and notice of hearing.

**SUMMARY:** On October 13, 2011, the Federal Election Commission published an Advance Notice of Proposed Rulemaking (''ANPRM'') seeking comment on whether to begin a rulemaking to revise its regulations concerning disclaimers on certain internet communications and, if so, on what changes should be made to those rules. The Commission has decided to reopen the comment period to receive additional comments in light of legal and technological developments since that notice was published. The Commission is also announcing a public hearing.

**DATES:** The comment period for the ANPRM published October 13, 2011 (76 FR 63567) is reopened. Comments must be received on or before December 19, 2016. The Commission will hold a hearing on these issues on February 1, 2017. Anyone wishing to testify at the hearing must file timely written comments and must include in the written comments a request to testify.

**ADDRESSES:** All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's Web site at *http://www.fec.gov/fosers,* reference REG 2011–02, or by email to *InternetDisclaimers@fec.gov.* Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Neven F. Stipanovic, Acting Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's Web site and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Ms. Jessica Selinkoff, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On October 13, 2011, the Commission published in the **Federal Register** an ANPRM seeking comment on whether and how to revise the rules at 11 CFR 110.11 regarding disclaimers on internet communications.[1] Specifically, the Commission was considering whether to modify the disclaimer requirements for certain internet communications, or to provide exceptions thereto, consistent with the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''the Act''). The Commission received seven substantive comments in response to the ANPRM. All but one of the commenters agreed that the Commission should update the disclaimer rules through a rulemaking, though commenters differed on how the Commission should do so. In light of subsequent legal and technological developments, the Commission is reopening the comment period and will hold a hearing.

As discussed in the ANPRM, a ''disclaimer'' is a statement that must appear on certain communications to identify who paid for it and, where applicable, whether the communication was authorized by a candidate. 52 U.S.C. 30120(a); 11 CFR 110.11. With some exceptions, the Act and Commission regulations require disclaimers for public communications: (1) Made by a political committee; (2) that expressly advocate the election or defeat of a clearly identified federal candidate; or (3) that solicit a contribution. 52 U.S.C. 30120(a); 11 CFR 110.11(a). While the term ''public communication'' generally does not include internet communications, it does include ''communications placed for a fee on another person's Web site.'' 11 CFR 100.26.[2] In addition to these internet public communications, ''electronic mail of more than 500 substantially similar communications when sent by a political committee . . . and all Internet Web sites of political committees available to the general public'' also must have disclaimers. 11 CFR 110.11(a).

Commission regulations set forth certain exceptions to the general disclaimer requirements. For example, disclaimers are not required for communications placed on ''[b]umper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed.'' 11 CFR 110.11(f)(1)(i) (the ''small items exception''). Nor are disclaimers required for ''[s]kywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.'' 11 CFR 110.11(f)(1)(ii) (the ''impracticable exception'').

As discussed in the ANPRM, some internet advertisements are so character-limited that providing all the disclaimer information required by the Act may take up much of the available ad characters. *See* Advisory Opinion 2010–19 (Google) (describing 95-character search result advertisements); *cf.* Advisory Opinion Request 2011–09 (Facebook) (describing several categories of advertisements ranging from zero to 160 characters).[3] However, the ANPRM noted that technological options may allow for the display of disclaimers when a user ''hovers'' or ''rolls'' over the advertisement, or on the landing page to which the user is taken after clicking the advertisement.[4]

Since the publication of the ANPRM, the Commission has considered these issues in new factual contexts. *See, e.g.,* Advisory Opinion Request 2013–18 (Revolution Messaging) (asking whether ''banner ads'' viewed on mobile phones, either in Web site or app, required disclaimers); MUR 6911 (Frankel) (considering whether candidates' and political parties' Twitter profiles and individual tweets required disclaimers). The Commission seeks comments on how the issues and possible approaches discussed in the ANPRM might or might not apply to these new technological presentations. The Commission also notes that, since the ANPRM was published, at least one additional state has joined California in adopting regulations to address small internet advertisements.[5] The Commission seeks comments addressing persons' experiences in complying with (and

[1] *See* Internet Communication Disclaimers, 76 FR 63567 (Oct. 13, 2011).

[2] The Commission is currently proposing amendments intended to modernize a number of regulations, including 11 CFR 100.26. To review those proposals and other Commission rulemaking documents, visit *http://www.fec.gov/fosers,* reference REG 2013–01.

[3] Documents related to Commission advisory opinions are available at *www.fec.gov/searchao.*

[4] *See, e.g.,* Contents of Disclosure Statements. Advertisement Disclosure, Cal. Code Regs. tit. 2, sec. 18450.4(b)(3)(G)(1) (California small internet ad disclosure rule discussed in ANPRM).

[5] *See* Electronic Media, Requirements, Md. Code Regs. 33.13.07.02(D)(2)(b).

receiving disclosure from) these state rules as well as other disclosure regimes. The Commission is also interested in comments that address:

- How campaigns, parties, and other political committees, voters, and others disseminate and receive electoral information via the internet and other technologies, including any data or experiences in purchasing, selling, or distributing small or character-limited advertisements on Web sites, apps, and mobile devices;
- any challenges in complying with the existing disclaimer rules as applied to internet communications;
- the technological or other characteristics that might define a ''small'' internet advertisement;
- how a disclaimer requirement or exception for ''small'' internet advertisements might be implemented;
- the informational benefits of disclaimers on internet communications to assist voters in identifying the source of advertising so they are better ''able to evaluate the arguments to which they are being subjected'';[6]
- the informational benefits of disclaimers on internet communications, including Web sites and social media pages, to avoid voter confusion and reduce the incidence of solicitations that appear to be for candidates but are actually for non-candidate committees; and
- the extent to which the Commission's consideration of disclaimer requirements should take into account current or anticipated models of internet advertising.

The Commission also invites additional comments on any issues discussed in the ANPRM and is particularly interested in comments addressing advertisements on internet-enabled applications and devices (such as apps, eReaders, and wearable technology). Given the speed at which technological advances are developing, the Commission welcomes comments that address possible regulatory approaches that might minimize the need for serial revisions to the Commission's rules in order to adapt to new or emerging technologies.

On behalf of the Commission.

Dated: October 7, 2016.

**Matthew S. Petersen,**

*Chairman, Federal Election Commission.*

[FR Doc. 2016–25103 Filed 10–17–16; 8:45 am]

**BILLING CODE 6715–01–P**

[6] *Citizens United* v. *FEC,* 558 U.S. 310, 368 (2010) (quoting *First Nat'l Bank of Boston* v. *Bellotti,* 435 U.S. 765, 792 n.32 (1978)).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 216

**[Docket No. FDA–2016–N–2462]**

## Amendments to the Regulation Regarding the List of Drug Products That Have Been Withdrawn or Removed From the Market for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is proposing to amend its regulations to revise the list of drug products that have been withdrawn or removed from the market because the drug products or components of such drug products have been found to be unsafe or not effective. Drugs appearing on this list may not be compounded under the exemptions provided by sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). Specifically, the proposed rule would add three entries to this list of drug products.

**DATES:** Submit either electronic or written comments on the proposed rule by January 3, 2017.

**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–2016–N–2462 for ''Amendments to the Regulation Regarding the List of Drug Products That Have Been Withdrawn or Removed From the Market for Reasons of Safety or Effectiveness.'' 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:** Edisa Gozun, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5199, Silver Spring, MD 20993–0002, 301–796–3110.

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## I. Executive Summary

### *A. Purpose of the Regulatory Action*

FDA is proposing to amend its regulations to revise the list of drug products that have been withdrawn or removed from the market because the drug products or components of such drug products have been found to be unsafe or not effective (referred to as ''the withdrawn or removed list'' or ''the list'') (§ 216.24 (21 CFR 216.24)). Drugs appearing on the withdrawn or removed list may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act (21 U.S.C. 353a and 353b).

The Agency is proposing to add three entries (all drug products containing aprotinin, all drug products containing bromocriptine mesylate, and all intravenous drug products containing greater than a 16 milligram (mg) single dose of ondansetron hydrochloride) as described in this document to the list in § 216.24 of drug products that cannot be compounded for human use under the exemptions provided by either section 503A or 503B of the FD&C Act because they have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective.

### *B. Summary of the Major Provisions of the Proposed Regulatory Action*

We are proposing that the following drugs that have been withdrawn or removed from the market because such drug products have been found to be unsafe or not effective be added to the list in § 216.24. The specific entries proposed for addition to the list for each of these drugs are provided as follows:

*Aprotinin:* All drug products containing aprotinin.

*Bromocriptine mesylate:* All drug products containing bromocriptine mesylate for prevention of physiological lactation.

*Ondansetron hydrochloride:* All intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride.

### *C. Costs and Benefits*

The Agency is not aware of any routine use of the drug products that FDA is proposing to add to the the withdrawn or removed list and, therefore, does not estimate any compliance costs or loss of sales as a result of the prohibition against compounding these drug products for human use. The Agency has determined that this rulemaking is not a significant regulatory action as defined by Executive Order 12866.

## II. Background

### *A. Relevant Provisions of the Statute*

Section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

In addition, section 503B of the FD&C Act describes the conditions that must be satisfied for a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility to be exempt from three sections of the FD&C Act: (1) Section 502(f)(1), (2) section 505, and (3) section 582 (21 U.S.C. 360eee–1) (concerning drug supply chain security).

One of the conditions that must be satisfied to qualify for the exemptions under both sections 503A and 503B of the FD&C Act is that the compounder does not compound a drug product that appears on a list published by the Secretary of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (withdrawn or removed list) (see sections 503A(b)(1)(C), 503B(a)(4), and 503B(a)(11) of the FD&C Act).

### *B. The List of Drug Products in § 216.24*

The drug products listed in § 216.24 (the withdrawn or removed list) have been withdrawn or removed from the market because they have been found to be unsafe or not effective and are ineligible for the exemptions set forth in sections 503A and 503B of the FD&C Act. A drug product that is included in the list codified at § 216.24 is not eligible for the exemptions provided in section 503A(a) of the FD&C Act, and is subject to sections 501(a)(2)(B), 502(f)(1), and 505 of the FD&C Act, in addition to other applicable provisions, if compounded. In addition, a drug that is included in the list codified at § 216.24 cannot qualify for the exemptions provided in section 503B(a) of the FD&C Act, and is subject to sections 502(f)(1), 505, and 582 of the FD&C Act, in addition to other applicable provisions, if compounded.

### *C. Regulatory History of the List*

Following the addition of section 503A to the FD&C Act on November 21, 1997, through the enactment of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), FDA proposed a rule in the **Federal Register** of October 8, 1998 (63 FR 54082), to establish the original list of drug products that have been withdrawn or removed from the market because the drug products or the components of such drug products have been found to be unsafe or not effective (1998 proposed rule) and therefore were not permitted to be compounded for human use under the exemptions provided by section 503A(a).

In the **Federal Register** of March 8, 1999 (64 FR 10944), FDA published a final rule that codified the original list in § 216.24 (1999 final rule).

Following the addition of section 503B to the FD&C Act on November 27, 2013, through the enactment of the Drug Quality and Security Act (Pub. L. 113–54), FDA proposed to amend the list in § 216.24 on July 2, 2014 (79 FR 37687); FDA published the final rule to amend § 216.24 in the **Federal Register** of October 7, 2016 (81 FR 69668) (2016 final rule). Given that nearly identical

criteria apply for a drug to be included on the list referred to in section 503A(b)(1)(C) and the list referred to in section 503B(a)(4) of the FD&C Act, FDA revised and updated the list at § 216.24 to clarify that it applies for purposes of both sections 503A and 503B.

**III. Description of the Proposed Rule**

FDA is proposing to amend § 216.24 to add three drug products, described in the following paragraphs, that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective.

As with the 1999 final rule establishing the original list, and the 2016 final rule revising that list, the primary focus of this proposed rule is on drug products that have been withdrawn or removed from the market because they have been found to be unsafe. FDA may propose at a later date to add other drug products to the list that have been withdrawn or removed from the market because they have been found to be not effective, or to update the list as new information becomes available to the Agency regarding products that were removed from the market because they have been found to be unsafe.

The following drugs proposed for inclusion in § 216.24 are arranged alphabetically by the established names of the active ingredients contained in the drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. For some of the drug products, the proprietary or trade names of some or all of the drug products that contained the active ingredient are also given in the preamble paragraphs describing the withdrawn or removed drug products. In some cases, the withdrawn or removed drug products are identified according to the established name of the active ingredient, listed as a particular salt or ester of the active moiety. The following list includes the specific drug entry FDA is proposing to add to § 216.24, as well as a brief summary of the reasons why each drug is being proposed for inclusion.

*a. Aprotinin: All drug products containing aprotinin.*

Bayer suspended marketing of aprotinin (TRASYLOL, NDA 20304) in November 2007 for safety reasons. TRASYLOL, NDA 20304, was approved on December 29, 1993. The indication for TRASYLOL, NDA 20304, was for ''prophylactic use to reduce perioperative blood loss and the need for blood transfusion in patients undergoing cardiopulmonary bypass in the course of coronary artery bypass graft surgery who are at increased risk for blood loss and blood transfusion.'' Prominent known adverse reactions associated with the use of the drug included anaphylactic reactions (with some deaths reported) and impaired renal function. In January 2006, Mangano et al. published a report that described the results from a retrospective analysis of the use of aprotinin compared to two other antifibrinolytic drugs (tranexamic acid and aminocaproic acid) or no antifibrinolytic drugs in 4,374 patients undergoing cardiac surgery (Ref. 1). The conclusions were that there was a statistically greater likelihood of the development of renal dysfunction and the need for hemodialysis, stroke, encephalopathy, myocardial infarction, and congestive heart failure in patients treated with aprotinin than with the other antifibrinolytic drugs or no antifibrinolytic drugs. On February 8, 2006, FDA issued a Public Health Advisory on TRASYLOL, NDA 20304, that called attention to this new information (Ref. 2). On September 21, 2006, FDA convened a meeting of its Cardiovascular and Renal Advisory Committee to evaluate these and other data for the drug (see *http://www.fda.gov/ohrms/dockets/ac/cder07.htm#CardiovascularRenal* for meeting documents from the September 21, 2006, Cardiovascular and Renal Advisory Committee meeting). The Cardiovascular and Renal Advisory Committee voted that the benefits of TRASYLOL, NDA 20304, compared to its risks warranted continued approvability for the indication (Yes, 18; No, 0; Abstain, 1). Before the advisory committee meeting, the sponsor had funded a study that evaluated a medical database for the outcomes of patients undergoing coronary artery bypass graft surgery (CABG) treated with aprotinin or other antifibrinolytics, which concluded that there was an increased risk of in-hospital death in the aprotinin-treated patients compared to those in patients treated with aminocaproic acid. This information was subsequently published in 2008 by Schneeweiss et al. (Ref. 3). In 2007, Mangano et al. published a report in 3,876 patients undergoing CABG surgery describing a higher mortality after 5 years for those treated with aprotinin compared to those treated with no antifibrinolytic drugs (Ref. 4). In the 2007 Mangano study, patients treated with either tranexamic acid or aminocaproic acid did not experience a higher mortality at 5 years compared to patients treated with no antifibrinolytic drug. These data led to a reconvening of the Cardiovascular and Renal Advisory Committee in a joint meeting with the Drug Safety and Risk Management Advisory Committee on September 12, 2007 (joint meeting), at which these and other data were reviewed (see *http://www.fda.gov/ohrms/dockets/ac/cder07.htm#CardiovascularRenal* for meeting documents from the September 12, 2007, Cardiovascular and Renal Advisory Committee meeting). The Committees at the joint meeting were informed that there was an ongoing prospective randomized trial of aprotinin, tranexamic acid, and aminocaproic acid in patients undergoing CABG surgery with cardiopulmonary bypass in Canada (named the BART study), but that the results would not be available for several years. Some of the Committee members at the joint meeting stated that the issue should be revisited once the data from the BART study were available. The Advisory Committees at the joint meeting voted that TRASYLOL, NDA 20304, should continue to be authorized to be marketed in the United States. Shortly after the joint meeting, FDA was informed that the Data Monitoring and Safety Committee for the BART study had recommended that the BART trial be terminated early because there appeared to be a greater frequency of death in patients treated with aprotinin (6.0 percent) compared to those treated in the combined tranexamic acid plus aminocaproic acid group (3.9 percent). The study was subsequently published in 2008 by Fergusson (Ref. 5). On October 25, 2007, FDA issued a Safety Alert for Human Medical Products alerting the medical community about the preliminary data from the BART trial (Ref. 6). On November 5, 2007, FDA issued a press release stating that, at the Agency's request, the sponsor had made a decision to suspend the marketing of TRASYLOL, NDA 20304, pending a review of the BART data for safety (Ref. 7). Although some of the data from the BART trial were submitted to FDA and the sponsor submitted its analysis of the data that was made available to the company, FDA was never successful in obtaining the raw data from the trial. Therefore, FDA was not able to conduct its own analyses of the trial data. TRASYLOL, NDA 20304, has not returned to the U.S. market since the sponsor announced its decision to suspend marketing in 2007. Aprotinin was made available by the sponsor for the treatment of certain surgical patients with an established medical need using

a treatment protocol under an investigational new drug application (IND) (Ref. 8). Expanded access to aprotinin through this treatment protocol is no longer available (see *https://clinicaltrials.gov/ct2/show/NCT00611845?term=aprotinin&rank=4*). FDA is not aware of any data that would give us reason to believe that the safety issues identified as having been associated with aprotinin should be restricted to a particular formulation, concentration, indication, route of administration, or dosage form. For these reasons, FDA is proposing to include all drug products containing aprotinin on the withdrawn or removed list.

*b. Bromocriptine mesylate: All drug products containing bromocriptine mesylate for prevention of physiological lactation.*

Bromocriptine mesylate was associated with risks of hypertension, seizures, and cardiovascular accidents, and the unfavorable benefit-risk balance was specific to the use of bromocriptine mesylate for the prevention of physiological lactation. In 1980, PARLODEL (bromocriptine mesylate) was approved for the prevention of physiological lactation as an acceptable alternative to estrogenic therapy. Subsequently, FDA received postmarket reports of serious and life-threatening adverse reactions (hypertension, seizures, and cerebrovascular accidents) associated with the use of bromocriptine mesylate to suppress lactation. According to the approved labeling for PARLODEL, dated July 15, 1988 (Ref. 9), serious adverse reactions reported in postpartum women included 50 cases of hypertension, 38 cases of seizures (including 4 cases of status epilepticus), 15 cases of strokes, and 3 cases of myocardial infarction. These cases were discussed at a 1989 Fertility and Maternal Health Drugs Advisory Committee meeting (Ref. 10). FDA presented reports of its safety findings, which included 28 reports of hypertension, 36 reports of seizures, and 19 reports of cerebrovascular accidents. FDA had received 85 cases of serious adverse events, including 10 deaths, since the approval of bromocriptine mesylate for lactation suppression in 1980 (August 23, 1994 (59 FR 43347)). The Fertility and Maternal Health Drugs Advisory Committee recommended that no drug then labeled for lactation suppression including bromocriptine mesylate be used for this indication. FDA subsequently asked that all manufacturers of these drugs voluntarily remove this indication from drug labeling. All but Sandoz, the manufacturer of PARLODEL, complied with FDA's request. In a document published in the **Federal Register** of August 23, 1994, FDA concluded that the risks of hypertension, seizures, and cardiovascular accidents outweighed the product's marginal benefit in preventing postpartum lactation. Accordingly, FDA proposed to withdraw approval of the indication recommending bromocriptine mesylate for preventing physiological lactation in the NDA for PARLODEL, under section 505(e) of the FD&C Act, on the basis that the drug is no longer shown to be safe for this indication. FDA withdrew approval of PARLODEL for the indication of prevention of physiological lactation in a document published in the **Federal Register** of January 17, 1995 (60 FR 3404). Withdrawal of PARLODEL's indication for the prevention of physiological lactation became effective on February 16, 1995. FDA's review of the withdrawal indicates that the withdrawal of bromocriptine mesylate for prevention of physiological lactation was fundamentally based on an unfavorable benefit-risk balance specific to this indication and not to other approved indications (such as treatment of Parkinson's disease, acromegaly, and prolactin-secreting adenomas). For this reason, FDA is proposing to include all drug products containing bromocriptine mesylate for prevention of physiological lactation on the withdrawn or removed list.

*c. Ondansetron hydrochloride: All intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride.*

Ondansetron (ondansetron hydrochloride (HCl)) Injection, USP, 32 mg, in 50 milliliters (mL), single intravenous (IV) dose, was associated with a specific type of irregular heart rhythm called QT interval prolongation, and the data suggest that any dose above the maximum recommendation of 16 mg per dose intravenously has the potential for increased risk of QT prolongation. In September 2011, FDA issued a Drug Safety Communication noting concerns that the 32 mg single IV dose of ZOFRAN (ondansetron HCl) and generic versions of that product could increase the risk of abnormal changes in the electrical activity of the heart, which could result in a potentially fatal abnormal heart rhythm (Ref. 11). Based on data subsequently collected from a study conducted at FDA's request by ZOFRAN's sponsor, GlaxoSmithKline (GSK), that identified a significant QT prolongation effect in connection with the 32 mg single IV dose, FDA approved GSK's supplemental application to remove the 32 mg single IV dose information from the labeling for ZOFRAN and has worked with manufacturers of all 32 mg single IV dose ondansetron HCl products to have them removed from the market. On June 29, 2012, FDA issued a Drug Safety Communication to notify health care professionals that the 32 mg single IV dose of ondansetron HCl, indicated for prevention of nausea and vomiting associated with initial and repeat courses of emetogenic cancer chemotherapy in adult patients, should be avoided due to the risk of QT interval prolongation, which can lead to Torsades de Pointes, an abnormal, potentially fatal heart rhythm (Ref. 12). Subsequently, FDA informed the holders of one NDA and four ANDAs for ondansetron HCl that the Agency believes that, in light of the safety concern associated with ondansetron HCl in the 32 mg single IV dose, these drug products should be removed from the market. The application holders agreed to voluntarily remove their respective 32 mg single IV dose ondansetron HCl products from the market and requested that FDA withdraw approval of their respective applications under 21 CFR 314.150(d). On December 4, 2012, FDA issued an updated Drug Safety Communication alerting health care professionals that these products would be removed from the market because of their potential for serious cardiac risks (Ref. 13). In the **Federal Register** of June 10, 2015 (80 FR 32966), FDA announced that it was withdrawing the approval of these five applications. On the same day, in a different document in the **Federal Register** (80 FR 32962), FDA announced its determination under 21 CFR 314.161 and 314.162(a)(2) that the NDA for Ondansetron (ondansetron HCl) Injection, USP, 32 mg/50 mL, single IV dose was withdrawn from sale for reasons of safety. As explained in the review of ondansetron HCl 32 mg single IV dose for the withdrawn or removed list (see tab 5 of the FDA briefing document for the June 17–18, 2015, Pharmacy Compounding Advisory Committee, available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm431285.htm*), for those approved products for IV ondansetron HCl that remain on the market, the current dosage and administration recommendation for adults and pediatric patients (6 months to 18 years) is three 0.15 mg/kilogram doses, up to a maximum of 16 mg per dose, infused intravenously over 15 minutes, and any dose above the maximum recommended

16 mg per IV dose has the potential for increased risk of QT prolongation. For these reasons, FDA is proposing to include all IV drug products containing greater than a 16 mg single dose of ondansetron HCl on the withdrawn or removed list.

On June 17, 2015, FDA presented these three proposed entries to the Pharmacy Compounding Advisory Committee (see the **Federal Register** of May 22, 2015 (80 FR 29717)). In addition to these three proposed entries, FDA presented a potential entry for all drug products containing more than 325 mg of acetaminophen per dosage unit to the Pharmacy Compounding Advisory Committee. The addition of all drug products containing more than 325 mg of acetaminophen per dosage unit to the list remains under consideration by the Agency.

The Pharmacy Compounding Advisory Committee voted in favor of including each of FDA's four proposed entries on the list. Although an open public hearing session was scheduled at this meeting to allow members of the public to present their views and opinions on the proposed entries to the committee members and the Agency prior to the vote by the Pharmacy Compounding Advisory Committee, no members of the public signed up to participate. A transcript of the June 2015 Pharmacy Compounding Advisory Committee meeting and briefing information that includes reviews and background on the proposed entries may be found at the Division of Dockets Management (see **ADDRESSES**) and at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm431285.htm.*

## IV. Legal Authority

Sections 503A and 503B of the FD&C Act provide the principal legal authority for this proposed rule. As described previously in the Background section of this document, section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from three sections of the FD&C Act (sections 501(a)(2)(B), 502(f)(1), and 505). One of the conditions that must be satisfied to qualify for the exemptions under section 503A of the FD&C Act is that the licensed pharmacist or licensed physician does not compound a drug product that appears on a list published by the Secretary in the **Federal Register** of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section 503A(b)(1)(C) of the FD&C Act). Section 503A(c)(1) of the FD&C Act also states that the Secretary shall issue regulations to implement section 503A, and that before issuing regulations to implement section 503A(b)(1)(C) pertaining to the withdrawn or removed rule, among other sections, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health.

Section 503B of the FD&C Act describes the conditions that must be satisfied for a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility to be exempt from three sections of the FD&C Act (sections 502(f)(1), 505, and 582). One of the conditions in section 503B of the FD&C Act that must be satisfied to qualify for the exemptions is that the drug does not appear on a list published by the Secretary of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective (see section 503B(a)(4)). To be eligible for the exemptions in section 503B, a drug must be compounded in an outsourcing facility in which the compounding of drugs occurs only in accordance with section 503B, including as provided in section 503B(a)(4).

Thus, sections 503A and 503B of the FD&C Act, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serve as our principal legal authority for this proposed rule revising FDA's regulations on drug products withdrawn or removed from the market because the drug product or a component of the drug product have been found to be unsafe or not effective in § 216.24.

## V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because small businesses are not expected to incur any compliance costs or loss of sales due to this regulation, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. We do not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

This proposed rule would amend § 216.24 concerning human drug compounding. Specifically, the proposed rule would add to or modify the list of drug products that may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act because the drug products have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section II of this document). We are proposing to add three entries to the list. We are not aware of any routine compounding for human use of the drug products that are the subject of this proposed rule, and therefore do not estimate any compliance costs or loss of sales if the proposal is adopted. However, we invite the submission of comments and solicit current compounding usage data for these drug products, if they are compounded for human use.

Unless we certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options to minimize any significant economic impact of a regulation on small entities. Most pharmacies meet the Small Business Administration definition of a small entity, which is defined as having annual sales less than $25.5 million for this industry. We are not aware of any routine compounding of these drug products and do not estimate any compliance costs or loss of sales to small businesses as a result of the prohibition against compounding these drug products. Therefore, we propose to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

### VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### IX. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.


1. Mangano, D.T., I.C. Tudor, and C. Dietzel, ''The Risk Associated With Aprotinin in Cardiac Surgery,'' *New England Journal of Medicine,* 354(4):353–365, 2006.
2. FDA News Release, ''FDA Issues Public Health Advisory for Trasylol'' (February 8, 2006), available at *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108592.htm.*
3. Schneeweiss, S., J.D. Seeger, J. Landon, and A.M. Walker, ''Aprotinin During Coronary-Artery Bypass Grafting and Risk of Death,'' *New England Journal of Medicine,* 358:771–783, 2008.
4. Mangano, D.T., Y. Miao, A. Vuylsteke, et al., ''Mortality Associated With Aprotinin During 5 Years Following Coronary Artery Bypass Graft Surgery,'' *Journal of the American Medical Association,* 297(5):471–479, 2007.
5. Fergusson, D.A., P.C. Hébert, C.D. Mazer, et al., ''A Comparison of Aprotinin and Lysine Analogues in High-Risk Cardiac Surgery,'' *New England Journal of Medicine,* 358(22):2319–2331, 2008.
6. FDA Alert—Aprotinin Injection (Marketed as Trasylol) (October 25, 2007), available at *http://www.fda.gov/Safety/MedWatch/SafetyInformation/SafetyAlertsforHumanMedicalProducts/ucm150815.htm.*
7. FDA News Release, ''FDA Requests Marketing Suspension of Trasylol'' (November 5, 2007), available at *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2007/ucm109021.htm.*
8. FDA News Release, ''Manufacturer Removes Remaining Stocks of Trasylol Access Limited to Investigational Use'' (May 14, 2008), available at *http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2008/ucm116895.htm.*
9. FDA–PARLODEL (bromocriptine mesylate) Information, available at *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM449535.pdf.*
10. FDA Fertility and Maternal Health Drugs Advisory Committee Meeting Minutes (June 1 and 2, 1989), available at *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM449535.pdf.*
11. FDA Drug Safety Communication—Abnormal Heart Rhythms May Be Associated with Use of Zofran (Ondansetron)(September 15, 2011), available at *http://www.fda.gov/Drugs/DrugSafety/ucm271913.htm.*
12. FDA Drug Safety Communication—New Information Regarding QT Prolongation with Ondansetron (Zofran) (June 29, 2012), available at *http://www.fda.gov/Drugs/DrugSafety/ucm310190.htm.*
13. FDA Drug Safety Communication—Updated Information on 32 mg Intravenous Ondansetron (Zofran) Dose and Pre-Mixed Ondansetron Products (December 4, 2012), available at *http://www.fda.gov/Drugs/DrugSafety/ucm330049.htm.*


### List of Subjects in 21 CFR Part 216

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 216 be amended as follows:

## PART 216—HUMAN DRUG COMPOUNDING

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353a, 353b, 355, and 371.

■ 2. Amend § 216.24 by adding, in alphabetical order, to the list of drugs ''Aprotinin'', ''Bromocriptine mesylate'', and ''Ondansetron hydrochloride'' to read as follows:

**§ 216.24 Drug products withdrawn or removed from the market for reasons of safety or effectiveness.**

* * * * *

*Aprotinin:* All drug products containing aprotinin.

* * * * *

*Bromocriptine mesylate:* All drug products containing bromocriptine mesylate for prevention of physiological lactation.

* * * * *

*Ondansetron hydrochloride:* All intravenous drug products containing greater than a 16 milligram single dose of ondansetron hydrochloride.

* * * * *

Dated: October 11, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–25005 Filed 10–17–16; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

## 37 CFR Part 42

**[Docket No. PTO–P–2016–0029]**

**RIN 0651–AD10**

## Rule Recognizing Privileged Communications Between Clients and Patent Practitioners at the Patent Trial and Appeal Board

**AGENCY:** Patent Trial and Appeal Board, United States Patent and Trademark Office, U.S. Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the rules of practice before the Patent Trial and Appeal Board to recognize that, in connection with discovery conducted in certain proceedings at the United States Patent and Trademark Office (USPTO or Office), communications between U.S.

patent agents or foreign patent practitioners and their clients are privileged to the same extent as communications between clients and U.S. attorneys. The rule would apply to *inter partes* review, post-grant review, the transitional program for covered business method patents, and derivation proceedings. This rule would clarify the protection afforded to such communications, which is currently not addressed in the rules governing Board proceedings at the USPTO. This new rule will not affect the duty of disclosure and candor before the Office under 37 CFR 1.56.

**DATES:** *Comment date:* The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before December 19, 2016 to ensure consideration.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: *acprivilege@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop OPIA Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Soma Saha, Patent Attorney, Patent Trial Proposed Rule on Privilege.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal at *http://www.regulations.gov. See* the Federal eRulemaking Portal Web site for additional instructions on providing comments via the Federal e-Rulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message to be able to more easily share all comments with the public. The Office prefers the comments to be submitted in plain text, but also accepts comments submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of Policy and International Affairs, currently located in Madison East, Second Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site at *http://www.uspto.gov/patents/law/comments/index.jsp* and at *http://www.regulations.gov.* Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Soma Saha, Patent Attorney, by email at *soma.saha@uspto.gov* or by telephone at (571) 272–8652; or Edward Elliott, Attorney Advisor, by email at *edward.elliott@uspto.gov* or by telephone at (571) 272–7024.

**SUPPLEMENTARY INFORMATION:**

*Purpose:* This proposed rule would amend the rules of practice before the Patent Trial and Appeal Board (PTAB) to recognize that communications between non-attorney U.S. patent agents or foreign patent practitioners and their clients that pertain to authorized practice before the United States Patent and Trademark Office (Office or USPTO) are privileged to the same extent as communications of that sort conducted between clients and U.S. attorneys. Under the proposed rule, those communications would be protected from discovery in trial practice proceedings at the USPTO. The proposed rule would apply to *inter partes* review (IPR), post-grant review (PGR), the transitional program for covered business method patents (CBM), and derivation proceedings. Currently, the rules governing proceedings at the USPTO do not address the privilege of communications with patent practitioners, and questions regarding that matter are decided on a case-by-case basis under common law principles. This new rule will not affect the duty of disclosure and candor before the Office under 37 CFR 1.56.

*Background:* Within this notice, the term ''patent practitioner'' includes both those authorized to practice patent matters before the USPTO and those authorized to practice patent matters in foreign jurisdictions. When referring to these groups separately, the terms ''U.S. or domestic patent practitioners'' and ''foreign patent practitioners'' will be used, respectively.

In February 2015, the USPTO held a roundtable and solicited comments on attorney-client privilege issues. *See* Notice of Roundtable and Request for Comments on Domestic and International Issues Related to Privileged Communications Between Patent Practitioners and Their Clients, 80 FR 3953 (Jan. 26, 2015). As part of that process, the USPTO requested comments on whether it should recognize that communications between patent applicants and owners and their U.S. patent agents or foreign patent practitioners are privileged to the same extent as communications between U.S. patent attorneys and patent applicants and owners. Respondents unanimously supported a rule recognizing such privilege. *See* USPTO, Summary of Roundtable and Written Comments, *available at http://www.uspto.gov/sites/default/files/documents/Summary%20of%20Privileged%20Communication%20Roundtable.pdf* (''Privilege Report'').

The USPTO administers various proceedings that entail discovery procedures, namely the IPR, PGR, and transitional program for CBM patents. In addition, the derivation proceedings provided for by the Leahy-Smith America Invents Act, Public Law 112–29, 125 Stat. 284 (2011) (AIA) permit discovery. Questions regarding privilege issues may arise in the course of discovery, and as some roundtable commenters noted, rules regarding privilege for U.S. patent agents and foreign practitioners during discovery in PTAB proceedings are not well defined.

*Current Practice:* PTAB proceedings are subject to the Federal Rules of Evidence (FRE), which include rules on attorney-client privilege. *See* 37 CFR 42.62(a). Accordingly, privilege may be asserted in PTAB proceedings by licensed attorneys. However, the FRE does not explicitly address privilege for communications with non-attorney U.S. patent agents or with foreign patent practitioners.

The rules governing PTAB practice likewise do not address this matter, and when it arises, PTAB Administrative Law Judges make legal determinations as to which communications may be protected from disclosure on a case-by-case basis, based on common law. *See GEA Process Engineering, Inc.* v. *Steuben Foods, Inc.,* IPR2014–00041, Paper 117 (PTAB 2014). U.S. courts have devised several different approaches to determine under what circumstances communications with these practitioners are privileged. As the Privilege Report notes, the common law on privilege for domestic and foreign patent practitioners varies across jurisdictions. Different approaches are taken, and results sometimes conflict. This may lead to administrative inefficiencies and inconsistencies in outcomes, as PTAB must select which set of common law rules to follow. (It is also noted that Administrative Law Judges in other agencies recognize certain confidential communications with a patent agent as privileged. *See, e.g.,* USITC Inv. No. 337–TA–339, slip op. at 2, 1992 WL 811804 (ITC 1992) (finding that confidential communications between a U.S. patent agent and his client in connection with

a patent prosecution are privileged).) The Federal Circuit recently recognized that attorney-client privilege applies to U.S. patent agents acting within the scope of their authorized practice. *See In re Queen's University at Kingston, PARTEQ Research and Development Innovations,* No. 2015–145 (Fed. Cir. 2016).

The Office has strong policy reasons to establish a privilege rule governing trial proceedings before PTAB. Such a rule would help ensure consistent outcomes with respect to privilege matters that arise at the Office, would improve public understanding of how privilege questions are decided before PTAB, and would help further judicial economy by providing PTAB judges with a clear, concise statement of when privilege applies.

*Public Comments:* In August 2015, the USPTO published in the **Federal Register** a proposed rule amending the rules for trial practice before the Office. *See* Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 FR 50719 (Aug. 20, 2015). Included in that proposed rule was a request for comments on the advisability of a privilege rule for PTAB proceedings. The comments submitted in response to that request are available on the USPTO Web site at *http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/comments-amendments-rules-practice-trials.*

Those responding to the request universally agreed that a privilege rule for PTAB proceedings should be promulgated. Respondents overwhelmingly favored promulgating such a rule, with some noting that it would lead to clarity and consistency and ''can reduce uncertainty and mitigate discovery costs.'' *See* Letter from Frederick W. Mau II on behalf of Toyota Motor Corp., David B. Kelley on behalf of Ford Motor Co., and Mark Duell on behalf of American Honda Motor Co., Inc., *RE: Comments on Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board,* p. 4–5 (Oct. 16, 2015). Others suggested that ''[i]f patent agents are not entitled to have their communications be considered privileged, however, then their utility—and associated cost savings for stakeholders—is lost.'' *See* Letter from Sharon A. Israel, President of the American Intellectual Property Law Assoc., *RE: Response to Proposed ''Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board,'' 80 FR 50720 (August 20, 2015),* p. 15–16 (Oct. 21, 2015).

Commenters said it ''would be particularly useful for patent agents['] communications to be explicitly protected in the discovery rules for post-grant proceedings (*e.g.,* inter parties [sic] review) before the USPTO.'' *See* Letter from Dorothy R. Auth, President of the New York Intellectual Property Law Assoc., *RE: NYIPLA Comments in Response to ''Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board,''* **Federal Register** *Notice, August 20, 2015, Vol. 80, No. 161 (80 FR 50720),* p. 6–9 (Nov. 18, 2015). Commenters suggested that the rule should extend at least to communications made in connection with acts that patent agents are authorized to perform in their particular jurisdictions, such as prosecuting patent applications. The USPTO agrees that the scope of a privilege rule should be defined by the activities that the agent is authorized to carry out. Others suggested that it should be ''a simple rule . . . that explicitly recognize[s] privilege for communications between patent applicants or owners and their domestic patent agents or foreign professional patent practitioners under the same circumstances as such privilege is recognized for communications between applicants or owners and U.S. attorneys.'' *See* Letter from Andrew D. Meikle, President of the U.S. Section of the International Federation of Intellectual Property Attorneys (FICPI), *RE: Comments on ''Recognizing Privilege for Communications With Domestic Patent Agents and Foreign Patent Practitioners'',* p. 4 (Nov. 24, 2015).

According to these comments, ''[t]his approach would provide the greatest uniformity and certainty, and avoid the need for the PTAB to engage in complex fact based analysis regarding application of the privilege under the common law.'' *Id.* These views were echoed by a law professor who has studied this issue since 2008:

> The privilege should be as broad as the ordinary attorney-client privilege. It should cover not only U.S. patent agents, but also foreign legal representatives. While the best solution would be a privilege that applied in all legal tribunals—not only the PTAB, but also federal and state courts—adoption of a privilege only for the PTAB would be a valuable first step toward this goal.

*See* Letter from John T. Cross, Professor of Law at University of Louisville, *Possible Adoption of a Legal Representation Privilege in Matters Before the Patent Trial and Appeal Board,* p. 2 (Sep. 9, 2015).

The USPTO agrees with these views and believes the proposed rule reflects them. As a policy matter, open and frank discussions between practitioners and clients promotes effective legal representation before the Office.

**Discussion of Specific Rules**

Taking into consideration comments from the public and insight gained from practice, the Office proposes to amend 37 CFR 42 to add new section 42.57 that clarifies which patent practitioners are eligible for assertions of attorney-client privilege.

The term ''patent practitioner'' is used to conform with existing terminology and avoid confusion with other terms used around the world, such as ''IP Advisor'' or ''Patent Advisor.'' It fits with practice elsewhere in Title 37, which refers to domestic ''patent practitioners,'' *i.e.,* U.S. patent agents and patent attorneys registered under 37 CFR 11.6. This narrower meaning is appropriate for most sections of Title 37, which deal with practitioners admitted to practice before the USPTO. For the new rule only, the term also includes comparable foreign counterparts practicing before foreign patent offices.

The rule would provide that the privilege only applies where the practitioner performs legal work authorized by the jurisdiction in which the practitioner practices. For instance, communications between clients and U.S. patent agents relating to patent application matters would be protected as privileged under the rule, but communications between these parties regarding litigation strategies would not be protected. The proposed rule also does not recognize privilege as applying to advice given by lay persons in jurisdictions that do not impose professional qualifications as a requirement to practice. However, the proposed rule can apply to communications from an in-house counsel who performs the functions of a patent attorney under appropriate circumstances, even though some civil law jurisdictions may not grant in-house counsel the privilege-type protections given to attorneys.

The Office invites the public to provide any comments on the proposed rule to inform further action.

*Costs and Benefits:* This rulemaking is not economically significant, and is not significant, under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

**Rulemaking Considerations**

*A. Administrative Procedure Act (APA)*

This proposed rule revises the rules of practice before PTAB to recognize that

communications between non-attorney or foreign patent practitioners and their clients that pertain to authorized practice before the USPTO are privileged. The changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Secretary of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive requirements for reviewing claims).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

*B. Regulatory Flexibility Act*

For the reasons set forth herein, the Deputy General Counsel for General Law of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The changes proposed in this rule are to revise the rules of practice before PTAB to explicitly recognize that communications between non-attorney or foreign patent practitioners and their clients that pertain to authorized practice before the USPTO or foreign patent offices are privileged and to define those persons who may avail themselves of this privilege. These proposed changes are expected to create no additional burden to those practicing before the Board as this rule merely clarifies rights and protections for the practitioner and client and does not impose a change in practice or requirements. In fact, this rule may produce a small benefit from a reduction in uncertainty and mitigation of discovery costs. For the foregoing reasons, the changes proposed in this rule will not have a significant economic impact on a substantial number of small entities.

*C. Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review)*

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13132 (Federalism)*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*F. Executive Order 13175 (Tribal Consultation)*

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

*G. Executive Order 13211 (Energy Effects)*

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*H. Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*I. Executive Order 13045 (Protection of Children)*

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*J. Executive Order 12630 (Taking of Private Property)*

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*K. Congressional Review Act*

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

*L. Unfunded Mandates Reform Act of 1995*

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the

Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*M. National Environmental Policy Act*

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

*N. National Technology Transfer and Advancement Act*

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

*O. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule not does not involve any new information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). Any information collections associated with this rule have been previously approved under OMB control number 0651–0069.

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 unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 37 CFR Part 42**

Administrative practice and procedure, inventions and patents.

For the reasons set forth in the preamble, 37 CFR part 42 is proposed to be amended as follows:

## PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR Part 42 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Add § 42.57 to read as follows:

**§ 42.57 Privilege for patent practitioners.**

(a) *Privileged communications.* A communication between a client and a domestic or foreign patent practitioner that is reasonably necessary or incident to the scope of the patent practitioner's authority shall receive the same protections of privilege as if that communication were between a client and an attorney authorized to practice in the United States, including all limitations and exceptions.

(b) *Definitions.* The term ''domestic patent practitioner'' means a person who is registered by the United States Patent and Trademark Office to practice before the agency under section 11.6. ''Foreign patent practitioner'' means a person who is authorized to provide legal advice on patent matters in a foreign jurisdiction, provided that the jurisdiction establishes professional qualifications and the practitioner satisfies them, and regardless of whether that jurisdiction provides privilege or an equivalent under its laws.

Dated: October 12, 2016.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2016–25141 Filed 10–17–16; 8:45 am]

BILLING CODE 3510–16–P

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 385

**[Docket No. 16–CRB–0003–PR (2018–2022)]**

## Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III); Comment Period Extension

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule; extension of comment period for reply comments.

**SUMMARY:** The Copyright Royalty Judges announce that they will accept reply comments in response to comments they received about a proposed rule regarding rates and terms applicable during the upcoming rate period for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

**DATES:** Reply comments for the proposed rule published July 25, 2016 (81 FR 48371) are due no later than November 17, 2016.

**ADDRESSES:** The proposed rule and the comments filed in response to it are posted on the agency's Web site (*www.loc.gov/crb*). The proposed rule is also posted at *Regulations.gov* (*www.regulations.gov*). Interested parties may submit reply comments via email to *crb@loc.gov.* Those who choose not to submit reply comments via email should see How to Submit Reply Comments in the **SUPPLEMENTARY INFORMATION** section below for online and physical addresses and further instructions.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658, or by email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** On July 25, 2016, the Judges published a proposed rule and requested comments. 81 FR 48371. The proposed rule was based upon a partial settlement [1] regarding copyright royalty rates and terms applicable during the upcoming rate period for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works. *See Joint Motion to Adopt Partial Settlement,* Docket No. 16–CRB–0003–PR (2018–2022) (June 15, 2016).

On or before August 24, 2016, the Judges received two timely comments, one from the American Association of Independent Music (A2IM) that supported it and one from Sony Music Entertainment (''Sony'') that supported it in part and opposed it in part.

On August 30, 2016, the National Music Publishers' Association and the Nashville Songwriters Association International filed a joint *Motion for Leave to Respond to the Comments and Objections of Sony Music Entertainment Concerning Proposed Settlement (Joint Motion).* In the interest of promoting a more complete record with regard to the proposed rule, the Judges will grant the *Joint Motion.* In addition, the Judges hereby announce that they will accept, without additional motions required, additional reply comments, if any, to the comments filed by A2IM and Sony.

The reply comments, if any, must be submitted no later than November 17, 2016.

**How To Submit Reply Comments**

Interested members of the public must submit reply comments to only *one* of the following addresses. If not submitting by email or online, commenters must submit an original of their reply comments, five paper copies, and an electronic version in searchable PDF format on a CD.

*Email: crb@loc.gov;* or

*Online: http://www.regulations.gov;* or

[1] The participants filing the motion were Church Music Publishers Association, Nashville Songwriters Association International, National Music Publishers Association, Harry Fox Agency, and Songwriters of North America, and licensees Universal Music Group and Warner Music Group.

*U.S. mail:* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Dated: October 12, 2016.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2016–25075 Filed 10–17–16; 8:45 am]

**BILLING CODE 1410–72–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 8a

**RIN 2900–AP49**

### Veterans' Mortgage Life Insurance—Coverage Amendment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing the Veterans' Mortgage Life Insurance (VMLI) program in order to provide VMLI-eligible individuals the option to lower their premiums by purchasing less than the minimum coverage amount required under current VA regulations. The proposed rule would also amend current VA regulations to reflect that the statutory maximum amount of coverage available under the VMLI program was previously increased to $200,000, to define the term ''eligible individual,'' and to clarify that eligibility for VMLI coverage has been extended to include servicemembers as well as veterans. These additional amendments are necessary to conform the existing regulations to current statutory provisions.

**DATES:** Comments must be received on or before December 19, 2016.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP49—Veterans' Mortgage Life Insurance—Coverage Amendment.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jeanne King, Attorney-Advisor, Insurance Service, Department of Veterans Affairs (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842–2000, ext. 4839. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Veterans' Mortgage Life Insurance (VMLI) program was established in 1971 to provide mortgage protection insurance to service-disabled veterans who receive Specially Adapted Housing Grants from VA. Under 38 U.S.C. 2106(g), the amount of VMLI coverage for a veteran is the amount necessary to pay the veteran's mortgage indebtedness in full, except as limited by section 2106(b) or ''regulations prescribed by the Secretary under this section.'' Section 2106(b) currently limits the amount of VMLI available to $200,000. Therefore, currently, a veteran who has a mortgage indebtedness that is greater than $200,000 and seeks VMLI must be covered in the amount of $200,000 and pay the corresponding premiums for such coverage. VA has concluded that requiring this level of coverage in such circumstance may cause some individuals to forego VMLI protection because they cannot afford the premiums. To address this specific problem and to allow veterans to pay lower premiums regardless of their mortgage indebtedness, VA proposes to exercise its explicit statutory authority set forth in section 2106(g) and amend its regulations to permit program participants to lower their premiums by carrying VMLI in an amount less than both the $200,000 statutory maximum and the amount necessary to pay the covered mortgage indebtedness in full.

As noted, paying the premiums on the level of coverage required under current regulations can present a financial hardship to individuals insured under the program. We realize that allowing eligible individuals to carry an amount of VMLI lower than the amount outstanding on the mortgage loan may result in circumstances where an insured dies with a balance on the loan that exceeds the amount of VMLI in effect, which currently occurs when an individual's mortgage balance exceeds the statutory maximum level of coverage. In such a situation, the individual's survivors may have to assume payment on the mortgage. However, VA believes that it is preferable for individuals to participate in the VMLI program to the extent they can financially, rather than foregoing coverage entirely because they cannot afford it. If an eligible individual opts out of the program, and then dies with an outstanding balance on the loan, his or her survivors could ultimately be forced to assume an even greater indebtedness than if the individual had carried partial VMLI coverage.

Individuals often seek to lower their VMLI premiums by requesting an amount of coverage less than both the statutory limit and the amount necessary to pay the mortgage indebtedness in full. For example, from January 1, 2005, to December 31, 2010, when the statutory coverage limit was $90,000, VA received 231 requests to terminate existing VMLI coverage. VA reviewed approximately 100 requests to determine if financial hardship was a factor in individuals' decisions to terminate coverage. Thirty percent of veterans who terminated their coverage during that period stated that the premium charged for their coverage was the main factor motivating their requests.

Effective October 1, 2011, the Veterans' Benefits Act of 2010 raised the statutory maximum coverage for VMLI from $90,000 to $150,000, and to $200,000 after January 1, 2012. See Public Law 111–275, Title IV, § 407, 124 Stat. 2864, 2880. Depending on a veteran's age and mortgage balance, this statutory change could cause an individual's monthly premiums to increase by almost $400.00—from less than $460.00 to more than $850.00 per month. As such, VA has concluded that, because premiums for the new statutory maximum amount of $200,000 are considerably higher than premiums for the former maximum amount, an increasing number of individuals may terminate their VMLI coverage or decline coverage entirely unless VA offers options to buy a lesser amount of VMLI.

To promptly address this problem, VA adopted an interim policy allowing

insureds to select less than both the statutory maximum and their outstanding mortgage balance. VA implemented this interim policy to avoid unintended harm to program participants. VA now seeks to amend its regulations to make this policy permanent.

In establishing the VMLI program, Congress intended to provide seriously disabled veterans with a reasonable level of mortgage protection insurance. If individuals decline coverage because they cannot afford the premiums, the purpose of the program is undermined. Therefore, VA proposes to amend its Part 8a regulations to reflect the new statutory maximum and provide program participants the option to select a more affordable level of coverage that is lower than both the statutory maximum and their outstanding mortgage balance. VA believes this change would benefit all VMLI-eligible individuals because it would provide needed flexibility in the program and empower veterans to decide what level of coverage they can afford. As explained above, VA has concluded that it is preferable for individuals to make their own financial decisions as to what level of VMLI they can afford, rather than foregoing coverage because they cannot afford a higher amount mandated by statute. Absent VA's proposed amendment, current regulations would likely prompt some veterans to decline VMLI coverage because they cannot afford the required premiums, ultimately forcing more survivors into greater mortgage debt than if partial VMLI coverage were available.

We interpret 38 U.S.C. 2106 as authorizing VA to prescribe regulations permitting VMLI coverage in amounts less than the statutory maximum and the outstanding mortgage indebtedness. Section 2106(g) requires that VMLI participants carry the amount of insurance necessary to pay their mortgage indebtedness in full, but explicitly authorizes the Secretary to prescribe an exception to this requirement. Moreover, section 2106(b) imposes a cap of $200,000 in coverage but does not mandate that VMLI participants carry the maximum amount of coverage available. Therefore, VA's proposed amendments to its regulations are implicitly authorized by 38 U.S.C. 2106.

The proposed amendment would exercise this authority by amending 38 CFR 8a.1(c) and 38 CFR 8a.2(a) to provide insureds with the option to select a more affordable level of coverage. We propose to revise the term ''initial amount of insurance'' in § 8a.1(c) to mean ''the amount of insurance selected by the insured, which may be less than the statutory maximum of $200,000 and less than the amount necessary to pay the mortgage indebtedness in full.'' This change would make clear that VMLI-eligible individuals are authorized to carry such VMLI coverage as they select, up to the lesser of the $200,000 statutory maximum or the amount necessary to pay their mortgage indebtedness in full. We would also amend § 8a.2(a) and (b)(1) and § 8a.4(b) and (c) to reflect that the current statutory maximum of VMLI coverage, as previously increased, is $200,000.

The proposed amendments to 38 CFR 8a.4(b)–(c) removing ''available to'' and adding in its place ''selected by'' are designed to ensure conformity with this change by making clear that the amount of insurance on the life of the eligible individual may be a reduced amount selected by the eligible individual, up to the lesser of the $200,000 statutory maximum or the amount necessary to pay their mortgage indebtedness in full. For the reasons discussed above, these amendments would benefit veterans and their beneficiaries by adding needed flexibility to the program and empowering individuals to make financial decisions based on the level of VMLI coverage they can afford. While such decisions require veterans and their families to consider the financial risk of choosing a lower amount of VMLI that may not cover their mortgage indebtedness in full, we feel that such personal financial decisions are best left to veterans and their families. Accordingly, VA's proposed amendments seek to provide veterans with the flexibility to choose the level of VMLI coverage that meets their financial needs. In doing so, we seek to minimize the number of eligible individuals who opt out of the program for financial reasons, and reduce instances where a veteran's survivors must assume greater indebtedness than if the veteran had carried at least partial VMLI coverage. In short, VA has concluded that veterans should enjoy the option to obtain VMLI coverage tailored to their specific needs.

We also propose a number of technical changes to 38 CFR part 8a to ensure consistency with current statutory authority. In the Housing and Economic Recovery Act of 2008, Congress extended eligibility for VMLI coverage to servicemembers in addition to veterans. See Public Law 110–289, section 2602, 122 Stat. 2654, 2858–2860. We propose to add a new definition of ''eligible individual'' at § 8a.1(f) to reflect this extension of eligibility for VMLI coverage and replace the term veteran with individual wherever appropriate in §§ 8a.1 through 8a.4. These substitutions would not cause any substantive change other than that brought about by Public Law 110–289.

Additionally, we propose one technical change to 38 CFR 8a.2(b)(8), which currently prescribes, ''[a]ll claims, arising out of the deaths of insured veterans occurring prior to (date of final publication), shall be subject to the provisions of paragraph (a) of this section then in effect which limited the amount of VMLI coverage to a lifetime maximum per eligible veteran.'' The parenthetical ''(date of final publication)'' appears to have been erroneously maintained in the Code of Federal Regulations, rather than being replaced by the appropriate date. We are correcting this error by striking ''(date of final publication)'' and inserting ''December 24, 1987,'' which is the effective date of the final rule that codified that regulation. See 52 FR 26356–01 (July 14, 1987) (proposed); 52 FR 48681–02 (Dec. 24, 1987) (final). No substantive change is intended.

We would also revise the authority citations at the end of § 8a.2 and § 8a.4 and add authority citations at the end of § 8a.1 and § 8a.3 to cite to 38 U.S.C. 501, 2101, 2101A, and 2106.

**Unfunded Mandates**

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

**Paperwork Reduction Act**

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

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving

Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12886 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

**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. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 7, 2016, for publication.

Dated: October 7, 2016.

**Jeffrey Martin,**

*Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

**List of Subjects in 38 CFR Part 8a**

Life insurance, Mortgage insurance, Veterans.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 8a as set forth below:

## PART 8a—VETERANS MORTGAGE LIFE INSURANCE

■ 1. The authority citation for part 8a continues to read as follows:

**Authority:** 38 U.S.C. 501, and 2101 through 2106, unless otherwise noted.

■ 2. Amend § 8a.1 as follows:
■ a. In paragraph (a), remove ''veteran'' each place it appears and add in its place ''individual'';
■ b. In paragraph (b), remove ''veterans'' the second time it appears and add in its place ''individuals'';
■ c. Revise paragraph (c);
■ d. In paragraph (d), remove ''veteran'' and add in its place ''individual'';
■ e. In paragraph (e) introductory text, remove ''veteran'' and add in its place ''individual'';
■ f. Add paragraph (f); and
■ g. Add an authority citation to the end of the section.

The revision and additions read as follows:

**§ 8a.1 Definitions.**

* * * * *

(c) The term *initial amount of insurance* means the amount of insurance selected by the insured, which may be less than the statutory maximum of $200,000 and less than the amount necessary to pay the mortgage indebtedness in full.

* * * * *

(f) The term *eligible individual* means a person who has been determined by the Secretary to be eligible for benefits pursuant to 38 U.S.C. chapter 21.

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

■ 3. Amend § 8a.2 as follows:
■ a. In paragraph (a), remove ''veteran'' each place it appears and add in its place ''individual'', remove ''$90,000'' and add in its place ''$200,000'', and add ''an initial amount of insurance'' between ''authorized'' and ''up'';
■ b. In paragraph (b)(1), remove ''$90,000'' and add in its place ''$200,000'';
■ c. In paragraph (b)(2), remove ''veteran'' and add in its place ''individual'';
■ d. In paragraph (b)(3), remove ''veteran'' each place it appears and add in its place ''individual'';
■ e. In paragraph (b)(4), remove ''veteran'' each place it appears and add in its place ''individual'';
■ f. In paragraph (b)(5), remove ''veteran'' and add in its place ''individual'';
■ g. In paragraph (b)(6), remove ''veteran'' each place it appears and add in its place ''individual'';
■ h. In paragraph (b)(7), remove ''veterans'' each place it appears and add in its place ''individuals'';
■ i. In paragraph (b)(8), remove ''veteran'' and add in its place ''individual'', remove ''veterans'' and add in its place ''individuals'', and remove ''(date of final publication)'' and add in its place ''December 24, 1987'';
■ j. In paragraph (c), remove ''veteran'' and add in its place ''individual''; and
■ k. Revise the authority citation at the end of section.

The revision reads as follows:

**§ 8a.2 Maximum amount of insurance.**

* * * * *

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

■ 4. Amend § 8a.3 as follows:
■ a. In paragraph (a), remove ''veteran'' each place it appears and add in its place ''individual'';
■ b. In paragraph (b), remove ''veteran'' each place it appears and add in its place ''individual'';
■ c. In paragraph (c), remove ''a veteran'' and add in its place ''an individual'', and remove ''the veteran'' each place it appears and add in its place ''the individual'';
■ d. In paragraph (d), remove ''veteran'' each place it appears and add in its place ''individual'';
■ e. In paragraph (e), remove ''veteran'' each place it appears and add in its place ''individual''; and
■ f. Add an authority citation to the end of the section.

The addition reads as follows:

**§ 8a.3 Effective date.**

* * * * *

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

■ 5. Amend § 8a.4 as follows:

■ a. In paragraph (b), remove ''$90,000'' each place it appears and add in its place ''$200,000'', remove ''available to'' each place it appears and add in its place ''selected by'', and remove ''veteran'' each place it appears and add in its place ''individual'';

■ b. In paragraph (c), remove ''$90,000'' and add in its place ''$200,000'', remove ''available to'' and add in its place ''selected by'', remove ''eligible veteran'' each place it appears and add in its place ''eligible individual'', and remove ''a veteran'' and add in its place ''an individual''; and

■ c. Revise the authority citation at the end of section.

The revision reads as follows:

**§ 8a.4 Coverage.**

* * * * *

(Authority: 38 U.S.C. 501, 2101, 2101A, 2106)

[FR Doc. 2016–25025 Filed 10–17–16; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2010–0682; FRL–9954–25–OAR]**

**RIN 2060–AT18**

## National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On December 1, 2015, the Environmental Protection Agency (EPA) finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) Refinery Maximum Achievable Control Technology (MACT) 1 and Refinery MACT 2 regulations and the New Source Performance Standards (NSPS) for petroleum refineries. Subsequently, the EPA received three petitions for reconsideration of the final rules. The EPA is announcing reconsideration and request for public comment on five issues raised in the petitions for reconsideration where petitioners claim that the public was not afforded an opportunity to comment. Additionally, the EPA is proposing amendments to the final rule to clarify a compliance issue raised by stakeholders subject to the final rule and to correct a referencing error. The EPA is seeking comment only on the five identified petition issues and on the proposed compliance issue clarification and referencing error amendments. The EPA will not respond to comments addressing any other issues or any other provisions of the final rule.

**DATES:** Comments must be received on or before December 2, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0682, at *http://www.regulations.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 is seeking comment only on the issues specifically identified in this notice. The EPA will not respond to any comments addressing other aspects of the final rules or any other related rulemakings. 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, 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.*

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0682. The EPA's policy is that all comments received will be included in the public docket without change, and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0682. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses.

*Docket.* All documents in the docket are listed in the *regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm* for additional

information about the EPA's public docket.

*Public hearing.* A public hearing will be held if requested by October 24, 2016 to accept oral comments on this proposed action. The hearing will be held, if requested, on November 2, 2016 at the EPA's North Carolina Campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing, if requested, will begin at 9:00 a.m. (local time) and will conclude at 1:00 p.m. (local time). To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov.* The last day to pre-register to speak at a hearing, if one is held, will be October 31, 2016. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before the hearing will be confirmed by the EPA via email.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source.* We ask that you contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Ms. Brenda Shine, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–3608; fax number: (919) 541–0246; and email address: *shine.brenda@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; and email address: *malave.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Preamble Acronyms and Abbreviations.* We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
DCU delayed coking unit
EPA Environmental Protection Agency
FCCU fluid catalytic cracking unit
HAP hazardous air pollutants
lbs/day pounds per day
LEL lower explosive limit
MACT Maximum Achievable Control Technology
MIR maximum individual risk
MPV miscellaneous process vent
NESHAP National Emissions Standards for Hazardous Air Pollutants
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PRA Paperwork Reduction Act
PRD Pressure Relief Devices
psig pounds per square inch gauge
PSM Process Safety Management
PTE potential to emit
RC/CA root cause analysis and corrective action
RFA Regulatory Flexibility Act
RMP Risk Management Plan
RTR residual risk and technology review
SRU sulfur recovery unit
SSM startup, shutdown and malfunction
STP standard temperature and pressure
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VOC volatile organic compounds
°F degrees Fahrenheit

*Organization of This Document.* The information in this preamble is organized as follows:

I. General Information
A. What is the source of authority for the reconsideration action?
B. Does this action apply to me?
C. Where can I get a copy of this document and other related information?
II. Background
III. Reconsideration Issues and Request for Public Comments
A. Work Practice Standards for PRDs
B. Work Practice Standards for Emergency Flaring
C. Assessment of Risk From the Refinery Source Categories After Implementation of the PRD and Emergency Flaring Work Practice Standards
D. Alternative Work Practice Standards for DCUs Employing the Water Overflow Design
E. Reduced Frequency of Fenceline Monitoring
IV. Proposed Technical Clarifications
V. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### *A. What is the source of authority for the reconsideration action?*

The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA)(42 U.S.C. 7412 and 7607(d)(7)(B)).

### *B. Does this action apply to me?*

*Regulated Entities.* Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

| NESHAP and source category | NAICS [a] code |
|---|---|
| Petroleum Refining Industry ..... | 324110 |

[a] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

### *C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this proposal will also be available on the

Internet through the Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at: *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this Web site.

## II. Background

On June 30, 2014, the EPA published a proposed rule in the **Federal Register** addressing the risk and technology review (RTR) for the Petroleum Refinery NESHAP, 40 CFR part 63, subparts CC (Refinery MACT 1) and UUU (Refinery MACT 2). On December 1, 2015 (80 FR 75178), after receiving and addressing public comments, the EPA finalized determinations pursuant to CAA section 112(d)(6) and (f)(2) for the Petroleum Refinery source categories and amended Refinery MACT 1 and 2 based on those determinations. The final December 2015 action included a determination that the remaining risk after promulgation of the revised NESHAP are acceptable and provide an ample margin of safety. The December 2015 action also finalized changes to Refinery MACT 1 and 2 pursuant to CAA section 112(d)(2) and (3), notably revising the requirements for flares and pressure relief devices (PRD). The December 2015 action also finalized technical corrections and clarifications to Refinery NSPS subparts J and Ja to address issues raised by the American Petroleum Institute (API) in their 2008 petition for reconsideration of the final NSPS Ja rule that had not been previously addressed. These include corrections and clarifications to provisions for sulfur recovery plants, performance testing, and control device operating parameters.

Following promulgation, the EPA received three separate petitions for reconsideration: Two jointly from API and the American Fuel and Petrochemical Manufacturers (AFPM) and one from Earthjustice (submitted on behalf of Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition for a Safe Environment, Del Amo Action Committee, Environmental Integrity Project, Sierra Club, Texas Environmental Justice Advocacy Services and Utah Physicians for a Healthy Environment). The petitions are available for review in the rulemaking docket (see Docket ID No. EPA–HQ–OAR–2010–0682).

On January 19, 2016, API and AFPM requested an administrative reconsideration under section 307(d)(7)(B) of the CAA of certain provisions of Refinery MACT 1 and 2, as promulgated in the December 2015 final rule. Specifically, API and AFPM requested that the EPA reconsider the maintenance vent provisions in Refinery MACT 1 for sources constructed on or before June 30, 2014; the alternate startup, shutdown, or hot standby standards for fluid catalytic cracking units (FCCU) constructed on or before June 30, 2014, in Refinery MACT 2; the alternate startup and shutdown for sulfur recovery units (SRU) constructed on or before June 30, 2014, in Refinery MACT 2; and the new catalytic reforming units (CRU) purging limitations in Refinery MACT 2. The request pertained to providing and/or clarifying the compliance time for these sources. In response to this request and additional information received relative to providing additional compliance time for these provisions, the EPA issued a proposal on February 9, 2016 (81 FR 6814). A final rule was published on July 13, 2016 (81 FR 45232, July 13, 2016), fully responding to the January 19, 2016, initial petition for reconsideration submitted by API and AFPM.

On February 1, 2016, Earthjustice filed a petition for reconsideration of several aspects of the December 1, 2015, final rule, and on that same day API and AFPM submitted a supplemental petition for reconsideration, identifying additional issues on which they sought reconsideration. In these petitions, both Earthjustice and API/AFPM requested that the EPA reconsider certain aspects of the December 2015 revisions to Refinery MACT 1 and 2, noting that CAA section 307(d)(7)(B) authorizes the EPA to reconsider a rule where it is impracticable to raise an objection during the period for public comment (but within the time specified for judicial review) or if the grounds for such an objection arose after the close of the public comment period. In particular, Earthjustice claimed that several aspects of the revisions to Refinery MACT 1 were not proposed, and, thus they were precluded from commenting on them during the public comment period: (1) Work practice standards for PRDs and flares; (2) alternative water overflow provisions for delayed coking units (DCU); (3) reduced monitoring provisions for fenceline monitoring; and (4) adjustments to the risk assessment to account for these new work practice standards. The API/AFPM petition outlined a number of specific issues related to the work practice standards for PRDs and flares, and the alternative water overflow provisions for DCUs, as well as a number of other specific issues on other aspects of the rule. On June 16, 2016, the EPA granted the petitions for reconsideration from Earthjustice and API/AFPM on the petitioners' claims as they relate to the following aspects of the December 2015 revisions to the final rule to provide an opportunity for public notice and comment: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; (4) the alternative work practice standards for DCUs employing the water overflow design; and (5) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling stations that consistently record benzene concentrations below 0.9 micrograms per cubic meter.

## III. Reconsideration Issues and Request for Public Comment

After reviewing the two February 1, 2016, petitions for reconsideration as described above, we granted reconsideration to provide the public an opportunity to comment on selected provisions of the December 2015 amendments and the assessment of risk as modified to account for the implementation of the PRD and emergency flaring work practice standards included in the December 2015 final rule. To ensure public participation in its final decisions, the Agency is requesting public comment on these issues as described below. The EPA is seeking comment only on these five specific issues. The EPA will not respond to any comments addressing any other provisions of the December 1, 2015, final Refinery Sector Rule or any other rule or issues.

### *A. Work Practice Standard for PRDs*

In the proposed rule (79 FR 36970, June 30, 2014), EPA proposed to revise Refinery MACT 1 to establish operating and pressure release requirements that apply to all PRDs and to prohibit atmospheric releases of hazardous air pollutants (HAP) from PRDs. To ensure compliance, we proposed to require that sources monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Many commenters suggested that a prohibition on atmospheric PRD releases was not

indicative of the best performing facilities, was unachievable and/or very costly, and would have negative environmental impacts due to additional flares that would need to be installed and operated in standby mode to accept the PRD releases. Some commenters suggested that we should instead consider the rules on PRDs that apply to refineries in the South Coast Air Quality Management District (SCAQMD) and the Bay Area Air Quality Management District (BAAQMD).

Based on these comments, we evaluated the two California district rules and determined that 8 percent (or 12 refineries) are subject to these requirements, which was a sufficient number of subject refineries to establish work practice standards that represent the emissions limitation achieved in practice by the best performers. The two rules are similar in that they both establish comprehensive regulatory programs to address the group or system of PRDs at refineries by requiring monitoring, root cause analysis, and corrective action, and by focusing on PRDs with the greatest emissions potential through a combination of applicability thresholds (albeit with differing thresholds between the two rules). In addition, both rules exclude emissions from certain types of PRDs—typically lower-release potential PRDs, liquid-type PRDs, or in the case of SCAAMD PRDs resulting from events outside of the refinery's control. We considered the two rules as the basis for determining the best performers for establishing the work practice standard that is included in the December 2015 final Refinery Sector Rule (see 40 CFR 63.648(j)(3)). In doing so, similar to these two rules, we established a work practice standard that is a comprehensive set of requirements that apply to the group of PRDs at refineries, and that focuses on reducing the size and frequency of atmospheric releases of HAP from PRDs, with an emphasis on prevention, monitoring, correction, and limitations on the frequency of release events. For further details on our analysis of the SCAQMD and BAAQMD rules and our use of those rules to establish a comprehensive work practice standard for PRDs that are representative of the best performing refineries, refer to the December 1, 2015, notice at 80 FR 75216 and the memorandum in the docket titled, ''Pressure Relief Device Control Option Impacts for Final Refinery Sector Rule, July 30, 2015 (Docket ID No. EPA–HQ–OAR–2010–0682–0750).

In the final rule, we established a four-part work practice standard in place of the prohibition on release to the atmosphere based on what was achieved by the best performers, as represented by the two California rules. Consistent with the proposed rule, the first component of the work practice standard requires that owners or operators monitor PRDs using a system that is capable of recording the time and duration of each pressure release and notifying operators that a pressure release has occurred. Second, the work practice standard requires refinery owners or operators to establish preventative measures for each affected PRD to prevent direct release of HAP to the atmosphere as a result of pressure release events. Third, in the event of an atmospheric release, the work practice standard requires refinery owners or operators to conduct a root cause analysis to determine the cause of a PRD release event. If the root cause was due to operator error or negligence, then the release would be a violation of the work practice standard. A second release due to the same root cause for the same equipment in a 3-year period would be a violation of the work practice standard. A third release in a 3-year period would be a violation of the work practice standard, regardless of the root cause. *Force majeure* events, as defined in the final rule, would not count in determining whether there has been a second or third event. The fourth component of the work practice standard is a requirement for corrective action. For any event other than a *force majeure* event, the owner or operator would be required to conduct a corrective action analysis and implement the results of the corrective action analysis. Refiners have 45 days to complete the root cause analysis and implement corrective action after the release event. The results of the root cause analysis and corrective action are due with the periodic reports on a semi-annual basis.

We excluded the following PRDs that have very low potential to emit (PTE) based on their type of service, size and pressure from the work practice standard: PRDs that only release material that is liquid at standard temperature and pressure (STP) and that are hard-piped to a controlled drain system, PRDs that do not have a PTE of 72 pounds per day (lbs/day) or more of volatile organic compounds (VOC), PRDs with design release pressure of less than 2.5 pounds per square inch gauge (psig), PRDs on mobile equipment, PRDs in heavy liquid service, and PRDs that are designed solely to release due to liquid thermal expansion. Although these PRDs are excluded from the work practice standard, they are subject to the operating and pressure relief requirements in 40 CFR 63.648(j)(1) and (2), which apply to all PRDs.

We request public comments on the work practice standard for PRDs as provided in 40 CFR 63.648(j)(3) and (5) through (7), including the number and type of release/event allowances; the type of PRDs covered by the work practice standard; and the definition of ''*force majeure* event'' in 40 CFR 63.641. We also request public comments on the recordkeeping and reporting requirements associated with the work practice standard in 40 CFR 63.655(g)(10)(iii) and (i)(11).

*B. Work Practice Standard for Emergency Flaring*

In the June 2014 proposed rule, the EPA proposed to amend the operating and monitoring requirements for petroleum refinery flares. As discussed in the proposal at 79 FR 36904, we determined that the requirements for flares in the General Provisions at 40 CFR 63.18 were not adequate to ensure compliance with the Refinery MACT standards. In general, flares used as air pollution control devices are expected to achieve a 98-percent HAP destruction efficiency. However, because flows of waste gases to the flares had diminished based on reductions achieved by the increased use of flare gas recovery systems, there were times when the waste gas to the flare contained insufficient heat content to adequately combust and, thus, a 98-percent HAP destruction efficiency was not being achieved. In addition, the practice of applying assist media to the flare (particularly steam to prevent smoking of the flare tip) had led to a decrease in the combustion efficiency of flares.

To ensure that a 98-percent HAP destruction efficiency was being met, as contemplated at the time the MACT standard was promulgated, we proposed revisions to Refinery MACT 1 that required flares to operate with a continuously-lit pilot flame at all times when gases are sent to the flare, with no visible emissions except for periods not to exceed 5 minutes during any 2 consecutive hours, and to meet flare tip velocity limits and combustion zone operating limits at all times when gases are flared.

During the comment period on the proposed rule, we received comments that the concern over insufficient heat content of the waste gas or over-assisting are less problematic in attaining a high level of destruction efficiency at the flare in emergency situations, where the flow in the flare

exceeds the smokeless capacity of the flare. Thus, commenters suggested that better combustion was assured closer to the incipient smoke point of the flare and that flow velocity limits and limits on visible emissions should not apply during flaring events.

In the final rule, we determined that it was appropriate to set different standards for when a flare is operating below its smokeless capacity and when it is operating above its smokeless capacity. We finalized the proposed requirements (with minor revisions) to apply when a flare is operating below its smokeless capacity.

We established a separate work practice standard that applies when a flare exceeds its smokeless capacity. As with flares operating below the smokeless capacity, the work practice standard requires the refinery to have a continuously-lit pilot flame and meet combustion zone operating limits (*e.g.*, heat content in the combustion zone) at all times and meet the monitoring, recordkeeping, and reporting requirements. These requirements are the most critical in ensuring that a 98-percent destruction efficiency is being met. The work practice standard also requires owners or operators to develop flare management plans to identify the flare system smokeless capacity and flare components, waste gas streams that are flared, monitoring systems and their locations, procedures that will be followed to limit discharges to the flare that cause the flare to exceed its smokeless capacity, and prevention measures implemented for PRDs that discharge to the flare header. The work practice standard requires refinery owners or operators to conduct a specific root cause analysis and take corrective action for any flaring event that exceeds the flare's smokeless capacity and that also exceeds the flare tip velocity and/or visible emissions limit. Refiners have 45 days to complete the root cause analysis and implement corrective action after an event. The results of the root cause and corrective action are due with the periodic reports on a semi-annual basis.

If the root cause analysis indicates that the exceedance of the flare tip velocity and/or the visible emissions limit is caused by operator error or poor maintenance, the exceedance is a violation of the work practice standard. A second event causing an exceedance of either the flare tip velocity or the visible emissions limit within a rolling 3-year period from the same root cause on the same equipment is a violation of the standard. A third exceedance of the velocity or visible emissions limit occurring from the same flare in a rolling 3-year period is a violation of the work practice standard, regardless of the cause. However, *force majeure* events are excluded from the event count. The requirements for a continuously-lit pilot flame, combustion-zone operating limits and the monitoring, recordkeeping and reporting requirements apply at all times (whether the flare is operating below, at, or above its smokeless capacity), including during a *force majeure* event.

In reviewing the regulatory text for this proposed action, we determined that 40 CFR 63.670(o)(1)(ii)(B) contains an incorrect reference to pressure relief devices for which preventative measures must be implemented. The correct reference is paragraph 40 CFR 63.648(j)(3)(ii) not 40 CFR 63.648(j)(5). We are proposing to correct this referencing error.

We request public comments on the above smokeless capacity work practice standard in 40 CFR 63.670(o), including the requirements to maintain records of prevention measures in 40 CFR 63.670(o)(1)(ii)(B) and (o)(1)(vi); the requirement to establish a single smokeless design capacity in 40 CFR 63.670(o)(1)(iii)(B); the number and type of releases/events that constitute a violation; the phrase ''. . . and the flare vent gas flow rate is less than the smokeless design capacity of the flare'' in 40 CFR 63.670(c) and (d)''; the proposed correction to paragraph 40 CFR 63.670(o)(1)(ii)(B); and other provisions in 40 CFR 63.670(o)(3) through (7). We also request public comments on the recordkeeping and reporting requirements associated with these work practice standards in 40 CFR 63.655(g)(11)(iv) and (i)(9)(x) through (xii).

### *C. Assessment of Risk From the Refinery Source Categories After Implementation of the PRD and Emergency Flaring Work Practice Standards*

The results of our residual risk review for the Petroleum Refinery source categories were published in the June 30, 2014, proposal (79 FR 36934 through 36942), and included assessment of chronic and acute inhalation risk, as well as multipathway and environmental risk, to inform our decisions regarding acceptability and ample margin of safety. The results indicated that the cancer risk to the individual most exposed (maximum individual risk or ''MIR'') based on allowable HAP emissions is no greater than approximately 100-in-1 million, which is the presumptive limit of acceptability, and that the MIR based on actual HAP emissions is no greater than approximately 60-in-1 million but may be closer to 40-in-1 million. In addition, the maximum chronic non-cancer target organ-specific hazard index (TOSHI) due to inhalation exposures was less than 1. The evaluation of acute non-cancer risks, which was conservative, showed acute risks below a level of concern. Based on the results of a refined site-specific multipathway analysis portion of the risk review, we also concluded that the cancer risk to the individual most exposed through ingestion is considerably less than 100-in-1 million.

In the final Refinery MACT 1 rule, we established work practice standards for PRD releases and emergency flaring events, which under the proposed rule would not have been allowed. Thus, because we did not consider such non-routine emissions under our risk assessment for the proposed rule, we performed a screening assessment of risk associated with these emissions for the final rule as discussed in detail in ''Final Residual Risk Assessment for the Petroleum Refining Source Sector'' in Docket ID No. EPA–HQ–OAR–2010–0682. Our analysis showed that these HAP emissions could increase the MIR based on actual emissions by as much as 2-in-1 million, which results in essentially the same level of risk as was estimated at proposal. We also estimated that chronic non-cancer TOSHIs attributable to the additional exposures from non-routine flaring and PRD HAP emissions are well below 1. When adding the additional chronic noncancer TOSHI risks from the screening analysis with the analysis in the proposal, chronic noncancer TOSHI risks still remain below 1. Further, our screening analysis also projected that maximum acute exposure to non-routine PRD and flare emissions would result in a maximum hazard quotient (HQ) of 14 from benzene emissions based on a reference exposure level (REL). Based on risk analysis performed for the proposed rule and the screening assessment to consider how conclusions from that analysis would be affected by the additional non-routine flare and PRD emissions allowed under the final rule, we determined that the risk posed after implementation of the revisions to the MACT standards is acceptable.

We request public comments on the screening analysis and the conclusions reached based on that analysis in conjunction with the risk analysis performed for the proposed rule.

### *D. Alternative Work Practice Standards for DCUs Employing the Water Overflow Design*

In Refinery MACT 1, we finalized MACT standards for DCU decoking

operations. Existing DCU-affected sources must comply with a 2 psig or 220 degrees Fahrenheit (°F) limit in the drum overhead line determined on a rolling 60-event basis prior to venting to the atmosphere, draining, or deheading the coke drum. New DCU affected sources must comply with a 2.0 psig or 218 °F limit in the drum overhead line on a per-event, not-to-exceed basis. In the final rule, we also finalized an alternative requirement to address DCU with water overflow design that we did not propose, where pressure monitoring would not be appropriate. As part of these provisions, we also included a new requirement in the final rule for DCU with water overflow design to hard-pipe the overflow drain water to the receiving tank via a submerged fill pipe (pipe below the existing liquid level) whenever the overflow water exceeds 220 °F.

We request public comments on the alternative work practice standard for delayed coking units employing a water overflow design provided in 40 CFR 63.657(e).

*E. Reduced Frequency of Fenceline Monitoring*

In the December 2015 final rule, we revised Refinery MACT 1 to establish a work practice standard requiring refinery owners to monitor benzene concentrations around the fenceline or perimeter of the refinery. We promulgated new EPA Methods 325A and B which specify monitor siting and quantitative sample analysis procedures. The work practice is designed to improve the management of fugitive emissions at petroleum refineries through the use of passive monitors by requiring sources to implement corrective measures if the benzene concentration in air attributable to emissions from the refinery exceeds a fenceline benzene concentration action level. The work practice requires refinery owners to reduce fenceline levels that exceed the concentration action level to at or below that level. In the final rule, we included provisions that were not proposed that would allow for reduced monitoring frequency (after 2 years of continual monitoring) at monitoring locations with consistently low fenceline concentrations.

We request public comments on the provision allowing refineries to reduce the frequency of fenceline monitoring at monitoring sites that consistently record benzene concentrations below 0.9 micrograms per cubic meter, as provided in 40 CFR 63.658(e)(3).

## IV. Proposed Technical Clarifications

In this action, the EPA is proposing to amend provisions related to how to address overlapping requirements for equipment leaks that are contained in Refinery MACT 1 and in the Refinery Equipment Leak NSPS (40 CFR part 60, subpart GGGa). The Refinery MACT 1 provision at 40 CFR 63.640(p)(2) currently states that equipment leaks that are subject to the provisions in the Refinery Equipment Leak NSPS (40 CFR part 60 subpart GGGa) are only required to comply with the provisions in the Refinery Equipment Leak NSPS. However, the Refinery Equipment Leak NSPS does not include the new work practice standards finalized in the final Refinery MACT 1 at 40 CFR 63.648(j) which apply to releases from PRD. Certain provisions of 40 CFR 63.648(j) detail a work practice standard for the management of releases from PRD. We intended that these new work practice standards would be applicable to all PRD at refineries, including those PRD subject to the requirements in the Refinery Equipment Leaks NSPS. In order to provide clarity and assure that stakeholders subject to these provisions fully understand their compliance obligations, we are proposing that equipment components that are also subject to the provisions of the Refinery Equipment Leak NSPS, are required to comply with the provisions specified in the Refinery Equipment Leaks NSPS, except for PRDs in organic HAP service, which must only comply with the requirements in Refinery MACT 1 at 40 CFR 63.648(j) for PRDs. We are also amending the introductory text in 40 CFR 63.648(j) to reference Refinery Equipment Leaks NSPS at 40 CFR 60.482–4a and amending paragraphs (j)(2)(i) through (iii) of Refinery MACT 1 to correct the existing reference to 40 CFR 60.485(b), which should refer to 40 CFR 60.485(c) and 40 CFR 60.485a(c).

## V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subpart CC and has assigned OMB control number 2060–0340. The proposed amendments are the result of a clarification that does not affect the estimated burden of the existing rule. Specifically, we are proposing amendments clarifying that facilities using the equipment leak overlap provisions must also comply with the PRD work practice standard in 40 CFR part 63, subpart CC. In our burden estimates for the December 1, 2015, final rule, we assumed that all major source refineries would have to comply with the PRD work practice standards. Consequently, the burden estimates provided with the December 1, 2015, final rule are consistent with the proposed clarifying amendment. Therefore, we have not revised the information collection request for the existing rule.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The proposed rule consists of a clarification which does not change the expected economic impact analysis performed for the existing rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of $100 million or more 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 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 action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action requests comment on a risk assessment that is described in section III. C. of this preamble.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The proposed amendments serve to clarify one aspect of the rule. They do not relax the control measures on regulated sources, and, therefore, do not change the level of environmental protection.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 6, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

### Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 2. Section 63.640 is amended by revising paragraph (p)(2) to read as follows:

**§ 63.640 Applicability and designation of affected source.**

* * * * *

(p) * * *

(2) Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa, except that pressure relief devices in organic HAP service must only comply with the requirements in § 63.648(j).

* * * * *

■ 3. Section 63.648 is amended by revising paragraphs (j) introductory text and (j)(2)(i) through (iii) to read as follows:

**§ 63.648 Equipment leak standards.**

* * * * *

(j) Except as specified in paragraph (j)(4) of this section, the owner or operator must comply with the requirements specified in paragraphs (j)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 60.482–4 of this chapter, § 60.482–4a of this chapter, or § 63.165, as applicable. Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraph (j)(3) of this section for all pressure relief devices.

* * * * *

(2) * * *

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (j)(2)(i) of this section (not replacing the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator may not initiate startup of the equipment served by the rupture disk until the rupture disc is replaced. The owner or operator must conduct instrument monitoring, as specified in § 60.485(c) of this chapter, § 60.485a(c) of this chapter, or § 63.180(c), as applicable, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

* * * * *

■ 4. Section 63.670 is amended by revising paragraph (o)(1)(ii)(B) to read as follows:

**§ 63.670 Requirements for flare control devices.**

* * * * *

(o) * * *

(1) * * *

(ii) * * *

(B) Implementation of prevention measures listed for pressure relief devices in § 63.648(j)(3)(ii) for each pressure relief valve that can discharge to the flare.

* * * * *

[FR Doc. 2016–25162 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[EPA–HQ–OPP–2015–0032; FRL–9952–19]**

# Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before November 17, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

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

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

### *New Tolerances*

1. *PP 5E8431.* (EPA–HQ–OPP–2016–0087). Bayer CropScience LP, 2 T.W. Alexander Dr., Research Triangle Park, NC, requests to establish a tolerance in 40 CFR part 180.435 for residues of the insecticide, deltamethrin, in or on orange, fruit at 0.3 ppm, orange, dried pulp at 3 ppm, and orange, oil at 50 ppm. The gas chromatography equipped with an electron capture detector (GC/ECD) is used to measure and evaluate the chemical cis-deltamethrin, alpha-R-

deltamethrin and trans-deltamethrin. Contact: RD.

2. *PP 6E8482.* (EPA–HQ–OPP–2016–0352). Interregional Research No 4 (IR–4) Project, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.442 for residues of the insecticide, Bifenthrin (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on apple, wet pomace at 1.3 ppm; avocado at 0.50 ppm; berry, low growing, subgroup 13–07G at 3.0 ppm; brassica, leafy greens, subgroup 4–16B at 15 ppm; caneberry subgroup 13–07A at 1.0 ppm; fruit, citrus, group 10–10 at 0.05 ppm; fruit, pome, group 11–10, except mayhaw, at 0.70 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.20 ppm; nut, tree, group 14–12 at 0.05 ppm; peach, subgroup 12–12B at 0.70 ppm; pepper/eggplant subgroup 8–10B at 0.50 ppm; pomegranate at 0.50 ppm; and tomato, subgroup 8–10A at 0.30 ppm. The GC/ECD is used to measure and evaluate the chemical bifenthrin. Contact: RD.

3. *PP 6E8483.* (EPA–HQ–OPP–2016–0448). IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201–W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.686 for residues of the fungicide, benzovindiflupyr (N-[9-(dichloromethylene)-1,2,3,4-tetrahydro-1,4-methanonaphthalen-5-yl]-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide) in or on onion, bulb, subgroup 3–07A at 0.02 ppm and onion, green, subgroup 3–07B at 0.4 ppm. The multi-residue analytical method consisting of high pressure liquid chromatography with tandem mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical benzovindiflupyr. Contact: RD.

4. *PP 6E8484.* (EPA–HQ–OPP–2016–0475). IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.475 for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4,—triazole, including its metabolites and degradates, in or on brassica, leafy greens, subgroup 4–16B at 35 ppm; cranberry at 0.6 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 4.0 ppm; guava at 3.0 ppm; kohlrabi at 2.0 ppm; papaya at 0.6 ppm; and vegetable, brassica, head and stem, group 5–16 at 2.0 ppm. Available analytical methods for crops include gas chromatography (GC) equipped with a nitrogen-phosphorous detector; and LC/MS/MS; and for meat, milk, poultry or eggs, Syngenta's method, AG544A, is used to measure and evaluate the chemical difenoconazole. Contact: RD.

*Amended Tolerances*

1. *PP 6E8482.* (EPA–HQ–OPP–2016–0352). IR–4 Project, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes upon establishment of tolerances referenced above under ''New Tolerances'' to remove existing tolerances in 40 CFR 180.442 for residues of the insecticide, Bifenthrin (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on apple at 0.5 parts per million (ppm) brassica, leafy greens, subgroup 5B at 3.5 ppm; caneberry, subgroup 13A at 1.0 ppm; eggplant 0.05 ppm; fruit, citrus, group 10 at 0.05 ppm; grape at 0.20 ppm; groundcherry 0.5 ppm; nectarine at 0.5 ppm; nut, tree, group 14 at 0.05 ppm; okra at 0.50 ppm; peach at 0.5 ppm; pear at 0.5 ppm; pepino 0.5 ppm; pepper, bell at 0.5 ppm; pepper, nonbell at 0.5 ppm; pistachio at 0.05 ppm; strawberry at 3.0 ppm; tomato at 0.15 ppm; and turnip, greens at 3.5 ppm. The GC/ECD is used to measure and evaluate the chemical bifenthrin. Contact: RD.

2. *PP 6E8484.* (EPA–HQ–OPP–2016–0475). IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540, requests that upon establishing tolerances for this petition under ''New Tolerances'' above, 40 CFR part 180.475 is amended to remove existing tolerances for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4,—triazole, including its metabolites and degradates, in or on brassica, head and stem, subgroup 5A at 1.9 ppm, brassica, leafy greens, subgroup 5B at 35 ppm; grape at 4.0 ppm; and turnip, greens at 35 ppm. Contact: RD

*Tolerance Exemptions*

1. *PP IN–10922.* (EPA–HQ–OPP–2016–0487). Itaconix, 2 Marin Way, Stratham, NH 03885, requests to establish an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-methylene-, telomer with sodium phosphinate (1:1), acidified, potassium salt, 4000 amu, (CAS Reg. No. 1663489–14–2) with a number-average molecular weight (in amu) of 3811 grams/mole when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

2. *PP IN–10905.* (EPA–HQ–OPP–2016–0472). Technology Sciences Group (1150 18th St., NW., Suite 1000, Washington, DC 20036) on behalf of Central Garden & Pet (1501 East Woodfield Road, Suite 200 West, Schaumburg, IL 60173) requests to establish an exemption from the requirement of a tolerance for residues of ethoxyquin (CAS Reg No. 91–53–2) when used as an inert ingredient (antioxidant and stabilizing agent) in pesticide formulations applied to animals under 40 CFR 180.930 at a concentration not to exceed 0.015% by weight (150 ppm) in finished feed-through pesticide formulations. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD

*Tolerance Exemption Amended*

1. *PP IN–10965.* (EPA–HQ–OPP–2016–0500). Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005, requests to amend the exemption from the requirement of a tolerance in 40 CFR 180.910 for residues of mono-, di-, and trimethylnapthalenesulfonic acids and napthalenesulfonic acids formaldehyde condensates, ammonium and potassium salts (CAS Reg. Nos. 9008–63–3, 9069–80–1, 9084–06–4, 36290–04–7, 91078–68–1, 141959–43–5, 68425–94–5) to include the corresponding potassium salt (CAS Reg. No. 67828–14–2) when used as an inert ingredient (surfactant, related adjuvant of surfactant in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: September 30, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–25146 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R6–ES–2016–0106; 4500030114]**

**RIN 1018–BB78**

## Endangered and Threatened Wildlife and Plants; Proposed Rule for the North American Wolverine

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reopening the comment period on our February 4, 2013, proposed rule to list the distinct population segment of wolverine (*Gulo gulo luscus)* occurring in the contiguous United States as threatened, under the Endangered Species Act of 1973, as amended (Act). The District Court for the District of Montana vacated our August 13, 2014, withdrawal of our proposed rule to list the distinct population segment of the North American wolverine as threatened under the Act, which effectively returns the process to the stage of the proposed listing rule we published in 2013. We will initiate a new status review of the North American wolverine, to determine whether this distinct population segment meets the definition of an endangered or threatened species under the Act. We request new information regarding the North American wolverine to inform this status review. We may also reopen the comment period should we receive significant new information as a result of this document.

**DATES:** In order to fully consider and incorporate public comment, the Service requests submittal of comments by close of business November 17, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:**

*Document availability:* You may obtain copies of the proposed rule and supporting documents on the internet at *https://www.fws.gov/mountain-prairie/es/wolverine.php* or at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0107 or by mail from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the docket number for background information on this species is different from the docket number for the submission of comments, which is provided in the headings of this document and also in the following paragraphs:

*Written Comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the proposed listing rule by searching for Docket No. FWS–R6–ES–2016–0106, which is the docket number for this document and any further documents that may be published related to this rulemaking action.

(2) *By hard copy:* Submit comments on the proposed listing rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2016–0106; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601, by telephone (406) 449–5225). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

*Species Information*

Please refer to the February 4, 2013, proposed listing rule at 78 FR 7864 for information about the wolverine's taxonomy; life history; requirements for habitat, space, and food; densities; status in Canada and Alaska; geographic range delineation complexities; distribution; and habitat relationships and distribution. Please also refer to our December 14, 2010, 12-month petition finding (75 FR 78030) and our February 4, 2013, proposed rule to list the North American wolverine (78 FR 7864) for a detailed evaluation of the wolverine under our distinct population segment (DPS) policy, which published in the **Federal Register** on February 7, 1996 (61 FR 4722).

*Previous Federal Actions*

Please refer to the proposed listing rule for the wolverine (78 FR 7864; February 4, 2013) for a detailed description of previous Federal actions concerning the wolverine prior to 2013. On February 4, 2013, we published a proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act, with a proposed rule under section 4(d) of the Act that outlines the prohibitions necessary and advisable for the conservation of the wolverine (78 FR 7864). We also published a February 4, 2013, proposed rule to establish a nonessential experimental population (NEP) area for the North American wolverine in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming (78 FR 7890). On October 31, 2013, we reopened the comment period on the proposed listing rule for an additional 30 days (78 FR 65248).

Following publication of the 2013 proposed rules, there was scientific disagreement and debate about the interpretation of the habitat requirements for wolverines and the available climate change information used to determine the extent of threats to the DPS. Based on this substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, on February 5, 2014 (79 FR 6874), we announced a 6-month extension of the final determination of whether to list the wolverine DPS as a threatened species. We also reopened the comment period on the proposed rule to list the contiguous U.S. DPS of the North American wolverine for 90 days.

On August 13, 2014, we withdrew the proposed rule to list the DPS of the North American wolverine as a threatened species under the Act (79 FR 47522). This withdrawal was based on our conclusion that the factors affecting the DPS as identified in the proposed rule were not as significant as believed at the time of the proposed rule's publication in 2013. As a result, we also withdrew our associated proposed rule under section 4(d) of the Act contained in the proposed listing rule and withdrew the proposed NEP designation under section 10(j) of the Act for the southern Rocky Mountains.

In October 2014, three complaints were filed in the District Court for the District of Montana by Defenders of Wildlife, WildEarth Guardians, Center for Biological Diversity, and other organizations challenging the withdrawal of the proposal to list the North American wolverine DPS.

Numerous parties intervened in the litigation. These three cases were consolidated, and on April 4, 2016, the court issued a decision. As a result of the court order, the August 13, 2014, withdrawal was vacated and remanded to the Service for further consideration consistent with the order.

In effect, the court's action returns the process to the proposed rule stage, and the status of the wolverine under the Act has effectively reverted to that of a proposed species for the purposes of consultation under section 7 of the Act. Therefore, this document notifies the public that we are reopening the comment period on the February 4, 2013, proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act (78 FR 7864). We also announce that we will be initiating an entirely new status review of the North American wolverine, to determine whether this DPS meets the definition of an endangered or threatened species under the Act, or whether the species is not warranted for listing. Any listing determination we make must be made based on the best available information. We invite the public to comment on the proposed rule, and we request new information regarding the North American wolverine that has become available since the publication of the proposed rule to inform this status review.

## Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened that was published in the **Federal Register** on February 4, 2013 (78 FR 7864). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures or efforts for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether and how the wolverine may benefit from such a designation; whether there are threats to the species from human activity, the degree to which it can be expected to increase due to a critical habitat designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on the amount and distribution of wolverine habitat, including den sites.

(7) Specific information on the impacts of small population size and genetic diversity on the wolverine.

(8) Information on the projected and reasonably likely impacts of climate change on the wolverine and its habitat, including the loss of snowpack and impacts to wolverine denning habitat.

(9) Additional provisions the Service may wish to consider to conserve, recover, and manage the proposed DPS of the North American wolverine occurring in the contiguous United States.

If you submitted comments or information on the proposed rule (78 FR 7864) during the initial comment periods from February 4, 2013, to May 6, 2013, from October 31, 2013 to December 2, 2013, or from February 4, 2014, to May 6, 2014, please do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and any additional information we receive during all comment periods. The final decision may differ from the proposed rule, based on our review of all information received during this rulemaking proceeding. If we receive significant new scientific information, we may need to reopen the public comment period so that the public can comment on the new information.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2016–0106, and supporting documentation we used in preparing the proposed rule will be available for public inspection on the internet at *https://www.fws.gov/mountain-prairie/es/wolverine.php* or at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0107, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0107, or by mail from the Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the 2012 docket has documents and other information related to the proposed rule, as well as the comments received and the proposed rule itself, and the 2016 docket is the correct docket for submission of comments.

## Authors

The primary authors of this notice are the staff members of the Mountain Prairie Regional Office, U.S. Fish and Wildlife Service.

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 19, 2016.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–24929 Filed 10–17–16; 8:45 am]

BILLING CODE 4333–15–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 130417378–6933–01]**

**RIN 0648–BD22**

# Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Proposed Amendment 5b

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is amending the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) based on the results of the 2016 stock assessment update for Atlantic dusky sharks. Based on this assessment, NMFS determined that the dusky shark stock remains overfished and is experiencing overfishing. Consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is proposing management measures that would reduce fishing mortality on dusky sharks and rebuild the dusky shark population consistent with legal requirements. The proposed measures could affect U.S. commercial and recreational fishermen who harvest sharks in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

**DATES:** Written comments must be received by December 22, 2016. NMFS will hold six public hearings on Draft Amendment 5b and this implementing proposed rule on November 9, November 15, November 16, November 21, and November 28, 2016. NMFS will also hold an operator-assisted public hearing via conference call and webinar for this proposed rule on December 12, 2016, from 2:00 p.m. to 4:00 p.m. EST. For specific locations, dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0070, by any one 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-2013-0070,* 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:* Please include the identifier NOAA–NMFS–2013–0070 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

NMFS will hold 6 public hearings and 1 conference call on this proposed rule. NMFS will hold public hearings in Manalapan, NJ; Newport, RI; Belle Chasse, LA; Houston, TX; Melbourne, FL; and Manteo, NC; and via a public conference call. For specific locations, dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents—including the draft environmental impact statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic HMS FMP are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Tobey Curtis at 978–281–9273.

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis at 978–281–9273 or Karyl Brewster-Geisz at 301–427–8503.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic commercial shark fisheries are managed primarily under the authority of the Magnuson-Stevens Act. The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A brief summary of the background of this proposed rule is provided below. Additional information regarding Atlantic HMS management can be found in the Draft Environmental Impact Statement (DEIS) for Amendment 5b to the 2006 Consolidated HMS FMP (Amendment 5b), the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at *http://www.nmfs.noaa.gov/sfa/hms/.*

### *Dusky Shark Stock Status and Management History*

NMFS has prohibited the retention of dusky sharks in commercial and recreational fisheries since 2000. In 2008, in response to a 2006 stock assessment declaring dusky sharks to be overfished with overfishing occurring despite this complete prohibition, NMFS adopted a rebuilding plan for the stock. This rebuilding plan, set out in Amendment 2 to the Consolidated HMS FMP, undertook a suite of measures to address dusky shark overfishing, focusing primarily on bycatch of the species in other shark fisheries. Major components of this plan—which are unchanged by this action—include a continued prohibition on retention of dusky sharks (§§ 635.22(c)(4) and 635.24(a)(5)), time/area closures (§ 635.21(d)), and the prohibition of landing sandbar sharks (the historic target species for the large coastal shark fishery) outside of the shark research fishery along with significant retention limit reductions in the bottom longline fishery where interactions were commonly occurring (§§ 635.24(a)(1), (2), and (3)). The terminal year for rebuilding was set at 2108, consistent with the assessment, which concluded that the stock could rebuild within 100 to 400 years. In 2011, three years into this 100-year rebuilding plan, a benchmark stock assessment for dusky sharks was completed through the Southeast Data, Assessment, and Review (SEDAR) 21 process (76 FR 62331, October 7, 2011), the first assessment for dusky sharks conducted within the SEDAR process. The 2011 stock assessment provided an update to a 2006 dusky shark stock assessment and concluded that the stock remained overfished with overfishing occurring.

On October 7, 2011 (76 FR 62331), NMFS made stock status determinations for several shark species based on the results of the SEDAR 21 process. NMFS determined in the notice that dusky sharks, a prohibited species, were still overfished and still experiencing overfishing (*i.e.,* their stock status has not changed from a 2006 assessment). The stock assessment recommended a

decrease in dusky shark mortality of 58 percent against 2009 levels. NMFS announced its intent to prepare an Environmental Impact Statement (EIS) for Amendment 5 to the 2006 Atlantic Consolidated HMS FMP, which would assess the potential effects on the human environment of additional action proposed through rulemaking to rebuild and end overfishing of several stocks assessed in SEDAR 21, including dusky sharks, consistent with the Magnuson-Stevens Act.

NMFS considered alternatives to rebuild several overfished Atlantic shark species, including dusky sharks, in Draft Amendment 5 (77 FR 70552, November 26, 2012). The proposed measures were designed to reduce fishing mortality and effort, while ensuring that a limited sustainable shark fishery for certain species could be maintained consistent with legal obligations and the 2006 Consolidated HMS FMP. NMFS received substantial public comment disputing the basis for the proposed dusky shark measures, and NMFS decided further analysis was necessary on those measures in a separate FMP amendment, EIS, and proposed rule. NMFS finalized management measures for the other Atlantic shark species included in Draft Amendment 5 in the Final Amendment 5a and associated final rule (78 FR 40318, July 3, 2013), while announcing that dusky shark management measures would be included in an upcoming, separate rulemaking known as Amendment 5b (*i.e.,* this rule).

NMFS prepared a Predraft for Amendment 5b in March 2014 that considered the feedback received on Draft Amendment 5, solicited additional public input, and consulted with its Advisory Panel at the Spring 2014 meeting. The Predraft considered alternatives that were not included in Draft Amendment 5, as well as new information.

Following the Predraft for Amendment 5b, additional information regarding dusky sharks became available that was not available at the time of the SEDAR 21 stock assessment. NMFS, in response to two petitions from environmental groups regarding listing dusky sharks under the Endangered Species Act (ESA), conducted an ESA Status Review for the Northwest Atlantic population of dusky sharks, which was completed in October 2014. That status review included an updated analysis of three fishery-independent surveys, the Northeast Fisheries Science Center (NEFSC) Coastal Shark Bottom Longline Survey (NELL), the Virginia Institute of Marine Science Shark Longline Survey (VIMS LL), and the University of North Carolina Shark Longline Survey (UNC LL), using the same methodology as the SEDAR 21 Data Workshop (McCandless et al., 2014). The updated analysis included data from 2010—2012 and showed an increasing trend in dusky shark indices of abundance for all three surveys since 2009, the terminal year of data used for dusky sharks in the SEDAR 21 stock assessment. The ESA Status Review Team concluded that, based on the most recent stock assessment, abundance projections, updated analyses, and the potential threats and risks to population extinction, the dusky shark population in the Northwest Atlantic and Gulf of Mexico has a low risk of extinction currently and in the foreseeable future. On December 16, 2014, NMFS announced a 12-month finding that determined that the Northwest Atlantic and Gulf of Mexico population of dusky sharks did not warrant listing under the ESA at that time (79 FR 74954).

NMFS applied additional restrictions in the shark research fishery to reduce dusky shark mortality in 2013 (refer to the Amendment 5b DEIS; see **ADDRESSES**). This included establishing a dusky shark interaction cap for the entire shark research fishery of 45 dusky sharks per year, with more specific caps within the regions, which has been an effective way to minimize dusky shark dead discards within the limited shark research fishery, which only involves 6 to 10 participants annually.

By Fall 2015, as described in an HMS staff presentation to its Advisory Panel, the reductions in dusky shark mortality since 2009, and the increasing population trends from fishery-independent surveys, had indicated that management actions may have already reduced dusky shark mortality to levels prescribed by the SEDAR 21 stock assessment (*i.e.,* reduced mortality by at least 58 percent against 2009 levels). In light of this updated information, the Southeast Fisheries Science Center (SEFSC) prioritized an update of the SEDAR 21 dusky shark stock assessment using data through 2015, to be completed in summer 2016. It was determined that further action on Amendment 5b should wait until after the completion of the assessment update to ensure that it was based on the best available scientific information.

On October 27, 2015, the environmental advocacy organization Oceana filed a complaint against NMFS in Federal district court alleging violations of the Magnuson-Stevens Act and Administrative Procedure Act with respect to delays in taking action to rebuild and end overfishing of dusky sharks. A settlement agreement was reached between NMFS and the Plaintiffs on May 18, 2016, regarding the timing of the pending agency action. This settlement acknowledged that NMFS was in the process of developing an action to address overfishing and rebuilding of dusky sharks and that an assessment update was ongoing and stipulated that, based upon the results of the assessment update, NMFS would submit a proposed rule to the **Federal Register** no later than October 14, 2016.

A draft of the SEDAR 21 stock assessment update for dusky sharks became available in July 2016 and underwent internal NMFS peer review in August 2016. The assessment update added 2010–2015 data inputs from the same data sources vetted and approved in SEDAR 21 (fishery-dependent and -independent data, relative effort series, etc.) to the accepted models in order to update the status of the stock using the most recent data. Five model scenarios were run, all of which were considered to be plausible states of nature according to SEDAR 21 (*i.e.,* no single model is considered preferred to the others). The peer reviewers did not identify any issues or concerns with the methods applied or the results or conclusions of the assessment update. However, SEDAR 21 and the 2016 update noted a high level of uncertainty in the input observations, as well as the model outputs, beyond that of many other Atlantic shark stock assessments. The final SEDAR 21 stock assessment update report was made available in September 2016 and is available on the SEDAR Web site (*http://sedarweb.org/sedar-21*).

Despite including much of the same data as those used in the 2014 ESA Dusky Shark Status Review Report (McCandless et al., 2014), which suggested mostly positive trends in dusky shark relative abundance, the 2016 assessment update concluded that the stock is still overfished and experiencing overfishing, although the level of overfishing has decreased compared to previous assessments and is low. Specifically, Spawning Stock Fecundity (SSF) relative to $SSF_{MSY}$ (proxy biomass target) ranges from 0.41 to 0.64 (*i.e.,* overfished) (median = 0.53). The fishing mortality rate (F) in 2015 relative to $F_{MSY}$ is estimated to be 1.08–2.92 (median = 1.18) (values >1 indicate overfishing).

The rebuilding year was also updated according to the new model projections. The target rebuilding year was calculated as the amount of time needed for the stock to reach the target ($SSF_{MSY}$) with a 70% probability in the absence of fishing mortality (F=0) plus one mean

generation time (40 years). The updated projections estimate that the target rebuilding years range from 2084–2204, with a median of 2107. The previous rebuilding year under SEDAR 21 was 2108.

In order to achieve rebuilding by 2107 with a 50% probability, the final models projected that F on the stock would have to be reduced 24–80% (median = 35%) from 2015 levels. The assessment update states that the stock can sustain small amounts of fishing mortality during its rebuilding. When developing measures to address overfishing or rebuilding in HMS fisheries, NMFS' general approach is that measures should have at least a 50-percent probability of success in achieving those goals. For Atlantic highly migratory sharks, however, NMFS has, since 1999, typically used a 70-percent probability for sharks, in light of their late age to maturity, reproduction, population growth rate, and other considerations. Given particular issues specific to the 2016 SEDAR 21 dusky shark assessment update (explained below), NMFS used the F reduction associated with the 50-percent probability to develop Draft Amendment 5b.

While peer reviewers did not identify any issues with how the 2016 assessment update was conducted, SEDAR 21 and the 2016 update noted a high level of uncertainty in the input observations, as well as the model outputs, beyond that of many other Atlantic shark stock assessments. Data on dusky sharks is limited, given the retention prohibition and fact that interactions with prohibited sharks are rare events, and dusky shark sharks are often misidentified. Data input to the models came from different types of fishing vessels/gears and time series collected by different entities, including the Atlantic Shark Bottom Longline Observer Program, Shark Bottom Longline Research Fishery, the Atlantic Pelagic Observer Program, the recreational Large Pelagics Survey, the Northeast Fisheries Science Center's Bottom Longline Survey, and the Virginia Institute of Marine Science's Bottom Longline Survey. Based on these data, the five plausible model scenarios in the 2016 assessment update produced a very wide range of estimates (overfishing and overfished status) and outcomes (F reductions, rebuilding timelines, etc.). In light of the range of estimates and outcomes, NMFS used the median of the five scenarios in its development of measures in Draft Amendment 5b to address overfishing and rebuilding of dusky sharks. Given the range of plausible scenarios from the assessment update, using the median of multiple scenarios is an acceptable method because it is an objective approach for reconciling a range of management options. It is also consistent with the management approach to similar situations in other fisheries (*e.g.,* New England Fishery Management Council's Scientific and Statistical Committee's recommendation for yellowtail flounder in September 2009; Scott et al. 2016).

Because of the above issues, NMFS decided it was appropriate from a scientific, technical perspective to use the F reduction associated with the 50-percent probability when developing Draft Amendment 5b. While NMFS typically uses a 70-percent probability for Atlantic highly migratory shark species, the 2016 update has a higher level of uncertainty than other shark assessments and presents a more pessimistic view of stock status than was expected based on our preliminary review of the same information and other available information. Such information includes the information reviewed in the ESA Status Review, reductions in U.S. fleet fishing effort due to management actions, and updated age and growth information indicating that dusky sharks are more productive than previously thought (Natanson et al. 2014). This information could not be used in the 2016 assessment update, because assessment updates only incorporate data inputs (*e.g.,* time series, life history parameters, etc.) that were previously vetted through the SEDAR process and approved as part of the most recent benchmark assessment. Here, that was the 2011 benchmark stock assessment (SEDAR 21). Based on its review of the 2016 update, understanding about the operation of the HMS fisheries under current management measures, and other available information, the F estimate associated with the 50-percent probability more accurately reflects current fishing pressure and accounts for the new information on dusky shark productivity than the F estimate associated with the 70-percent probability. From a statistical perspective, the wider confidence band in the projections results in the F estimate associated with a 70-percent probability being substantially lower than the apical value. Thus, the F reduction associated with 70-percent goes well beyond what we would consider appropriately precautionary even for species with relatively slow life history such as sharks (refer to the Amendment 5b DEIS for more details; see **ADDRESSES**). NMFS also notes that the rebuilding year (*i.e.,* length of time the species could rebuild with no fishing mortality plus one mean generation time) was calculated using a 70-percent probability, as is typically done in assessments, which additionally increases the likelihood of achieving rebuilding within the mandated time period.

Therefore, based on the 2016 assessment update, NMFS needs to reduce dusky shark fishing mortality by approximately 35% relative to 2015 levels to rebuild the stock by the year 2107. NMFS also needs to address overfishing, but the level of overfishing is not high (median $F_{2015}/F_{MSY}$ is 1.18). NMFS solicits public comment on its approach in Draft Amendment 5b based on the 2016 update, particularly ideas on different approaches and any scientific support for them.

*Annual Catch Limits (ACLs) and Accountability Measures (AMs)*

The Magnuson-Stevens Act requires that each FMP establish a mechanism for specifying ACLs at a level such that overfishing does not occur, including measures to ensure accountability (AMs) (16 U.S.C. 1853(a)(15)). In 2010, NMFS addressed these requirements for Atlantic highly migratory shark stocks in Amendment 3 to the 2006 Consolidated HMS FMP (Amendment 3) (NMFS 2010), including sharks in the prohibited shark complex, which includes dusky sharks. Draft Amendment 5b clarifies that the ACL for the 19 species of sharks in the prohibited shark complex is zero. NMFS believes that an ACL of zero is appropriate and, along with existing and proposed conservation and management measures, will prevent overfishing.

In its proposed revisions to the NS 1 guidelines (80 FR 2786; January 20, 2015), NMFS explains in § 600.310(g)(3) that if an ACL is set equal to zero and the AM for the fishery is a closure that prohibits fishing for a stock, additional AMs are not required if only small amounts of catch (including bycatch) occur, and the catch is unlikely to result in overfishing. According to the available analyses, prohibited shark species—basking sharks (Campana 2008), night sharks (Carlson et al. 2008), sand tiger sharks (Carlson et al., 2009), white sharks (Curtis et al. 2014), and bigeye thresher sharks (Young et al. 2016)—are not experiencing overfishing. While such analyses have not been completed for all other prohibited shark species, there is no information suggesting that overfishing is occurring on other members of this complex. In addition, commercial and recreational retention of prohibited sharks is prohibited, and there is only a small

amount of bycatch occurring for the complex. The annual number of observed bycatch mortalities of prohibited sharks ranged from 293 to 1,829 sharks per year over the time series, and the most recent observed three-year average annual mortality for all sharks in the complex was 498 sharks (refer to the DEIS for this action for more detail; see **ADDRESSES**).

NMFS acknowledges that, in addition to the small amount of bycatch, there is also information on a small amount of occasional prohibited shark landings. Based on observer and other data and input from the HMS AP, NMFS believes that these landings most likely are due to misidentification issues and lack of awareness of shark fishing regulations, which would be addressed through this action. Even though dusky sharks are experiencing overfishing, NMFS believes that an ACL of zero is still appropriate for the prohibited shark complex. The estimated level of overfishing for dusky sharks is not high (median $F_{2015}/F_{MSY}$ is 1.18; values >1 indicates overfishing), and measures under Draft Amendment 5b and this proposed rule are expected to prevent this overfishing (*See* ''Proposed Measures'' below.) NMFS notes that there would be policy and scientific/data concerns if we were to specify an ACL other than zero. As noted earlier, there was a high level of uncertainty in the 2016 assessment update, given limited data on dusky sharks, multiple data sources, and five plausible model scenarios. The update had five different total allowable catch (TAC) estimates ranging from 7,117 to 47,400 lb (3.2 to 21.5 mt) dressed weight (median = 27,346 lb (12.4 mt) dressed weight). NMFS does not have a basis for picking one model over another, and is concerned that setting an ACL based on the highly uncertain TAC estimates could encourage increased catch. Retention of dusky sharks is prohibited, thus NMFS believes that the ACL for dusky sharks (along with other species in the prohibited shark complex) should be zero.

NMFS is proposing additional measures in Draft Amendment 5b and this proposed rule to prevent overfishing of dusky sharks (see ''Proposed Measures'' below). These measures are in addition to previously-adopted shark management measures. NMFS considers these and other management measures for dusky sharks (*e.g.,* prohibition on retention) to be AMs. After considering the proposed revisions to the NS1 guidelines at 50 CFR 600.310(g)(3), NMFS does not believe additional AMs are needed for dusky sharks or other prohibited sharks. Over the past years, NMFS has taken significant regulatory action that has reduced fishing effort and mortality on shark species. Most significantly, Amendment 2 regulations, which were implemented in July 2008 (73 FR 35778, June 24, 2008, as corrected at 73 FR 40658, July 15 2008), dramatically changed how the directed shark fishery (which had frequent interactions with dusky sharks) operates by, among other things, reducing the commercial trip limit from 4,000 lb (1.81 mt) dw to 36 non-sandbar LCS per trip (approximately 1,213 lb or 0.55 mt dw), significantly reducing the sandbar quota and prohibiting the retention of sandbar sharks outside a limited shark research fishery, and requiring that sharks be landed with their fins attached. Because dusky sharks have a similar distribution to sandbar sharks, and they were frequently caught together, measures that reduced sandbar shark catches also reduced dusky shark bycatch. To address bycatch of dusky sharks on bottom longline gear, the quota for sandbar sharks was reduced by 80 percent, leaving only a small, very closely monitored research fishery. Other measures to reduce dusky shark bycatch, which remain in place, included limiting the number of vessels authorized to land sandbar sharks and setting a finite number of trips that would be taken targeting sandbar sharks in the research fishery. Once this quota was met, there would be no more targeting or possession of sandbar sharks and other shark species within the shark research fishery. Implementing a more restrictive retention limit for non-sandbar LCS (*e.g.,* 36 non-sandbar LCS/vessel/trip for directed permit holders) was also adopted to result in reduced fishing effort targeting sharks with bottom longline (BLL) gear. NMFS also adopted measures that would not allow dusky sharks to be collected for public display, limiting the number of dusky sharks authorized for research, not allowing certain species of sharks that look like dusky sharks to be possessed in recreational fisheries, maintaining the mid-Atlantic shark closed area, and implementing additional time/area closures for BLL gear as recommended by the South Atlantic Fishery Management Council in its Amendment 14. These measures have already reduced effort and fishing mortality, which will increase the likelihood of rebuilding dusky sharks.

Additionally, Amendment 7 to the 2006 Consolidated HMS FMP in 2015 effected management measures in the pelagic longline fishery by implementing measures to control bluefin tuna bycatch in that fishery. As a result, pelagic longline fishery management and monitoring has changed significantly and, at least in the initial years of management under these controls, effort has decreased.

The time series NMFS used to evaluate the impact of conservation and management measures and fishing mortality on the prohibited shark complex begins in 2008 to coincide with the implementation of Amendment 2 and ends in 2015, the most recent year for which data are available. Bycatch data are not available in as timely a manner as data on landed catch, and interactions with prohibited sharks are rare events, which can be highly variable from year to year. Thus, three-year rolling averages were used to smooth interannual variability in the observed catches.

On an annual basis, NMFS will continue to monitor the prohibited shark complex, based on a comparison of the most recent three-year average mortality to previous three-year averages to evaluate the impact of conservation and management measures, and evaluate fishing mortality on the prohibited shark complex. NMFS anticipates that bycatch of dusky and other prohibited sharks will continue to occur; in other words, the three-year averages will be higher than zero. However, small amounts of bycatch are permissible where the ACL is set to zero and the bycatch is small and does not lead to overfishing. For the reasons discussed above, NMFS does not believe that further AMs are needed to prevent overfishing. If significant changes in the three-year average mortality occur, NMFS would evaluate trends in relative abundance data from species within the prohibited shark complex and evaluate current fisheries practices and look for patterns in bycatch mortality of species within the complex to determine if additional measures are needed to address overfishing.

NMFS solicits public comment on its approach to the ACL/AMs for the prohibited shark complex and whether other approaches might address the scientific and management concerns noted above.

*Proposed Measures*

The objectives of Draft Amendment 5b are to end overfishing and rebuild the dusky shark stock. This section summarizes NMFS' proposed, preferred measures. NMFS expects that these measures will prevent overfishing and achieve at least a 35% mortality reduction for dusky sharks to ensure stock rebuilding with at least 50%

probability in conjunction with the measures already in place. A description of other alternatives analyzed is provided in the Initial Regulatory Flexibility Analysis (IRFA) summary, below. NMFS' detailed analysis of a range of alternatives is in the DEIS for Draft Amendment 5b (see **ADDRESSES** for how to get a copy of the DEIS). In developing the alternatives, NMFS considered the existing rebuilding plan, other conservation and management measures that have been implemented in the HMS fisheries since 2008 and that have affected the shark fisheries or shark bycatch in other fisheries, public response to the results of SEDAR 21 and the 2016 SEDAR 21 update, public comments received on Draft Amendment 5 and the Amendment A5b Predraft and comments at Advisory Panel meetings during the course of development of this action.

A number of alternatives that were considered and/or commented on during the development of this action are not preferred alternatives at this time, because they are not needed to meet the objectives of the amendment and would result in negative economic impacts, would not meet the objectives of the amendment, would not be logistically/administratively feasible, are not scientifically supportable, and/or they would result in other unnecessary, negative impacts, as described in the DEIS (see **ADDRESSES**). In general terms, these non-preferred alternatives included requirements for vessels to carry shark identification placards, prohibiting recreational retention of all ridgeback sharks, increasing the recreational minimum size limit, allowing only catch and release of all sharks in the recreational fishery, limiting the number of hooks that could be deployed by pelagic longline vessels, dusky shark time-area closures, closure of the pelagic longline fishery, and individual dusky shark bycatch quotas.

As explained in this proposed rule and the DEIS, NMFS has already taken significant actions that reduce fishing effort and mortality. After extensive review of available management measures, NMFS has determined that the proposed measures will prevent overfishing and rebuild dusky sharks. However, we specifically request comment from the public on other potential management measures and any scientific, policy, or other support for them. In response to public comment, NMFS may make changes in Final Amendment 5b and the final rule by modifying the proposed measures or adopting different or additional measures, which are not currently preferred.

Recreational Measures

The two proposed recreational measures address permitting (Alternative A2) and gear use (Alternative A6a). The first proposed measure would require HMS permit holders that recreationally fish for, retain, possess, or land sharks to obtain a ''shark endorsement,'' which would require completing an online shark identification and fishing regulation training course, before they will be permitted to fish for, retain, possess, or land sharks. This would include HMS Angling and Charter/Headboat permit holders, as well as General category and Swordfish General Commercial permit holders when participating in a registered HMS fishing tournament. Obtaining the shark endorsement would be included in the annual HMS Angling, Charter/Headboat, Atlantic tunas General category, and Swordfish General Commercial permit application or annual renewal process and would not result in any additional fees beyond the cost of the permit itself. NMFS requests public input on how to most effectively implement the requirement through this process, including the appropriate effective date and implementation strategy. Unlike changing permit categories (which can only be done within 45 calendar days of the date of issuance of the permit), vessel owners could obtain a shark endorsement, which would be added to their relevant permit, throughout the year. An online quiz, administered during the application or renewal process, would be required in order to obtain the shark endorsement. This online quiz would focus on identification of prohibited species (*e.g.,* dusky sharks), current recreational rules and regulations, and safe handling instructions. Currently, retention of dusky sharks is prohibited in the recreational fishery. Mortality or landings in the recreational fishery, then, is likely a result of either species misidentification or a lack of knowledge about prohibited shark species regulations or safe handling to minimize harm to accidentally caught fish. The application process for the shark endorsement would also provide an opportunity for focused outreach, and the list of shark endorsement holders would allow for more targeted surveys, increasing the reliability of recreational shark catch estimates. As a result of this measure, NMFS expects accidental retention of dusky sharks to decrease and for dusky shark fishing mortality to decrease in recreational fisheries. Therefore, implementing this measure would likely result in direct short- and long-term moderate beneficial ecological impacts.

The second proposed measure would require HMS permit holders that recreationally fish for, retain, possess, or land sharks (the same permit holders as those described above) to use circle hooks when fishing for, retaining, possessing, or landing sharks. Any shark caught on a hook other than a circle hook would have to be released. This requirement is intended to apply across the recreational shark fishery. To ensure that the measure encompasses all shark fishing activity, we also specify that a person on board an HMS-permitted vessel fishing with natural baits and using wire or heavy (200 lb test or greater) monofilament or fluorocarbon leaders (*i.e.,* the terminal tackle most commonly used for shark fishing) would be presumed to be fishing for sharks. NMFS is specifically inviting public comment on whether this approach will ensure that the measure applies to the entire fishery or whether different indicators of recreational shark fishing should be adopted.

By requiring circle hooks across the recreational shark fishery, dusky shark mortality is expected to decrease. Most evidence suggests that circle hooks reduce shark at-vessel and post-release mortality rates without significantly reducing catchability compared to J-hooks, although it varies by species, gear configuration, bait, and other factors. Willey et al. (2016) found that 3% of sharks caught recreationally with circle hooks were deep hooked while 6% caught on J-hooks were deep hooked. Campana et al. (2009) observed that 96% of sharks that were deep hooked were severely injured or dead while 97% of sharks that were hooked superficially (mouth or jaw) were released healthy and with no apparent trauma. As deep hooked sharks are more likely to die, Willey et al.'s (2016) results indicate circle hooks could reduce mortality of sharks deep-hooked by J-hooks by approximately 48 percent (*i.e.,* a 50 percent reduction from 96 percent deep hooked sharks). For this reason, this alternative would likely have direct moderate beneficial impacts in both the short- and long-term for dusky sharks. Requiring these hooks whenever this gear/bait combination is used and further specifying that sharks may not be retained unless circle hooks have been used is expected to reduce dusky shark mortality because dusky sharks that are inadvertently caught in the recreational fishery would be more easily released in better condition,

reducing dead discards and post-release mortality.

Under these recreational measures combined, HMS permitted recreational vessels without a shark endorsement and/or not fishing with circle hooks would be prohibited from retaining any sharks.

Commercial Measures

In total, the DEIS considers nine main commercial alternatives that cover education, outreach, gear, and time/area measures for pelagic longline, bottom longline, and shark gillnet fisheries. The four commercial fishery measures that are proposed would address dusky shark post-release mortality (Alternatives B3 and B9), avoidance (Alternative B6), and outreach and education (Alternatives B5 and B6) and thus would decrease fishing mortality of dusky sharks in the commercial fisheries. The first proposed measure would require that all pelagic longline fishermen release all sharks that are not being boarded or retained by using a dehooker, or by cutting the gangion no more than three feet from the hook. This alternative would reduce post-release mortality on dusky sharks because using a dehooker or cutting the gangion no more than three feet from the hook would reduce the amount of trailing gear attached to released dusky sharks. A study on recreationally caught thresher sharks (Sepulveda et al. 2015), suggested that thresher sharks that had ~2 m of trailing gear had 88% higher mortality rates than those without. While this study focuses on thresher sharks and not dusky sharks, its conclusion regarding the effects of trailing gear on post-release mortality rates of sharks can be presumed to be generally applicable to other sharks, although further research would be needed to better quantify the percent mortality reductions that could be expected under different species and gear combinations. NMFS Tech Memo OPR–29 on marine turtle mortality indicates that reducing gear left on sea turtles reduces post-interaction mortality of mouth-hooked turtles by 25–33%, further supporting the approach that reducing trailing gear on animals generally improves post-release survival. Because it would apply to all sharks that are not being retained, it would also reduce misidentification problems that occur in identifying dusky sharks from other shark species, because fishermen would have to cut the gangion closer to the shark, allowing a better view for identification purposes. Therefore, implementing this measure is anticipated to have direct short- and long-term minor, beneficial ecological impacts.

The second proposed measure would require additional training on shark identification and safe handling for HMS permitted pelagic longline, bottom longline, and shark gillnet vessels. The course would be taught in conjunction with current Protected Species Safe Handling, Release, and Identification workshops that these vessel owners and operators are already required to attend. The training course would provide information regarding shark identification and regulations, as well as best practices to avoid interacting with dusky sharks and how to minimize mortality of dusky sharks and other prohibited species caught as bycatch. This training course requirement provides outreach to those who are likely to interact with dusky sharks, and should decrease interactions and post-release mortality of dusky sharks. Implementing this measure could result in direct, moderate, beneficial ecological impacts after these vessel owners and operators complete the training course.

In the third proposed measure, NMFS would develop additional outreach materials for commercial fisheries regarding shark identification, and require that all HMS permitted pelagic longline, bottom longline, and shark gillnet vessels abide by a dusky shark fleet communication and relocation protocol. The protocol would require vessels to report the location of dusky shark interactions over the radio to other vessels in the area and that subsequent fishing sets on that fishing trip could be no closer than 1 nautical mile from where the encounter took place. Providing the fleet with more information regarding dusky shark locations and avoiding areas and conditions where dusky sharks are located should reduce dusky shark bycatch. This additional awareness from enhanced outreach methods and the fleet communication and relocation protocol would have direct short- and long-term minor beneficial ecological impacts as it would help reduce bycatch of dusky sharks.

The fourth proposed measure would require the use of circle hooks by HMS directed limited access shark permit holders fishing with bottom longline gear. Circle hooks are already required in the pelagic longline fishery, and this would extend that requirement to the bottom longline fishery to help reduce dusky shark mortality. Currently, approximately 25% of bottom longline vessels do not solely use circle hooks, so this measure would result in additional reductions in dusky shark post-release mortality on those vessels that switch to circle hooks. As in the recreational fishery circle hook measure described above, implementing a circle hook requirement would reduce post-release mortality rates and have direct moderate beneficial impacts in both the short- and long-term for dusky sharks.

*Request for Comments*

NMFS is requesting comments on the alternatives and analyses described in this proposed rule and contained in Draft Amendment 5b and its DEIS, IRFA and RIR. Comments may be submitted via *http://www.regulations.gov,* mail, or fax. Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). We solicit comments on this proposed rule by December 22, 2016 (see **DATES** and **ADDRESSES**).

*Public Hearings*

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule by December 22, 2016. During the comment period, NMFS will hold 6 public hearings and 1 conference call for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guý DuBeck at 301–427–8503, at least 7 days prior to the meeting. NMFS has also asked to present information on the proposed rule and draft Amendment 5b to the Caribbean, Gulf of Mexico, South Atlantic, Mid-Atlantic, and New England Fishery Management Councils and the Atlantic States Marine Fisheries Commissions at their meetings during the public comment period. Please see their meeting notices for dates, times, and locations. In addition, NMFS will have an HMS Advisory Panel meeting on December 1–2, 2016, to discuss this rulemaking. NMFS will announce the location and times of HMS Advisory Panel meeting in a future **Federal Register** notice.

TABLE 1—DATES, TIMES, AND LOCATIONS OF UPCOMING PUBLIC HEARINGS AND CONFERENCE CALL

| Venue | Date/time | Meeting location | Location contact information |
|---|---|---|---|
| Public Hearing | November 9, 2016, 5 p.m.–8 p.m. | Manalapan, NJ | Monmouth County Public Library—Headquarters, 125 Symmes Road, Manalapan, NJ 07726. |
| Public Hearing | November 15, 2016, 5:30 p.m.–8:30 p.m. | Newport, RI | Hotel Viking, 1 Bellevua Ave, Newport, RI 02840. |
| Public Hearing | November 15, 2016, 5 p.m.–8 p.m. | Belle Chasse, LA | Belle Chasse Branch Library, 8442 Louisiana 23, Belle Chasse, LA 70037. |
| Public Hearing | November 16, 2016, 5 p.m.–8 p.m. | Houston, TX | Clear Lake City-County Freeman Branch Library, 16616 Diana Lane, Houston, TX 77062. |
| Public Hearing | November 21, 2016, 5 p.m.–8 p.m. | Melbourne, FL | Melbourne Public Library, 540 E. Fee Ave, Melbourne, FL 32901. |
| Public Hearing | November 28, 2016, 5 p.m.–8 p.m. | Manteo, NC | Commissioners Meeting Room, Dare County Administration Building, 954 Marshall C. Collins Dr., Manteo, NC 27954. |
| Conference call | December 12, 2016, 2 p.m.–4 p.m. | | To participate in conference call, call: (888) 790–3514. Passcode: 1029249. To participate in webinar, RSVP at: *https://noaaevents2.webex.com/mw3100/mywebex/default.do?nomenu=true&siteurl=noaaevents2&service=6&rnd=0.5722618598976709&main_url=https%3A%2F%2Fnoaaevents2.webex.com%2Fec3100%2Feventcenter%2Fevent%2EventAction.do%3FtheAction%3Ddetail%26%26%26EMK%3D4832534b0000000274c902c10b1213f88484f05821429342e756fdecbad04e74e804da6c498aaf5f%26siteurl%3Dnoaaevents2%26confViewID%3D422630081%26encryptTicket%3DSDJTSwAAAAJC7aKRCiFlqT_gqFltkrAG9vq8AwtwiNksxtKEngpmzQ2%26.* |

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; 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; and attendees should not interrupt one another). At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments. The NMFS representative will attempt to 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, if they do not, they may be asked to leave the hearing or may not be allowed to speak during 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, ATCA, 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.

NMFS prepared a DEIS for this proposed rule that discusses the impact on the environment that would result from this rule. A copy of the DEIS is available from NMFS (see **ADDRESSES**). The Notice of Availability of the DEIS is publishing in the **Federal Register** on the same day as this proposed rule. A summary of the impacts of the alternatives considered is described above.

*Paperwork Reduction Act (PRA)*

This proposed rule would require HMS-permitted recreational fishermen to obtain a shark endorsement in order to fish for, retain, possess, or land sharks. Public comment is sought regarding: whether this proposed collection of information 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 (enter office name) at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

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

*Regulatory Flexibility Act*

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Description of the Reasons Why Action Is Being Considered

As described in the preamble of this rule and in the Draft Amendment 5b DEIS (see **ADDRESSES**), the proposed action is designed to provide measures in addition to those previously adopted to further address the overfished and overfishing occurring status of the dusky shark stock. NMFS previously considered alternatives for management of dusky sharks in Draft Amendment 5, which proposed measures that were designed to reduce fishing mortality and effort in order to prevent overfishing and rebuild various overfished Atlantic shark species, including dusky sharks, while ensuring that a limited sustainable shark fishery for certain species could be maintained consistent with legal obligations and the 2006 Consolidated HMS FMP. After reviewing all of the comments received,

NMFS determined further analyses were warranted on measures pertaining to dusky sharks in a separate FMP amendment (Amendment 5b), EIS, and this proposed rule.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objectives of, and legal basis for, this proposed rule are summarized in the preamble of this rule and in the Draft Amendment 5b DEIS (see **ADDRESSES**).

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

This proposed rule is expected to directly affect commercial pelagic longline, bottom longline, shark gillnet, and recreational shark fishing vessels that possess HMS permits. To fish for Atlantic HMS, pelagic longline vessels must possess an Atlantic shark limited access permit, an Atlantic swordfish limited access permit, and an Atlantic Tunas Longline category permit. For the recreational management measures, the proposed management measures would only directly apply to small entities that are Charter/Headboat permit holders that provide for-hire trips that target sharks. Other HMS recreational fishing permit holders are considered individuals, not small entities.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) 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 not in excess of $11 million for all its affiliated operations worldwide. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. The Small Business Administration (SBA) has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than $7.5 million.

Regarding those entities that would be directly affected by the recreational management measures, HMS Angling (Recreational) category permits are typically obtained by individuals who are not considered businesses or small entities for purposes of the RFA. Additionally, while Atlantic Tunas General category and Swordfish General commercial permit holders hold commercial permits and are usually considered small entities, because the proposed management measures would only affect them when they are fishing under the recreational regulations for sharks during a registered tournament, NMFS is not considering them small entities for this rule. However, because vessels with the HMS Charter/Headboat category permit are for-hire vessels, these permit holders can be regarded as small entities for RFA purposes. At this time, NMFS is unaware of any charter/headboat businesses that could exceed the SBA receipt/revenue thresholds for small entities. Overall, the recreational alternatives would impact a portion of the 3,596 HMS Charter/Headboat permit holders interested in shark fishing.

Regarding those entities that would be directly affected by the commercial management measures, the average annual revenue per active pelagic longline vessel is estimated to be $187,000 based on the 170 active vessels between 2006 and 2012 that produced an estimated $31.8 million in revenue annually. The maximum annual revenue for any pelagic longline vessel between 2006 and 2015 was less than $1.9 million, well below the NMFS small business size standard for commercial fishing businesses of $11 million. Other non-longline HMS commercial fishing vessels typically generally earn less revenue than pelagic longline vessels. Therefore, NMFS considers all Atlantic HMS commercial permit holders to be small entities. The preferred commercial alternatives would apply to the 280 Atlantic tunas Longline category permit holders and 224 directed shark permit holders. Of these 280 permit holders, only 136 have Individual Bluefin Quotas (IBQ) shares required to go commercial pelagic longline fishing.

NMFS has determined that the preferred alternatives would not likely directly affect any small organizations or small government jurisdictions defined under RFA. More information regarding the description of the fisheries affected, and the categories and number of permit holders, can be found in Chapter 3 of the Draft Amendment 5b DEIS (see **ADDRESSES**).

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule

Several of the preferred alternatives in Draft Amendment 5b would result in reporting, record-keeping, and compliance requirements that may require new Paperwork Reduction Act (PRA) filings and some of the preferred alternatives would modify existing reporting and record-keeping requirements, and add compliance requirements. NMFS estimates that the number of small entities that would be subject to these requirements would include the Atlantic tuna Longline category (280), Directed and Incidental Shark Limited Access (224 and 275, respectively), and HMS Charter/Headboat category (3,596) permit holders.

*Recreational Alternatives*

The preferred recreational alternative, A2, would require recreational fishermen fishing for, retaining, possessing, or landing sharks to obtain a shark endorsement in addition to other existing permit requirements. Obtaining the shark endorsement would be included in the online HMS permit application and renewal processes and would require the applicant to learn about prohibited shark species identification, regulations, and safe handling guidelines, and then complete a short quiz focusing on shark species identification. The applicant would simply need to indicate the desire to obtain the shark endorsement, after which he or she would be directed to a short online quiz that would take minimal time to complete. Adding the endorsement to the permit and requiring applicants to take the online quiz to obtain the endorsement will require a modification to the existing PRA for the permits.

*Commercial Measures Alternatives*

Alternative B5, a preferred alternative, would require completion of shark identification and fishing regulation training as a new part of all Safe Handling and Release Workshops for HMS pelagic longline (PLL), BLL, and shark gillnet vessel owners and operators. The training course would provide information regarding shark identification and regulations, as well as best practices to avoid interacting with dusky sharks and how to minimize mortality of dusky sharks caught as bycatch. Compliance with this course requirement would be mandatory and be a condition for permit renewal. A certificate would be issued to all commercial pelagic longline vessel owners indicating compliance with this requirement and the certificate would be required for permit renewal.

Alternative B6, a preferred alternative, would require that all vessels with an Atlantic shark commercial permit and fishing with pelagic longline, bottom longline, or shark gillnet gear abide by a dusky shark fleet communication and relocation protocol. The protocol would require vessels to report the location of

dusky shark interactions over the radio to other pelagic longline, bottom longline, or shark gillnet vessels in the area and that subsequent fishing sets on that fishing trip could be no closer than 1 nautical mile (nm) from where the encounter took place.Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

The proposed rule would not conflict with any relevant regulations, Federal or otherwise. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The RFA (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and,
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with all legal requirements, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. Under the third category, ''use of performance rather than design standards,'' NMFS considers Alternative B5, which would provide additional training for pelagic longline, bottom longline, and shark gillnet fishermen, to be a performance standard rather than a design standard. Alternative B5's training requirement will apply to all commercial vessels and take place in conjunction with other currently required training workshops. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides the rationale for identifying the preferred alternative to achieve the desired objective.

In this rulemaking, NMFS considers two different categories of alternatives. The first category, recreational alternatives, covers seven main alternatives that address various strategies of reducing dusky shark mortality in the recreational fishery. The second category of alternatives, commercial measures, considers eight main alternatives that address various strategies of reducing dusky shark mortality in the commercial fishery.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed in the following sections. The preferred alternatives include: Alternative A2, Alternative A6a, Alternative B3, Alternative B5, Alternative B6, and Alternative B9. The economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

Recreational Alternatives

Alternative A1

Alternative A1, the no action alternative, would not implement any management measures in the recreational shark fishery to decrease mortality of dusky sharks, likely resulting in direct, short- and long-term neutral economic impacts. Since there would be no changes to the fishing requirements, there would be no economic impacts on small entities. If more restrictive measures are required in the long-term under MSA or other statutes such as the Endangered Species Act, moderate adverse economic impacts may occur. NMFS does not prefer this alternative at this time, given that the purpose of this action is to address overfishing and rebuilding.

Alternative A2

Under Alternative A2, a preferred alternative, HMS Angling and Charter/Headboat permit holders would be required to obtain a shark endorsement, which requires completion of an online shark identification and fishing regulation training course and quiz in order to fish for, retain, possess, or land sharks. Obtaining the shark endorsement would be included in the online HMS permit application and renewal processes and would require the applicant to complete a training course focusing on shark species identification, fishing regulations, and safe handling. This alternative would likely result in no economic impacts since there would be no additional cost to the applicant and only a small additional investment in time. Obtaining the shark endorsement would be a part of the normal HMS permit application or renewal. The applicant would simply need to indicate the desire to obtain the shark endorsement, after which he or she would be directed to an online training course and quiz. The goal of the training course is to help prevent anglers from landing prohibited or undersized sharks, and thus, help rebuild stocks. Furthermore, the list of shark endorsement holders would allow for more targeted surveys and outreach, likely increasing the reliability of recreational shark catch estimates. This preferred alternative helps achieve the objectives of this proposed rule while minimizing any significant economic impacts on small entities.

Alternative A3

Alternative A3 would require participants in the recreational shark fishery (Angling and Charter/Headboat permit holders) to carry an approved shark identification placard on board the vessel when fishing for sharks. This alternative would likely result in short- and long-term minor economic impacts. The cost of obtaining a placard, which would be provided by NMFS, whether by obtaining a pre-printed one or self-printing, would be modest. To comply with the requirement of this alternative, the angler would need to keep the placard on board the vessel when fishing for sharks and, since carrying other documents such as permits and boat registration is already required, this is unlikely to be a large inconvenience. This alternative would have slightly more economic impacts than Alternative A2 on small entities and would likely be less effective than the training course in Alternative A2.

Alternative A4

Under Alternative A4, NMFS would extend the existing prohibition on the retention of certain ridgeback sharks (bignose, Caribbean reef, dusky, Galapagos, night, sandbar, and silky sharks) to include the rest of the ridgeback sharks, namely oceanic whitetip, tiger sharks, and smoothhound sharks, which currently may be retained by recreational shark fishermen (HMS Angling and Charter/Headboat permit holders) under certain circumstances. This alternative would simplify compliance with the ridgeback prohibition, which includes dusky sharks, for the majority of fishermen targeting sharks. Dusky shark mortality in the recreational fishery is in part due to misidentification of dusky sharks (which are prohibited) as one the retainable species. This alternative, however, could also potentially have adverse economic impacts for a small subset of fishermen that target oceanic whitetip, tiger, and smoothhound

sharks. These adverse impacts would be quite small, however, for oceanic whitetip and tiger sharks because few fishermen recreationally fish for these species. Based on MRIP data, however, this alternative could have considerable impacts on fishermen targeting sharks in the smoothhound shark complex because smoothhound sharks are commonly caught by recreational fishermen. Recreational fishermen with only state-issued permits would still be able to retain smoothhound sharks (those that hold an HMS permit must abide by Federal regulations, even in state waters). Alternative A4 would likely result in both direct short- and long-term, minor adverse economic impacts on HMS Charter/Headboat operators if prohibiting landing of additional shark species reduces demand for fishing charters. While this alternative may help reduce dusky mortality, the other proposed measures will address overfishing and rebuilding without the greater economic impacts associated with Alternative A4.

Alternative A5

Under Alternative A5, the minimum recreational size limit for authorized shark species, except for Atlantic sharpnose, bonnethead, and hammerhead (great, scalloped, and smooth) sharks, would increase from 54 to 89 inches fork length, which is the approximate length at maturity for dusky sharks. Under this alternative, increasing the recreational size limit would likely result in both direct short- and long-term, moderate adverse economic impacts for recreational fishermen, charter/headboat operators, and tournament operators. Because many shark species have a maximum size below an 89 inch size limit, there could be reduced incentive to fish recreationally for sharks due to the decreased potential to legally land these fish. Increasing the minimum size for retention would also impact the way that tournaments and charter vessels operate. While the impacts of an 89 inch fork length minimum size on tournaments awarding points for pelagic sharks may be lessened because these tournament participants target larger sharks, such as shortfin mako, blue, and thresher, that grow to larger than 89 inches fork length, this may not be the case for tournaments targeting smaller sharks. Tournaments that target smaller sharks, especially those that target shark species that do not reach sizes exceeding 89 inches fork length such as blacktip sharks, may be heavily impacted by this alternative. Reduced participation in such tournaments could potentially decrease the amount of monetary prizes offered to winners. Thus, implementation of this management measure could significantly alter the way some tournaments and charter vessels operate, or reduce both opportunities to fish for sharks and thus drastically reduce general interest and demand for recreational shark fishing, which could create adverse economic impacts. While this alternative may result in minor beneficial ecological impacts for dusky sharks, for the aforementioned reasons, NMFS does not prefer this alternative at this time.

Alternative A6a

Sub-alternative A6a is a preferred alternative and would require all persons on board vessels with Atlantic HMS permits participating in fishing tournaments that bestow points, prizes, or awards for sharks to use circle hooks when fishing for or retaining sharks, and require the use of circle hooks by all HMS recreational permit holders when fishing for or retaining sharks outside of a tournament. Any sharks caught on non-circle hooks would have to be released. It would be presumed that an operator is recreationally fishing for sharks if it is fishing with natural bait and using wire or heavy (200 pound test or greater) monofilament or fluorocarbon leader. Relative to the total cost of gear and tackle for a typical fishing trip, the cost associated with switching from J-hooks to circle hooks is negligible. Thus, the immediate cost in switching hook type is likely minimal. However, there is conflicting indication that the use of circle hooks may reduce or increase catch per unit effort (CPUE) resulting in lower catch of target species. In the event that CPUE is reduced, some recreational fishermen may choose not to fish for sharks or to enter tournaments that offer awards for sharks. These missed fishing opportunities could result in minor adverse economic impacts in the short- and long-term. However, since the economic impacts are minor and circle hooks would likely reduce fishing mortality for dusky sharks, NMFS prefers this alternative at this time.

Alternative A6b

Sub-Alternative Ab6 is similar to A6a, but instead of requiring circle hooks when fishing for sharks defined by deploying natural bait while using a wire or heavy (200 pound test or greater) monofilament or fluorocarbon leader, it instead requires circle hooks when fishing for sharks defined by deploying a 5/0 or greater size hook to fish with natural bait outside of a fishing tournament. This use of the hook size standard to determine if the trip could be targeting sharks may result in more recreational trips requiring circle hooks than under alterative A6a, but many of those trips might actually not be targeting sharks, but instead other large pelagic fish. The use of a heavy leader is probably more correlated with angling activity that is targeting sharks.

Alternative A6c

Sub-Alternative A6c is similar to A6a and A6b, but restricted to requiring the use of circle hooks by all HMS permit holders participating in fishing tournaments that bestow points, prizes, or awards for sharks. This alternative impacts a smaller universe of recreational fishermen, so the adverse impacts are smaller. However, given the limited scope of this requirement, the benefits to reducing dusky shark mortality via the use of circle hooks are also more limited.

Alternative A7

Alternative A7 would prohibit any HMS permit holders from retaining any shark species in the recreational fishery. Recreational fishermen may still fish for and target authorized shark species for catch and release. The large number of fishermen who already practice catch and release and the catch and release shark fishing tournaments currently operating would not be impacted. As this alternative would help eliminate accidental landings of already-prohibited dusky sharks, it would have minor beneficial ecological impacts. However, prohibiting retention of sharks could have major impacts on fishing behaviors and activity of other recreational shark fishermen and reduce their demand for charter/headboat trips. Only allowing catch and release of authorized sharks in the recreational fishery could impact some fishermen that retain sharks recreationally and tournaments that award points for landing sharks. Thus, prohibiting retention of Atlantic sharks in the recreational shark fisheries could drastically alter the nature of recreational shark fishing and reduce incentives to fish for sharks. Additionally, the reduced incentive to fish for sharks could negatively impact profits for the HMS Charter/Headboat industry. Because there could be major impacts to the recreational shark fisheries from this management measure, Alternative A7 would likely have direct short- and long-term, moderate adverse economic impacts on small business entities.

Commercial Alternatives

Alternative B1

Under Alternative B1, the no action alternative, NMFS would not implement any measures to reduce dusky shark mortality in the commercial shark or HMS fisheries. Since no management measures would be implemented under this alternative, NMFS would expect fishing practices to remain the same and economic impacts to be neutral in the short-term. Dusky sharks are a prohibited species and fishermen are not allowed to harvest this species. Thus, there would not be any economic impacts on the fishery in the short-term. If more restrictive measures are required in the long-term under MSA or other statutes such as the Endangered Species Act, moderate adverse economic impacts may occur. NMFS does not prefer this alternative at this time, given that the purpose of this action is to address overfishing and rebuilding.

Alternative B2

Under Alternative B2, HMS commercial fishermen would be limited to 750 hooks per pelagic longline set with no more than 800 assembled gangions onboard the vessel at any time. Based on average number of hooks per pelagic longline set data, the hook restriction in this alternative could have neutral economic impacts on fishermen targeting bigeye tuna, mixed tuna species, and mixed HMS species, because the average number of hooks used on pelagic longline sets targeting these species is slightly above or below the limit considered in this alternative. This alternative would likely have adverse economic impacts on pelagic longline fishermen who target dolphin fish, because these fishermen on average use 1,066 hooks per set. If NMFS implemented this alternative, fishermen targeting dolphin fish with pelagic longline gear would have to reduce their number of hooks by approximately 30 percent per set, which may result in a similar percent reduction in set revenue or could result in increased operating costs if fishermen decide to offset the limited number of hooks with more fishing sets. While this alternative would have minor beneficial ecological impacts, overall, Alternative B2 would be expected to have short- and long-term minor adverse economic impacts on the pelagic longline fishery.

Alternative B3

Under Alternative B3, a preferred alternative, HMS commercial fishermen must release all sharks that are not being boarded or retained by using a dehooker, or by cutting the gangion no more than three feet from the hook. This alternative would have neutral to adverse economic impacts on commercial shark fishermen using pelagic longline gear. Currently, fishermen are required to use a dehooking device if a protected species is caught. This alternative would require this procedure to be used on all sharks that would not be retained, or fishermen would have to cut the gangion to release the shark. Currently, it is common practice in the pelagic longline fishery to release sharks that are not going to be retained (especially larger sharks) by cutting the gangion, but they usually do not cut the gangion so only 3 feet remain, so there might be a slight learning curve. Using a dehooker to release sharks in the pelagic longline fishery is a less common practice; therefore, there may be more of a learning curve that would make using this technique more time consuming and would make fishing operations temporarily less efficient while fishermen become used to this technique. NMFS expects that these inefficiencies would be minimal and that fishermen would become adept in using a dehooker to release sharks over time given they are all practiced at using a dehooker to release protected species. Thus, Alternative B3 would be expected to have short- and long-term neutral economic impacts on the pelagic longline fishery.

Alternative B4

Under Alternative B4, NMFS considered various dusky shark hotspot closures for vessels fishing with pelagic longline gear. The hotspot closures considered are the same areas that were analyzed in Draft Amendment 5 and the A5b Predraft. These hotspot closure alternatives are located where increased levels of pelagic longline interactions with dusky sharks had been identified based on HMS Logbook data. During the months that hotspot closures are effective, Atlantic shark commercial permit holders (directed or incidental) would not be able to fish with pelagic longline gear in these areas. While these closures would result in minor ecological benefits, NMFS does not prefer them at this time because the preferred alternatives would address overfishing and rebuilding without the adverse social and economic impacts associated with these closures.

Alternative B4a—Charleston Bump Hotspot May

This alternative would define a rectangular area in a portion of the existing Charleston Bump time/area closure area, and prohibit the use of pelagic longline gear by all vessels during the month of May in that area. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 46 vessels that have historically fished in this Charleston Bump area during the month of May. This closure would result in the loss of approximately $15,250 in gross revenues per year per vessel assuming no redistribution of effort outside of the closed area.

However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. Based on natural breaks in the percentage of sets vessels made inside and outside of this alternative's hotspot closure area, NMFS estimated that if a vessel historically made less than 40 percent of its sets in the hotspot closure area, it would likely redistribute all of its effort. If a vessel made more than 40 percent but less than 75 percent of its sets in the hotspot closure area, it would likely redistribute 50 percent of its effort impacted by the hotspot closure area to other areas. Finally, if a vessel made more than 75 percent of its sets solely within the hotspot closure area, NMFS assumed the vessel would not likely shift its effort to other areas. Based on these individually calculated redistribution rates, the percentage of fishing in other areas during the gear restriction time period, the percentage of fishing in other areas during the hotspot closure time period, and the catch per unit effort for each vessel in each statistical area, NMFS estimated the potential landings associated with redistributed effort associated with fishing sets displaced by the hotspot closure area. The net loss in fishing revenues as a result of the Charleston Bump Hotspot May closure after considering likely redistribution of effort is estimated to be $8,300 per vessel per year. Alternative B4a would result in moderate short- and long-term adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Charleston Bump Hotspot May area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4b—Hatteras Shelf Hotspot May

This alternative would prohibit the use of pelagic longline gear in the vicinity of the ''Hatteras Shelf'' area of the Cape Hatteras Special Research Area during the month of May where elevated levels of dusky shark interactions have been reported. This alternative is expected to have moderate

short and long-term direct adverse economic impacts on 42 vessels that have historically fished in this Hatteras Shelf Hotspot area during the month of May. The average annual revenue per vessel from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $9,980 during the month of May, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Hatteras Shelf Hotspot May closure on fishing revenues after considering likely redistribution of effort is estimated to be $5,990 per vessel per year. Alternative B4b would result in moderate adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Hatteras Shelf Hotspot May area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4c—Hatteras Shelf Hotspot June

This alternative would prohibit the use of pelagic longline gear in the vicinity of the ''Hatteras Shelf'' area of the Cape Hatteras Special Research Area during the month of June where elevated levels of dusky shark interactions have been reported. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 37 vessels that have historically fished in this Hatteras Shelf Hotspot area during the month of June. The average annual revenue from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $7,640 per vessel during the month of June, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Hatteras Shelf Hotspot June closure on fishing revenues after considering likely redistribution of effort is estimated to be $4,010 per vessel per year. Alternative B4c would result in moderate adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Hatteras Shelf Hotspot June area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4d—Hatteras Shelf Hotspot November

This alternative would prohibit the use of pelagic longline gear in the vicinity of the ''Hatteras Shelf'' area of the Cape Hatteras Special Research Area during the month of November where elevated levels of dusky shark interactions have been reported. This alternative is expected to have minor short and long-term direct adverse economic impacts on 23 vessels that have historically fished in this Hatteras Shelf Hotspot area during the month of November. The average annual revenue from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $5,230 per vessel during the month of November, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Hatteras Shelf Hotspot November closure on fishing revenues after considering likely redistribution of effort is estimated to be $3,540 per vessel per year. Alternative B4d would result in minor adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Hatteras Shelf Hotspot November area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4e—Canyons Hotspot October

This alternative would prohibit the use of pelagic longline gear by all U.S. flagged-vessels permitted to fish for HMS in the three distinct closures in the vicinity of the Mid-Atlantic Canyons during the month of October where elevated levels of dusky shark interactions have been reported. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 64 vessels that have historically fished in this Canyons Hotspot October area. The average annual revenue from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $9,950 per vessel during the month of October, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Canyons Hotspot October closure on fishing revenues after considering likely redistribution of effort is estimated to be $3,720 per vessel per year. Alternative B4e would result in moderate adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Canyons Hotspot October area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4f—Southern Georges Banks Hotspot July

This alternative would prohibit the use of pelagic longline gear by all U.S. flagged-vessels permitted to fish for HMS in July in an area adjacent to the existing Northeastern U.S. closure which is currently effective for the month of June, where elevated levels of dusky shark interactions have been reported. This alternative is expected to have moderate short- and long-term direct adverse economic impacts on 35 vessels that have historically fished in this Southern Georges Banks Hotspot area during the month of July. The average annual revenue from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $14,230 per vessel during the month of July, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Southern Georges Banks Hotspot July closure on fishing revenues after considering likely redistribution of effort is estimated to be $8,290 per vessel per year. Alternative B4f would result in moderate adverse economic impacts as a result of restricting longline vessels from fishing in the Southern Georges Banks Hotspot July area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4g—Southern Georges Banks Hotspot August

This alternative would prohibit the use of pelagic longline gear by all U.S. flagged-vessels permitted to fish for HMS in August in an area adjacent to the existing Northeastern U.S. closure, which is currently effective for the month of June, where elevated levels of dusky shark interactions have been reported. This alternative is expected to have moderate short and long-term direct adverse economic impacts on 35 vessels that have historically fished in this Southern Georges Banks Hotspot area during the month of August. The average annual revenue from 2008 through 2014 from all fishing sets made

in this hotspot closure area has been approximately $12,260 per vessel during the month of August, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Southern Georges Banks Hotspot August closure on fishing revenues after considering likely redistribution of effort is estimated to be $5,990 per vessel per year. Alternative B4g would result in moderate adverse economic impacts as a result of restricting pelagic longline vessels from fishing in the Southern Georges Banks Hotspot August area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4h—Charleston Bump Hotspot November

This alternative would prohibit the use of pelagic longline gear by all U.S. flagged-vessels permitted to fish for HMS in a portion of the existing Charleston Bump time/area closure during the month of November where elevated levels of dusky shark interactions have been reported. This alternative is expected to have minor short and long-term direct adverse economic impacts on 32 vessels that have historically fished in this Charleston Bump Hotspot area during the month of November. The average annual revenue from 2008 through 2014 from all fishing sets made in this hotspot closure area has been approximately $7,030 per vessel during the month of November, assuming that fishing effort does not move to other areas. However, it is likely that some of the vessels that would be impacted by this hotspot closure would redistribute their effort to other fishing areas. The net impact of the Charleston Bump Hotspot November closure on fishing revenues after considering likely redistribution of effort is estimated to be $2,720 per vessel per year. Alternative B4h would result in minor adverse social and economic impacts as a result of restricting pelagic longline vessels from fishing in the Charleston Bump Hotspot November area, thus causing decreased revenues and increased costs associated with fishing in potentially more distant waters if vessel operators redistribute their effort.

Alternative B4i—Conditional Access to Hotspot Closures

This alternative would allow PLL vessels that have demonstrated an ability to avoid dusky sharks and comply with dusky shark regulations to fish within any dusky hotspot closure adopted. This approach would address the fact that, according to HMS logbook data, relatively few vessels have consistently accounted for the majority of the dusky shark interactions and also address requests from PLL participants to increase individual accountability within the fishery. Depending on the metrics selected and fishery participant behavior, this alternative could have adverse socioeconomic effects on certain vessels that are both poor avoiders of dusky sharks and are non-compliant with the regulations. This alternative would require an annual determination of which vessels would qualify for conditional access based on dusky shark interactions. NMFS would analyzed the socioeconomic impact by using similar fishing effort redistribution proposed in Draft Amendment 7 and described in Alternative B5. This alternative would have neutral to beneficial effects for vessels that are still authorized to fish in a hotspot closure(s), and would reduce adverse socioeconomic effects of a closure(s). As explained above, NMFS is not preferring any hotspot closure alternative and thus is not preferring this alternative, which would work in conjunction with a closure.

Alternative B4j—Dusky Shark Bycatch Caps

This alternative would implement bycatch caps on dusky shark interactions over a three-year period in hotspot areas. Under this alternative, NMFS would allow pelagic longline vessels limited access to high dusky shark interaction areas with an observer onboard while limiting the number of dusky shark interactions that could occur in these areas. Once the dusky shark bycatch cap for an area is reached, that area would close until the end of the three-year bycatch cap period. This alternative could lead to adverse economic impacts by reducing annual revenue from fishing in the various hot spot areas depending on the number of hotspots where bycatch cap limits are reached, the timing of those potential closures during the year, and the amount of effort redistribution that occurs after the closures. In addition to direct impacts to vessels owners, operators, and crew members, this alternative would have moderate, adverse indirect impacts in the short and long-term on fish dealers, processors, bait/gear suppliers, and other shore-based businesses impacted by reduced fishing opportunities for pelagic longline vessel owners that would have fished in the hotspot area. As explained above, NMFS is not preferring any hotspot closure alternative and thus is not preferring this alternative, which would work in conjunction with a closure.

Alternative B5

Alternative B5, a preferred alternative, would provide additional training to pelagic longline, bottom longline, and shark gillnet vessel owners and operators as a new part of all currently required Safe Handling and Release Workshops. The training course would provide information regarding shark identification and regulations, as well as best practices to avoid interacting with dusky sharks and how to minimize mortality of dusky sharks caught as bycatch. This training course requirement provides targeted outreach to those who continue to interact with dusky sharks, which should decrease interactions with dusky sharks. This alternative would have minor adverse economic impacts since the fishermen would be required to attend a workshop, incur some travel costs, and would not be fishing while taking attending the workshop. Given the minor economic impacts and this alternative's potential to decrease dusky interactions and mortality, NMFS prefers this alternative.

Alternative B6

The economic impacts associated with Alternative B6, a preferred alternative, which would increase dusky shark outreach and awareness through development of additional commercial fishery outreach materials and establish a communication and fishing set relocation protocol for HMS commercial fishermen following interactions with dusky sharks and increase outreach, are anticipated to be neutral. These requirements would not cause a substantial change to current fishing operations, but have the potential to help fishermen become more adept in avoiding dusky sharks. If fishermen become better at avoiding dusky sharks, there is the possibility that target catch could increase. On the other hand, the requirement to move the subsequent fishing set one nautical mile from where a previous dusky shark interaction occurred could move fishermen away from areas where they would prefer to fish and it could increase fuel usage and fuel costs. Given the low economic impacts of this alternative and its potential to decrease dusky shark interactions, NMFS prefers this alternative.

Alternative B7

NMFS would seek, through collaboration with the affected states

and the ASMFC, to extend the end date of the existing state shark closure from July 15 to July 31. Currently, the states of Virginia, Maryland, Delaware, and New Jersey have a state-water commercial shark closure from May 15 to July 15. Extending the closure period in state waters would result in minor beneficial ecological impacts. In 2014, 621 lb dw of aggregated LCS and 669 lb dw of hammerhead sharks were landed by commercial fishermen in Virginia, Maryland, and New Jersey from July 15 to July 31. Based on 2014 ex-vessel prices, the annual gross revenues loss for aggregated LCS and hammerhead shark meat to the regional fleet in revenues due to an extended closure date would be $847, while the shark fins would be $207. Thus the total loss annual gross revenue for aggregated LCS and hammerhead sharks would be $1,054. Extending this closure by 16 days could cause a reduction of commercial fishing opportunity, likely resulting in minor adverse economic impacts due to reduced opportunities to harvest aggregated LCS and hammerhead sharks. In the long-term, this reduction would be neutral since fishermen would be able to adapt to the new opening date.

Alternative B8

Under Alternative B8, NMFS would remove pelagic longline gear as an authorized gear for Atlantic HMS. All commercial fishing with pelagic longline gear for HMS in the Atlantic, Gulf of Mexico, and Caribbean would be prohibited, which would have beneficial ecological impacts. However, this would greatly reduce fishing opportunities for pelagic longline fishing vessel owners. Prohibiting the use of pelagic longline fishing gear would result in direct and indirect, major adverse economic impacts in the short and long-term for pelagic longline vessel owners, operators, and crew.

Between 2008 and 2014, 168 different vessels reported using pelagic longline fishing gear in Atlantic HMS Logbooks. Average annual revenues were estimated to be approximately $34,322,983 per year based on HMS logbook records, bluefin tuna dealer reports, and the eDealer database. In 2014, there were 110 active pelagic longline vessels which produced approximately $33,293,118 in revenues. The 2014 landings value is in line with the 2008 to 2014 average. Therefore, NMFS expects future revenues forgone revenue on a per vessel basis to be approximately $309,000 per year based on 110 vessels generating an estimated $34 million in revenues per year. This displacement of fishery revenues would likely cause business closures for a majority of these pelagic longline vessel owners. Given the magnitude of the economic impact of this alternative, it is not a preferred alternative.

Alternative B9

Under Alternative B9, a preferred alternative, NMFS would require the use of circle hooks by all HMS directed shark permit holders in the bottom longline fishery. This requirement would likely reduce the mortality associated with dusky shark bycatch in the bottom longline fishery. There is negligible cost associated with switch from J-hooks to circle hooks. However, it is possible that circle hooks may reduce catch per unit effort (CPUE) resulting in lower catch of target species. To the extent that CPUE is reduced, some commercial fishermen using BLL gear may experience reduced landings and associated revenue with the use of circle hooks. This alternative would require the 224 vessels that hold a shark directed limited access permit as of 2015 to use circle hooks. However, 104 of the 224 vessels have an Atlantic tunas longline permit, which requires fishermen to use circle hooks with pelagic longline gear. Thus, those vessels would already possess and use circle hooks. The remaining 120 permit holders would be required to use circle hooks when using bottom longline gear. Given the low switching costs from J-hooks to circle hooks and the potential to reduce dusky shark mortality, NMFS prefers this alternative.

Alternative B10

Under this alternative, NMFS would annually allocate individual dusky shark bycatch quota (IDQ) to each individual shark directed or incidental limited access permit holder in the HMS pelagic and bottom longline fisheries for assignment to permitted vessels. These allocations would be transferable between permit holders. When each vessel's IDQ is reached, the vessel would no longer be authorized to fish for HMS for the remainder of the year. The concept of this alternative is similar to the Individual Bluefin Tuna Quota (IBQ) Program implemented in Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71510; December 2, 2014), which established individual quotas for bluefin tuna bycatch in the pelagic longline fishery and authorized retention and sale of such bycatch. Under this alternative, however, NMFS would continue to prohibit retention and sale of dusky sharks. The goal of individual quotas generally is to provide strong individual incentives to reduce interactions while providing flexibility for vessels to continue to operate in the fishery; however, several unique issues associated with dusky sharks would make these goals difficult to achieve.

In order to achieve the mortality reductions based upon the 2016 SEDAR 21 dusky shark assessment update, the number of dusky shark interactions may need to be substantially reduced. NMFS expects the allocations to each vessel may be extremely low and highly inaccurate/uncertain. As stated above, there is significant uncertainty in estimating dusky shark catches and calculating the appropriate level of catch for this alternative to be feasible. It is not clear that an IDQ system without an appropriate scientific basis would actually reduce interactions with dusky sharks. To the extent that any reduction actually occurred, some vessels would be constrained by the amount of individual quota they are allocated and this could reduce their annual revenue. If a pelagic longline vessel interacts with dusky sharks early in the year and uses their full IDQ allocation, they may be unable to continue fishing with pelagic longline or bottom longline gear for the rest of the year if they are unable to lease quota from other IDQ holders. This would result in reduced revenues and potential cash flow issues for these small businesses.

If vessel owners are only allocated a very low amount of IDQs, it is very unlikely that an active trading market for IDQs will emerge. The initial allocations could be insufficient for many vessels to maintain their current levels of fishing activity and they may not be able to find IDQs to lease or have insufficient capital to lease a sufficient amount of IDQs. Some vessel owners may view the risk of exceeding their IDQ allocations and the associated costs of acquiring additional quota to outweigh the potential profit from fishing, so they may opt to not continue participating in the fishery. The annual transaction costs associated with matching lessor and lessees, the costs associated with drafting agreements, and the uncertainty vessel owners would face regarding quota availability would reduce some of the economic benefits associated with leasing quota and fishing. There would also be increased costs associated with bottom longline vessels obtaining and installing EM and VMS units. Some bottom longline vessel owners might have to consider obtaining new vessels if their current vessels cannot be equipped with EM and VMS. There would be increased costs associated with VMS reporting of dusky interactions. Some fishermen would also need to ship EM hard drives

after each trip and they may need to consider acquiring extra hard drives to avoid not having one available when they want to go on a subsequent trip.

NMFS is not preferring this alternative, as it does not further the objectives of this action. Given the challenges in properly identifying dusky sharks, every shark would need to be brought on board the vessel and ensure an accurate picture of identifying features was taken by the EM cameras. Such handling would likely increase dusky shark and other shark species mortality, and this action is supposed to reduce mortality. In addition, this alternative is also unlikely to minimize the economic impact of this rule as compared to the preferred alternatives given the potential for reduced fishing revenues, monitoring equipment costs, and transaction costs.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: October 12, 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 § 635.2:

■ a. Remove the definition of ''Protected species safe handling, release, and identification workshop certificate''; and

■ b. Add new definitions for ''Safe handling, release, and identification workshop certificate'' and ''Shark endorsement'' in alphabetical order to read as follows:

### § 635.2 Definitions.

* * * * *

*Safe handling, release, and identification workshop certificate* means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic HMS safe handling, release, and identification workshop.

* * * * *

*Shark endorsement* means an authorization added to an HMS Angling, HMS Charter/Headboat, Atlantic Tunas General, or Swordfish General Commercial permit that allows for the retention of authorized Atlantic sharks consistent with all other applicable regulations in this part.

* * * * *

■ 3. In § 635.4, revise paragraphs (b)(1), (c)(1), and (c)(2), and add paragraphs (c)(5) and (j)(4) to read as follows:

### § 635.4 Permits and fees.

* * * * *

(b) * * *

(1) The owner of a charter boat or headboat used to fish for, retain, possess, or land any Atlantic HMS must obtain an HMS Charter/Headboat permit. In order to fish for, retain, possess, or land Atlantic sharks, the owner must have a valid shark endorsement issued by NMFS, and persons on board must use circle hooks as specified at § 635.21(f) and (k). A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(c) * * *

(1) The owner of any vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed recreationally, must obtain an HMS Angling permit, except as provided in § 635.4(c)(2). In order to fish for, retain, possess, or land Atlantic sharks, the owner must have a valid shark endorsement issued by NMFS, and persons on board must use circle hooks as specified at § 635.21(f) and (k). Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit, a Swordfish General Commercial permit, or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) and (c)(4) and in addition to paragraph (c)(5) of this section.

* * * * *

(5) In order to fish for, retain, possess, or land sharks, the owner of a vessel fishing in a registered recreational HMS fishing tournament and issued either an Atlantic Tunas General category or Swordfish General Commercial permit must have a shark endorsement, and persons on board must use circle hooks as specified at § 635.21(f) and (k).

* * * * *

(j) * * *

(4) In order to obtain a shark endorsement to fish for, retain, or land sharks, a vessel owner with a vessel fishing in a registered recreational HMS fishing tournament and issued or required to be issued either an Atlantic Tunas General category or Swordfish General Commercial permit or a vessel owner of a vessel issued or required to be issued an HMS Angling or HMS Charter/Headboat permit must take a shark endorsement online quiz. After completion of the quiz, NMFS will issue the vessel owner a new or revised permit with the shark endorsement for the vessel. The vessel owner can take the quiz at any time during the fishing year, but his or her vessel may not leave the dock on a trip during which sharks will be fished for, retained, or landed unless a new or revised permit with a shark endorsement has been issued by NMFS for the vessel. The addition of a shark endorsement to the permit does not constitute a permit category change and does not change the timing considerations for permit category changes specified in paragraph (j)(3) of this section.

* * * * *

■ 4. In § 635.8, revise paragraphs (a), (c)(2), (c)(3), (c)(5), (c)(6), and (c)(7) as follows:

### § 635.8 Workshops.

(a) Safe handling release, disentanglement, and identification workshops. (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a safe handling, release, and identification workshop before a shark or swordfish limited access vessel permit, pursuant to § 635.4(e) and (f), is renewed. For the purposes of this section, it is a rebuttable presumption

that a vessel fishes with longline or gillnet gear if: Longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a safe handling, release, and identification workshop certificate to any person who completes a safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

* * * * *

(c) * * *

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to § 635.4(e) or (f), without submitting a valid safe handling, release, and identification workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to § 635.4(e) or (f), may not fish unless a valid safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

* * * * *

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a safe handling, release, and identification workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid safe handling, release, and identification workshop certificate may request, in the application for permit transfer per § 635.4(l)(2), additional safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive the safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must first show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and provide a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

■ 5. In § 635.19, revise paragraph (d) to read as follows:

**§ 635.19 Authorized gears.**

* * * * *

(d) *Sharks.* (1) No person may possess a shark without a permit issued under § 635.4.

(2) No person issued a Federal Atlantic commercial shark permit under § 635.4 may possess a shark taken by any gear other than rod and reel, handline, bandit gear, longline, or gillnet, except that smoothhound sharks may be retained incidentally while fishing with trawl gear subject to the restrictions specified in § 635.24(a)(7).

(3) No person issued an HMS Commercial Caribbean Small Boat permit may possess a shark taken from the U.S. Caribbean, as defined at § 622.2 of this chapter, by any gear other than with rod and reel, handline or bandit gear.

(4) Persons on a vessel issued a permit with a shark endorsement under § 635.4 may possess a shark only if the shark was taken by rod and reel or handline, except that persons on a vessel issued both an HMS Charter/Headboat permit (with or without a shark endorsement) and a Federal Atlantic commercial shark permit may possess sharks taken by rod and reel, handline, bandit gear, longline, or gillnet if the vessel is engaged in a non for-hire fishing trip and the commercial shark fishery is open pursuant to § 635.28(b).

* * * * *

■ 6. In § 635.21:

■ a. Add paragraph (c)(6);

■ b. Revise the introductory text for paragraph (d)(2);

■ c. Add paragraphs (d)(2)(iii) and (d)(4);

■ d. Revise paragraph (f); and

■ e. Add paragraphs (g)(5) and (k).

The additions and revisions read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

* * * * *

(c) * * *

(6) The owner or operator of a vessel permitted or required to be permitted under this part and that has pelagic longline gear on board must undertake the following shark bycatch mitigation measures:

(i) Handling and release requirements. Any hooked or entangled sharks that are not being retained must be released using dehookers or line clippers or cutters. If using a line clipper or cutter, the gangion must be cut so that less than three feet (91.4 cm) of line remains attached to the hook.

(ii) *Fleet communication and relocation protocol.* The owner or operator of any vessel that catches a dusky shark must broadcast the location of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing sets by that vessel on that trip must be at least 1 nmi from the reported location of the dusky shark catch.

(d) * * *

(2) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the following bycatch mitigation measures:

* * * * *

(iii) *Fleet communication and relocation protocol.* The owner or operator of any vessel that catches a dusky shark must broadcast the location

of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing sets by that vessel on that trip must be at least 1 nmi from the reported location of the dusky shark catch.

* * * * *

(4) Vessels that have bottom longline gear on board and that have been issued, or are required to have been issued, a directed shark limited access permit under § 635.4(e) must have only circle hooks as defined at § 635.2 on board.

* * * * *

(f) *Rod and reel.* (1) Persons who have been issued or are required to be issued a permit under this part and who are participating in a ''tournament,'' as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

(2) A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under this part and who is participating in an HMS registered tournament that bestows points, prizes, or awards for Atlantic sharks must deploy only circle hooks when fishing for, retaining, possessing, or landing sharks. For the purposes of this requirement, an owner or operator is fishing for sharks if they are using natural bait and wire or heavy (200 pound test or greater) monofilament or fluorocarbon leaders.

(3) A person on board a vessel that has been issued or is required to be issued an HMS Angling permit with a shark endorsement or an HMS Charter/Headboat permit with a shark endorsement must deploy only circle hooks when fishing for, retaining, possessing, or landing sharks. Any shark caught on non-circle hooks must be released. For the purposes of this requirement, an owner or operator is fishing for sharks if they are using natural bait and wire or heavy (200 pound test or greater) monofilament or fluorocarbon leaders.

(g) * * *

(5) *Fleet communication and relocation protocol.* The owner or operator of any vessel issued or required to be issued a Federal Atlantic commercial shark limited access permit that catches a dusky shark must broadcast the location of the dusky shark interaction over the radio to other fishing vessels in the surrounding area. Subsequent fishing sets by that vessel that trip must be at least 1 nmi from the reported location of the dusky shark catch.

* * * * *

(k) *Handline.* (1) A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under this part and who is participating in an HMS registered tournament that bestows points, prizes, or awards for Atlantic sharks must deploy only circle hooks when fishing for, retaining, possessing, or landing sharks. Any shark caught on non-circle hooks must be released. For the purposes of this sections, an owner or operator is fishing for sharks if they are using natural bait and wire or heavy (200 pound test or greater) monofilament or fluorocarbon leaders.

(2) A person on board a vessel that has been issued or is required to be issued an HMS Angling permit with a shark endorsement or a person on board a vessel with an HMS Charter/Headboat permit with a shark endorsement must deploy only circle hooks when fishing for, retaining, possessing, or landing sharks. Any shark caught on non-circle hooks must be released. For the purposes of this requirement, an owner or operator is fishing for sharks if they are using natural bait and wire or heavy (200 pound test or greater) monofilament or fluorocarbon leaders.

■ 7. In § 635.22, revise paragraph (c)(1) to read as follows:

**§ 635.22 Recreational retention limits.**

(c) * * *

(1) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a Federal Atlantic commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). If a commercial Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit with a shark endorsement under § 635.4 and is engaged in a for-hire fishing trip. A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 must use circle hooks as specified in § 635.21(f) and (k) in order to retain sharks per the retention limits specified in this section.

* * * * *

■ 8. In § 635.71, revise paragraphs (a)(50) through (52), and add paragraphs (d)(21) through (d)(26) to read as follows:

**§ 635.71 Prohibitions.**

* * * * *

(a) * * *

(50) Fish without being certified for completion of a NMFS safe handling, release, and identification workshop, as required in § 635.8.

(51) Fish without having a valid safe handling, release, and identification workshop certificate issued to the vessel owner and operator on board the vessel as required in § 635.8.

(52) Falsify a NMFS safe handling, release, and identification workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

* * * * *

(d) * * *

(21) Fish for, retain, possess, or land sharks without a shark endorsement when issued an Atlantic HMS Angling permit, HMS Charter/Headboat permit, an Atlantic Tunas General Category permit, or a Swordfish General Commercial permit, as specified in § 635.4(c).

(22) Fish for, retain, possess, or land sharks without deploying circle hooks when fishing at a registered HMS fishing tournament that has awards or prizes for sharks, as specified in § 635.21(f) and (k) and § 635.22(c)(1).

(23) Fish for, retain, possess, or land sharks without deploying circle hooks when issued an Atlantic HMS Angling permit or HMS Charter/Headboat permit with a shark endorsement, as specified in in § 635.21(f) and (k) and § 635.22(c)(1).

(24) Release sharks with more than 3 feet (91.4 cm) of trailing gear, as specified in § 635.21(c)(6).

(25) Fail to follow the fleet communication and relocation protocol for dusky sharks as specified at § 635.21(c)(6), (d)(2), and (g)(5).

(26) Deploy bottom longline gear without circle hooks, or have on board both bottom longline gear and non-circle hooks, as specified at § 635.21(d)(4).

* * * * *

[FR Doc. 2016–25051 Filed 10–17–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 81, No. 201

Tuesday, October 18, 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

### Natural Resources Conservation Service

**[Docket No. NRCS–2016–0010]**

### Notice of Proposed Changes to Section I of the Wisconsin Field Office Technical Guide

**AGENCY:** Natural Resources Conservation Service (NRCS).

**ACTION:** Notice of availability of proposed changes in the NRCS Wisconsin Field Office Technical Guides for review and comment.

**SUMMARY:** NRCS is proposing to revise Section I of the Wisconsin Field Office Technical Guide to include ''Wisconsin Wetland Determination Methods'' which will replace the existing ''Wisconsin Wetland Mapping Conventions issued May 1, 1998'' (commonly referred as State Wetland Mapping Conventions). The Wisconsin Wetland Determination Methods will be used as part of the technical documents and procedures to conduct wetland determinations on agriculture land as part of the Food Security Act of 1985 (as amended).

**DATES:** *Effective Date:* Effective October 18, 2016. Guidance for Wisconsin Wetland Determination Methods is in final draft status.

*Comment Date:* Submit comments on or before November 17, 2016. The final version of the Wisconsin Wetland Determination Methods will be adopted after the close of the 30-day period and after consideration of all comments.

**ADDRESSES:** Comments should be submitted, identified by Docket Number NRCS–2016–0010, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Submit state specific comments to the Wisconsin NRCS State Office, located at 8030 Excelsior Drive, Suite 200, Madison, WI 53737–2906.
- NRCS will post all comments on *http://www.regulations.gov.* In general, personal information provided with comments will be posted. If your comment includes your address, phone number, email, or other personal identifying information, your comments, including personal information, may be available to the public. You may ask in your comment that your personal identifying information be withheld from public view, but this cannot be guaranteed.

**FOR FURTHER INFORMATION CONTACT:** Jimmy Bramblett, Wisconsin State Conservationist. Phone: 608–662–4422, by email at *jimmy.bramblett@wi.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Guidance for Wisconsin Wetland Determination Methods will be used as part of the technical documents and procedures to conduct wetland determinations on agricultural land as required by 16 U.S.C. 3822. NRCS is required by 16 U.S.C. 3862 to make available for public review and comment all proposed revisions to standards and procedures used to carry out highly erodible land and wetland provisions of the law.

All comments will be considered. If no comments are received, Guidance for Wisconsin Wetland Determination Methods will be considered final.

Electronic copies of the proposed Guidance for Wisconsin Wetland Determination Methods are available through *http://www.regulations.gov* by accessing Docket No. NRCS–2016–0010. Alternatively, copies can be downloaded or printed from the Wisconsin NRCS Web site located at: *http://www.nrcs.usda.gov/wps/portal/nrcs/site/wi/home/.* Requests for paper versions or inquiries may be directed to the Wisconsin State Conservationist at the contact point shown above.

Signed this 5th day of October, 2016, in Madison, WI.

**Jimmy Bramblett,**

*State Conservationist.*

[FR Doc. 2016–25047 Filed 10–17–16; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Solicitation of Applications for the Rural Energy for America Program for Federal Fiscal Year 2017

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (the Agency) announces the acceptance of applications under the Rural Energy for America Program (REAP) which is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. REAP have two types of funding assistance: (1) Renewable Energy Systems and Energy Efficiency Improvements Assistance, and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvement Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy efficiency improvements to their operations. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds, grantee, will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

**DATES:** See under **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** The applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following

link: *http://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Maureen Hessel, Business Loan and Grant Analyst, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Stop 3225, Room 6870, Washington, DC 20250. Telephone: (202) 401–0142. Email: *maureen.hessel@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Program Description

The Rural Energy for America Program (REAP) helps agricultural producers and rural small businesses reduce energy costs and consumption and helps meet the Nation's critical energy needs. REAP has two types of funding assistance: (1) Renewable Energy Systems and Energy Efficiency Improvements Assistance and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvements Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses for renewable energy systems and energy efficiency improvements. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds, (grantee), will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

A. *General.* Applications for REAP can be submitted any time throughout the year. This Notice announces the deadline times and dates that applications have to be received to be considered for REAP funds provided by the Agricultural Act of 2014, (2014 Farm Bill), and any appropriated funds that REAP may receive from the appropriation for Federal fiscal year (FY) 2017 for grants, guaranteed loans, and combined grants and guaranteed loans to purchase and install renewable energy systems, and make energy efficiency improvements; and for grants to conduct energy audits and renewable energy development assistance.

The administrative requirements in effect at the time the application window closes for a competition will be applicable to each type of funding available under REAP and are described in 7 CFR part 4280, subpart B. In addition to the other provisions of this Notice:

(1) The provisions specified in 7 CFR 4280.101 through 4280.111 apply to each funding type described in this Notice.

(2) The requirements specified in 7 CFR 4280.112 through 4280.124 apply to renewable energy system and energy efficiency improvements project grants.

(3) The requirements specified in 7 CFR 4280.125 through 4280.152 apply to guaranteed loans for renewable energy system and energy efficiency improvements projects. For Federal FY 2017, the guarantee fee amount is one percent of the guaranteed portion of the loan, and the annual renewal fee is one-quarter of 1 percent (0.250 percent) of the guaranteed portion of the loan.

(4) The requirements specified in 7 CFR 4280.165 apply to a combined grant and guaranteed loan for renewable energy system and energy efficiency improvements projects.

(5) The requirements specified in 7 CFR 4280.186 through 4280.196 apply to energy audit and renewable energy development assistance grants.

## II. Federal Award Information

A. *Statutory Authority.* This program is authorized under 7 U.S.C. 8107.

B. *Catalog of Federal Domestic Assistance (CFDA) Number.* 10.868.

C. *Funds Available.* This Notice is announcing deadline times and dates for applications to be submitted for REAP funds provided by the 2014 Farm Bill and any appropriated funds that REAP may receive from the congressional enactment of a full-year appropriation for Federal FY 2017. This Notice is being published prior to the congressional enactment of a full-year appropriation for Federal FY 2017. The Agency will continue to process applications received under this announcement and should REAP receive appropriated funds, these funds will be announced on the following Web site: *www.rd.usda.gov/programs-services/rural-energy-america-program-renewable-energy-systems-energy-efficiency,* and are subject to the same provisions in this Notice.

To ensure that small projects have a fair opportunity to compete for the funding and are consistent with the priorities set forth in the statute, the Agency will set-aside 20 percent of the Federal FY 2017 funds until June 30, 2017, to fund grants of $20,000 or less.

(1) *Renewable energy system and energy efficiency improvements grant-funds.* There will be allocations of grant funds to each Rural Development State Office for renewable energy system and energy efficiency improvements applications. The State allocations will include an allocation for grants of $20,000 or less funds and an allocation of grant funds that can be used to fund renewable energy system and energy efficiency improvements applications for either grants of $20,000 or less or grants of more than $20,000, as well as the grant portion of a combination grant and guaranteed loan. These funds are commonly referred to as unrestricted grant funds. The funds for grants of $20,000 or less can only be used to fund grants requesting $20,000 or less.

(2) *Renewable energy system and energy efficiency improvements loan guarantee funds.* Rural Development's National Office will maintain a reserve of guaranteed loan funds.

(3) *Renewable energy system and energy efficiency improvements combined grant and guaranteed loan funds.* The amount of funds available for combined grant and guaranteed loan applications are outlined in paragraphs II.(C)(1) and II.(C)(2) of this Notice.

(4) *Energy audit and renewable energy development assistance grant funds.* The amount of funds available for energy audits and renewable energy development assistance in Federal FY 2017 will be 4 percent of Federal FY 2017 mandatory funds and will be maintained in a National Office reserve. Obligations of these funds will take place through March 31, 2017. Any unobligated balances will be moved to the renewable energy budget authority account, and may be utilized in any of the renewable energy system and energy efficiency improvements national competitions.

D. *Approximate Number of Awards.* The estimated number of awards is 1,000 based on the historical average grant size and the anticipated mandatory funding of $50 million for Federal FY 2017, but will depend on the actual amount of funds made available and on the number of eligible applicants participating in this program.

E. *Type of Instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

## III. Eligibility Information

The eligibility requirements for the applicant, borrower, lender, and project (as applicable) are clarified in 7 CFR part 4280 subpart B, and are summarized in this Notice. Failure to

meet the eligibility criteria by the time of the competition window may result in the Agency reviewing an application, but will preclude the application from receiving funding until all criteria have been met.

A. *Eligible Applicants.* This solicitation is for agricultural producers and rural small businesses, as well as units of State, Tribal, or local government; instrumentalities of a State, Tribal, or local government; institutions of higher education; rural electric cooperatives; public power entities; and councils, as defined in 16 U.S.C. 3451, which serve agricultural producers and rural small businesses. To be eligible for the grant portion of the program, an applicant must meet the requirements specified in 7 CFR 4280.109, 7 CFR 4280.110, and 7 CFR 4280.112, or 7 CFR 4280.186, as applicable.

B. *Eligible Lenders and Borrowers.* To be eligible for the guaranteed portion of the program, lenders and borrowers must meet the eligibility requirements in 7 CFR 4280.125 and 7 CFR 4280.127, as applicable.

C. *Eligible Projects.* To be eligible for this program, a project must meet the eligibility requirements specified in 7 CFR 4280.113, 7 CFR 4280.128, and 7 CFR 4280.187, as applicable.

D. *Cost Sharing or Matching.* The 2014 Farm Bill mandates the maximum percentages of funding that REAP can provide. Additional clarification is provided in paragraphs IV.F.(1) through (3).

(1) *Renewable energy system and energy efficiency improvements funding.* Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of eligible project costs, with any Federal grant portion not to exceed 25 percent of the total eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) *Energy audit and renewable energy development funds.* Requests for the energy audit and renewable energy development assistance grants, will indicate that the grantee that conducts energy audits must require that, as a condition of providing the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. The Agency recommended practice for on farm energy audits, audits for agricultural producers, ranchers, and farmers is the American Society of Agricultural and Biological Engineers S612 Level II audit. This audit conforms with program standards used by the Natural Resource Conservation Service. An applicant that has received one or more grants under this program must make satisfactory progress as indicated in 7 CFR 4280.100, which has been determined by the Agency to be the expenditure of 50 percent or more of the previously awarded grant by January 31, 2017, to be considered eligible for subsequent funding.

E. *Other.* Ineligible project costs can be found in 7 CFR 4280.114(d), 7 CFR 4280.129(f), and 7 CFR 4280.188(c), as applicable. The U.S. Department of Agriculture Departmental Regulations and Laws that contain other compliance requirements are referenced in paragraphs VI.B.(1) through (3), and IV.F of this Notice. Applicants who have been found to be in violation of applicable Federal statutes will be ineligible.

## IV. Application and Submission Information

A. *Address to Request Application Package.* Application materials may be obtained by contacting one of Rural Development's Energy Coordinators, as identified via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.* In addition, for grant applications, applicants may obtain electronic grant applications for REAP from *www.grants.gov.*

B. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B. Applicants must submit complete applications by the dates identified in Section IV.C. of this Notice, containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable, in order to be considered.

(1) *Renewable energy system and energy efficiency improvements grant application.*

(a) Information for the required content of a grant application to be considered complete is found in 7 CFR part 4280, subpart B.

(i) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $80,000 or less must provide information required by 7 CFR 4280.119.

(ii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $200,000 or less, but more than $80,000, must provide information required by 7 CFR 4280.118.

(iii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of greater than $200,000 must provide information required by 7 CFR 4280.117.

(iv) Grant applications for energy audits or renewable energy development assistance grant applications must provide information required by 7 CFR 4280.190.

(b) All grant applications must be submitted either as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located, or electronically using the Government-wide *www.grants.gov* Web site.

(i) Applicants submitting a grant application as a hard copy must submit one original to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(ii) Applicants submitting a grant application to the Agency via *www.grants.gov* (Web site) will find information about submitting an application electronically through the Web site, and may download a copy of the application package to complete it off line, upload and submit the completed application, including all necessary assurances and certifications, via *www.grants.gov.* After electronically submitting an application through the Web site, the applicant will receive an automated acknowledgement from *www.grants.gov* that contains a *www.grants.gov* tracking number. USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through *www.grants.gov.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.122 (a) through (h) for the grant agreement to be executed.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan application.*

(a) Information for the content required for a guaranteed loan application to be considered complete is found in 7 CFR 4280.137.

(b) All guaranteed loan applications must be submitted as a hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal

award, borrowers must meet the conditions prior to issuance of loan note guarantee as outlined in of 7 CFR 4280.142.

(3) *Renewable energy system and energy efficiency improvements combined guaranteed loan and grant application.*

(a) Information for the content required for a combined guaranteed loan and grant application to be considered complete is found in 7 CFR 4280.165(c).

(b) All combined guaranteed loan and grant application applications must be submitted as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements, including the requisite forms and certifications, specified in 7 CFR 4280.117, 4280.118, 4280.119, and 4280.137, as applicable, for the issuance of a grant agreement and loan note guarantee.

(4) *Energy audits or renewable development assistance grant applications.*

(a) Grant applications for energy audits or renewable energy development assistance must provide the information required by 7 CFR 4280.190 to be considered a complete application.

(b) All energy audits or renewable development assistance grant applications must be submitted either as hard copy to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located, or electronically using the Government-wide *www.grants.gov* Web site. Instructions for submission of the application can be found at section IV.B. of this Notice.

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.195 for the grant agreement to be executed.

5. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM).* All applicants, unless exempt under 2 CFR 25.110, or who have an exception approved by the Federal awarding agency under 2 CFR 25.110(d), are required to:

(a) Be registered in SAM prior to submitting an application; which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *fedgov.dnb.com/webform.*

(b) Provide a valid DUNS number in its application.

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency.

(d) If an applicant has not fully complied with the requirements of IV.C. (1) through (3) at the time the Agency is ready to make an award, the Agency may determine the applicant is not eligible to receive the award.

C. *Submission Dates and Times.* Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance provided by the 2014 Farm Bill for Federal FY 2017, and for appropriated funds that REAP may receive from the appropriation for Federal FY 2017, may be submitted at any time on an ongoing basis. When an application window closes, the next application window opens on the following day. This Notice establishes the deadline dates for the applications to be received in order to be considered for funding. If an application window falls on a Saturday, Sunday, or Federal holiday, the application package is due the next business day. An application received after these dates will be considered with other applications received in the next application window. In order to be considered for funds under this Notice, complete applications must be received by the appropriate USDA Rural Development State Office or via *www.grants.gov.* The deadline for applications to be received to be considered for funding in Federal FY 2017 are outlined in the following paragraphs and also summarized in a table at the end of this section:

(1) *Renewable energy system and energy efficiency improvements grant applications and combination grant and guaranteed loan applications.* Application deadlines for Federal FY 2017 grant funds are:

(a) For applicants requesting $20,000 or less that wish to have their application compete for the ''Grants of $20,000 or less set aside,'' complete applications must be received no later than:

(i) 4:30 p.m. local time on October 31, 2016, or

(ii) 4:30 p.m. local time on March 31, 2017.

(b) For applicants requesting grant funds of over $20,000 (unrestricted) or funding for a combination grant and guaranteed loan, complete applications must be received no later than 4:30 p.m. local time on March 31, 2017.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan-only applications.* Applications will be reviewed and processed when received, with periodic competitions.

(3) *Energy audits and renewable energy development assistance grant applications.* Applications must be received no later than 4:30 p.m. local time on January 31, 2017.

| Application | Application window opening dates | Application window closing dates |
|---|---|---|
| Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less competing for up to approximately 50 percent of the set aside funds). | May 3, 2016 | October 31, 2016. |
| Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less competing for the remaining set aside funds). | November 1, 2016 | March 31, 2017*. |
| Renewable Energy Systems and Energy Efficiency Improvements Grants (Unrestricted grants, including combination grant and guaranteed loan). | May 3, 2016 | March 31, 2017*. |
| Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loans. | Continuous application cycle | Continuous application cycle. |
| Energy Audit and Renewable Energy Development Assistance Grants | February 2, 2016 | January 31, 2017. |

* Applications received after this date will be considered for the next funding cycle in the subsequent Federal FY.

D. *Intergovernmental Review.* REAP is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

E. *Funding Restrictions.* The following funding limitations apply to applications submitted under this Notice.

(1) *Renewable energy system and energy efficiency improvements projects.*

(a) Applicants can be awarded only one renewable energy system project and one energy efficiency improvement grant in Federal FY 2017.

(b) For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvements grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(c) For renewable energy system and energy efficiency improvements loan guarantees, the minimum REAP guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million.

(d) Renewable energy system and energy efficiency improvements guaranteed loan and grant combination applications. Paragraphs IV.E.(1)(b) and (c) of this Notice contain the applicable maximum amounts and minimum amounts for grants and guaranteed loans. Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of eligible project costs, with any Federal grant portion not to exceed 25 percent of the total eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) *Energy audit and renewable energy development assistance grants.*

(a) Applicants may submit only one energy audit grant application and one renewable energy development assistance grant application for Federal FY 2017 funds.

(b) The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this Notice cannot exceed $100,000 for Federal FY 2017.

(c) The 2014 Farm Bill mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business must require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

(3) *Maximum grant assistance to an entity.* For the purposes of this Notice, the maximum amount of grant assistance to an entity will not exceed $750,000 for Federal FY 2017 based on the total amount of the renewable energy system, energy efficiency improvements, energy audit, and renewable energy development assistance grants awarded to an entity under REAP.

F. *Other Submission Requirements.*

(1) *Environmental information.* For the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1970. Any required environmental review must be completed prior to obligation of funds or the approval of the application. Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable to ensure adequate review time.

(2) *Felony conviction and tax delinquent status.* Corporate applicants submitting applications under this Notice must include Form AD 3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.'' Corporate applicants who receive an award under this Notice will be required to sign Form AD 3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Both forms can be found online at *www.ocio.usda.gov/document/ad3030,* and *www.ocio.usda.gov/document/ad3031.*

(3) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through *www.grants.gov* at a later date.

(4) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that they have the necessary processes and systems in place to comply with the reporting requirements to receive funding.

(5) *Race, ethnicity, and gender.* The Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this information with their applications, but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information. However, failure to furnish this information may preclude the awarding of State Director and Administrator points in Section V.C.(1) of this Notice.

## V. Application Review Information

A. *Criteria.* In accordance with 7 CFR part 4280 subpart B, the application dates published in Section IV.C. of this Notice identify the times and dates by which complete applications must be received in order to compete for the funds available.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Complete renewable energy systems and energy efficiency improvements grant applications are eligible to compete in competitions as described in 7 CFR 4280.121.

(a) Complete renewable energy systems and energy efficiency improvements grant applications requesting $20,000 or less are eligible to compete in up to five competitions as described in 7 CFR 4280.121(b).

(b) Complete renewable energy systems and energy efficiency improvements grant applications, regardless of the amount of funding requested are eligible to compete in two competitions each Federal FY—a State competition and a national competition as described in 7 CFR 4280.121(a).

(2) *Renewable energy systems and energy efficiency improvements guaranteed loan applications.* Complete guaranteed loan applications are eligible for periodic competitions as described in 7 CFR 4280.139(a).

(3) *Renewable energy systems and energy efficiency improvements combined guaranteed loan and grant applications.* Complete combined guaranteed loan and grant applications are eligible to compete in two competitions each Federal FY—a State competition and a national competition as described in 7 CFR 4280.121(a).

(4) *Energy audit and renewable energy development assistance grant applications.* Complete energy audit and renewable energy development assistance grants applications are eligible to compete in one national competition per Federal FY as described in 7 CFR 4280.193.

B. *Review and Selection Process.* All complete applications will be scored in accordance with 7 CFR part 4280 subpart B and this section of the Notice.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Renewable energy system and energy efficiency grant applications will be scored in accordance with 7 CFR 4280.120 and selections will be made in accordance with 7 CFR 4280.121. Due to the competitive nature of this program, applications are competed based on submittal date. The submittal date is the

date the Agency receives a complete application. The complete application date is the date the Agency receives the last piece of information that allows the Agency to determine eligibility and to score, rank, and compete the application for funding.

(a) Funds for renewable energy system and energy efficiency improvements grants of $20,000 or less will be allocated to the States. Eligible applications must be submitted by October 31, 2016, or May 1, 2017, in order to be considered for these set-aside funds. Approximately 50 percent of these funds will be made available for those complete applications the Agency receives by October 31, 2016, and approximately 50 percent of the funds for those complete applications the Agency receives by May 1, 2017. All unused State allocated funds for grants of $20,000 or less will be pooled to the National Office.

(b) Eligible applications received by May 1, 2017, for renewable energy system and energy efficiency improvements grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications of $20,000 or less from other States at a national competition. Obligations of these funds will take place prior to June 30, 2017.

(c) Eligible applications for renewable energy system and energy efficiency improvements, regardless of the amount of the funding request, received by May 1, 2017, can compete for unrestricted grant funds. Unrestricted grant funds will be allocated to the States. All unused State allocated unrestricted grant funds will be pooled to the National Office.

(d) National unrestricted grant funds for all eligible renewable energy system and energy efficiency improvements grant applications received by May 1, 2017, which include grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications from other States at a final national competition.

(2) *Renewable energy systems and energy efficiency improvements guaranteed loan applications.* Renewable energy systems and energy efficiency improvements guaranteed loan applications will be scored in accordance with 7 CFR 4280.135 and selections will be made in accordance with 7 CFR 4280.139. The National Office will maintain a reserve for renewable energy system and energy efficiency improvements guaranteed loan funds. Applications will be reviewed and processed when received. Those applications that meet the Agency's underwriting requirements, are credit worthy, and score a minimum of 50 points will compete in national competitions for guaranteed loan funds periodically. All unfunded eligible guaranteed loan-only applications received that do not score at least 50 points will be competed against other guaranteed loan-only applications from other States at a final national competition, if the guaranteed loan reserves have not been completely depleted, on September 1, 2017. If funds remain after the final guaranteed loan-only national competition, the Agency may elect to utilize budget authority to fund additional grant-only applications.

(3) *Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications.* Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications will be scored in accordance with 7 CFR 4280.120 and selections will be made in accordance with 7 CFR 4280.121. Renewable energy system and energy efficiency improvements combined grant and guaranteed loan applications will compete with grant-only applications for grant funds allocated to their State. If the application is ranked high enough to receive State allocated grant funds, the State will request funding for the guaranteed loan portion of any combined grant and guaranteed loan applications from the National Office guaranteed loan reserve, and no further competition will be required. All unfunded eligible applications for combined grant and guaranteed loan applications that are received by May 1, 2017, and that are not funded by State allocations can be submitted to the National Office to compete against other grant and combined grant and guaranteed loan applications from other States at a final national competition.

(4) *Energy audit and renewable energy development assistance grant applications.* Energy audit and renewable energy development assistance grants will be scored in accordance with 7 CFR 4280.192 and selections will be made in accordance with 7 CFR 4280.193. Energy audit and renewable energy development assistance grant funds will be maintained in a reserve at the National Office. Applications received by January 31, 2017 will compete for funding at a national competition, based on the scoring criteria established under 7 CFR 4280.192, will compete for funding at a national competition. If funds remain after the energy audit and renewable energy development assistance national competition, the Agency may elect to transfer budget authority to fund additional renewable energy system and energy efficiency improvements grants from the National Office reserve after pooling.

C. *State Director and Administrator Points.* The State Director and the Administrator will take into consideration paragraphs V.C.(1) and (2) below in the awarding of points for eligible renewable energy systems and energy efficiency improvement grant applications submitted in Federal FY 2017:

(1) 7 CFR 4280.120(g)(3) may allow for applicants who are members of unserved or under-served populations to receive additional points if one of the following criteria are met:

(a) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have veteran status; or

(b) Owned by a member of a socially-disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that the owners of the project are members of a socially-disadvantaged group.

(2) 7 CFR 4280.120(g)(4) may allow for applications that further a Presidential initiative, or a Secretary of Agriculture priority to receive additional points including:

(a) Located in rural areas with the lowest incomes where, according to the most recent 5-year American Community Survey, show that at least 20 percent of the population is living in poverty. Or a project is located in a community (village, town, city, or Census Designated Place) with a median household income of 60 percent or less of the State's non-metropolitan median household income. This will support Secretary of Agriculture's priority of providing 20 percent of its funding to these areas of need; and

(b) Located in designated Strike Force or Promise Zone areas, which is a Secretary of Agriculture's priority.

D. *Other Submission Requirements.* Grant-only applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance may be submitted at any time. In order to be considered for funds, complete

applications must be received by the appropriate USDA Rural Development State Office in which the applicant's proposed project is located, or via *www.grants.gov,* as identified in Section IV.C., of this Notice.

(1) *Insufficient funds.* If funds are not sufficient to fund the total amount of an application:

(a) For State allocated funds:

(i) The applicant must be notified that they may accept the remaining funds or submit the total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(ii) If two or more grant or combination applications have the same score and remaining funds in the State allocation are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or submit their total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(b) The applicant notification for national funds will depend on size of the grant request.

(i) For an application requesting a grant of $20,000 or less in which this is the fifth and final competition or for those applications requesting grants of over $20,000 and combined grant and guaranteed loan application, the applicant must be notified that they may accept the remaining funds or their grant application will be withdrawn. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(ii) For an application requesting a grant of $20,000 or less which is eligible to compete in one or more additional competitions after the national competition, the applicant must be notified that they may accept the remaining funds or have their request considered in subsequent competitions. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(iii) If two or more grant or combination applications have the same score and remaining funds are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or be notified in accordance with V.D.(1)(b)(i) or (ii), as applicable.

(iv) At its discretion, the Agency may instead allow the remaining funds to be carried over to the next Federal FY rather than selecting a lower scoring application(s) or distributing funds on a pro-rata basis.

(2) *Award considerations.* All award considerations will be on a discretionary basis. In determining the amount of a renewable energy system or energy efficiency improvements grant or loan guarantee, the Agency will consider the six criteria specified in 7 CFR 4280.114(e) or 7 CFR 4280.129(g), as applicable.

(3) *Notification of funding determination.* As per 7 CFR 4280.111(c) all applicants will be informed in writing by the Agency as to the funding determination of the application.

## VI. Federal Award Administration Information

A. *Federal Award Notices.* The Agency will award and administer renewable energy system and energy efficiency improvements grants, guaranteed loans in accordance with 7 CFR 4280.122, and 7 CFR 4280.139, as applicable. The Agency will award and administer the energy audit and renewable energy development assistance grants in accordance with 7 CFR 4280.195. Notification requirements of 7 CFR 4280.111, apply to this Notice.

B. *Administrative and National Policy Requirements.*

(1) *Equal Opportunity and Nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the U.S. Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(2) *Civil Rights Compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(3) *Environmental Analysis.* 7 CFR part 1970, or successor regulation outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(4) *Appeals.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4280.105.

(5) *Reporting.* Grants, guaranteed loans, combination guaranteed loans and grants, and energy audit and energy audit and renewable energy development assistance grants that are awarded are required to fulfill the reporting requirements as specified in Departmental Regulations, the Grant Agreement, and in 7 CFR part 4280 subpart B and paragraphs VI.B.(5)(a) through (d) of this Notice.

(a) Renewable energy system and energy efficiency improvements grants that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.123.

(b) Guaranteed loan applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.143.

(c) Combined guaranteed loan and grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.165(f).

(d) Energy audit and renewable energy development assistance grants grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.196.

## VII. Federal Awarding Agency Contacts

For further information contact the applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Maureen Hessel, Business Loan and Grant Analyst, USDA Rural Development, Energy Division, 1400 Independence Avenue SW., Stop 3225, Room 6866,

Washington, DC 20250. Telephone: (202) 401–0142. Email: *maureen.hessel@wdc.usda.gov.*

**VIII. Other Information**

*A. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvements grants and guaranteed loans, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050. The information collection requirements associated with energy audit and renewable energy development assistance grants have also been approved by OMB under OMB Control Number 0570–0059.

*B. Nondiscrimination Statement*

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, reprisal and where applicable, political beliefs, marital status, familial or parental status, religion, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *www.ascr.usda.gov/complaint_filing_cust.html,* or complete the form at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us directly by mail or by email. If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: October 12, 2016.

**Justin Hatmaker,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2016–25163 Filed 10–17–16; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Dairyland Power Cooperative: Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Scoping Meetings

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement and Hold Public Scoping Meetings.

**SUMMARY:** The Rural Utilities Service (RUS) intends to prepare an Environmental Impact Statement (EIS) and hold public scoping meetings in connection with possible impacts related to the Cardinal-Hickory Creek Transmission Line Project proposed by Dairyland Power Cooperative (DPC). Other utilities participating in the Project are American Transmission Company LLC, by its corporate manager ATC Management Inc. and ITC Midwest LLC.

The proposal consists of the construction of a 345-kilovolt (kV) transmission line and associated infrastructure connecting the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middleton, Wisconsin (near Madison, Wisconsin). The Project also includes a new intermediate 345/138-kV substation near the Village of Montfort in either Grant County or Iowa County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 125 miles. DPC and the other project participants have identified proposed and alternate segments and locations for transmission lines and associated facilities and for the intermediate substation. Dairyland Power Cooperative is requesting RUS to provide financing for its portion of the proposed project.

**DATES:** RUS will conduct four public scoping meetings in an open-house format at the following locations:

| Date | Location | Time | Venue |
|---|---|---|---|
| October 31, 2016 | Peosta, Iowa | 3:00–6:00 p.m | Peosta Community Center, 7896 Burds Road, Peosta, IA 53068. |
| November 1, 2016 | Cassville, Wisconsin | 4:00–7:00 p.m | Cassville Middle School Cafeteria, 715 E. Amelia Street, Cassville, WI 53806. |
| November 2, 2016 | Dodgeville, Wisconsin | 4:00–7:00 p.m | Dodgeville Middle School Cafeteria, 951 Chapel St., Dodgeville, WI 53533. |
| November 3, 2016 | Middleton, Wisconsin | 4:00–7:00 p.m | Madison Marriott West, 1313 John Q Hammons Dr., Middleton, WI 53562. |

**ADDRESSES:** To send comments or for further information, contact Dennis Rankin, Environmental Protection Specialist, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW., Room 2244, Stop 1571, Washington, DC 20250–1571 Email: *dennis.rankin@wdc.usda.gov* Washington, DC 20250–1571.

An Alternative Evaluation Study (AES) and Macro Corridor Study (MCS), prepared by Dairyland Power Cooperative, will be presented at the public scoping meetings. The reports are available for public review at the RUS address provided in this notice and at Dairyland Power Cooperative, 3251 East Avenue, South, La Crosse, WI 54602. In addition, the reports will be available at RUS' Web site, *http://www.rd.usda.gov/publications/environmental-studies/impact-statements* and at local libraries in the project area.

**SUPPLEMENTARY INFORMATION:** Preliminary proposed transmission line corridors, the siting area for the intermediate substation, and the two existing end-point substations have been identified. The EIS will address the construction, operation, and

management of the proposed project, which includes the following: A new 345-kV terminal within the existing Hickory Creek Substation in Dubuque County, Iowa; a new intermediate 345/138-kV substation near the Village of Montfort in either Grant or Iowa County, Wisconsin; a new 345-kV terminal within the existing Cardinal Substation in the Town of Middleton in Dane County, Wisconsin; a new 45- to 65-mile (depending on the final route) 345-kV transmission line between the Hickory Creek Substation and the intermediate substation; a new 45- to 60-mile (depending on the final route) 345-kV transmission line between the intermediate substation and the existing Cardinal Substation; a short, less than one-mile, 69-kV line in Iowa; facility reinforcement needed in Iowa and Wisconsin; construction and maintenance of access roads for all proposed transmission lines and rebuild of the Turkey River Substation in Dubuque County, Iowa with two 161/69 kV transformers, four 161-kV circuit breakers, and three 69-kV circuit breakers.

Total length of the transmission lines for the proposed project will be approximately 125 miles. The project study area includes part or all of the following counties in Iowa: Clayton and Dubuque. In Wisconsin, the project area includes parts of the following counties: Dane, Grant, Iowa, and Lafayette.

Among the alternatives RUS will address in the EIS is the No Action alternative, under which the project would not be undertaken. In the EIS, the effects of the proposed project will be compared to the existing conditions in the area affected. Alternative transmission line corridors and the intermediate substation location will be refined as part of the EIS scoping process and will be addressed in the Draft EIS. RUS will carefully study public health and safety, environmental impacts, and engineering aspects of the proposed project and all related facilities.

The U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) are participating in the environmental review process as cooperating agencies, with RUS as the lead Federal agency.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS that considers all comments received will subsequently be prepared. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft EIS, the Final EIS, and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant federal, state, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1970).

Dated: October 12, 2016.

**Kellie Kubena,**

*Director, Engineering and Environmental Staff, Rural Utilities Service.*

[FR Doc. 2016–25132 Filed 10–17–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Discontinuance of Information Collection 0694–0009: Triangular Transactions ''Stamp'' Covered by a U.S. Import Certificate

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

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, has discontinued Information Collection 0694–0009, ''Triangular Transactions Covered by a U.S. Import Certificate.'' Although this collection has been discontinued, the Triangular Transactions ''Stamp'' is still valid and has been added to collection 0694–0017 as a supplemental document.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Mark Crace, BIS ICB Liaison, (202)482–8093 or *Mark.Crace@bis.doc.gov.*

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2016–25125 Filed 10–17–16; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–876, A–583–859, A–489–829]**

### Steel Concrete Reinforcing Bar From Japan, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Effective October 11, 2016.

**FOR FURTHER INFORMATION CONTACT:** Emily Halle at (202) 482–0176 (Japan); Jun Jack Zhao at (202) 482–1396 (Taiwan); and Myrna Lobo at (202) 482–2371 (Republic of Turkey), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### The Petitions

On September 20, 2016, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of steel concrete reinforcing bar (rebar) from Japan, Taiwan, and the Republic of Turkey (Turkey), filed in proper form on behalf of the Rebar Trade Action Coalition and its individual members (Petitioners).[1] The Petitions were accompanied by a countervailing duty (CVD) petition on rebar from Turkey.[2] Petitioners are domestic producers of rebar.[3]

On September 23 and 30, 2016, the Department requested additional information and clarification of certain areas of the Petitions.[4] Petitioners filed

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey, dated September 20, 2016 (the Petitions). The individual members of the Rebar Trade Action Coalition are Bayou Steel Group, Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc.

[2] *Id.*

[3] *See* Volume I of the Petitions, at 2 and Exhibits I–1.

[4] *See* Letter from the Department to Petitioners entitled ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' dated September 23, 2016 (General Issues Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Japan: Supplemental Questions,'' dated September 23, 2016 (Japan Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled

Continued

responses to these requests on September 28, October 4, and October 5, 2016, respectively.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of rebar from Japan, Taiwan, and Turkey are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, Petitioners state that the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed these Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in sections 771(9)(C) and (E) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioners are requesting.[6]

## Period of Investigation

Because the Petitions were filed on September 20, 2016, the period of investigation (POI) for each investigation is, pursuant to 19 CFR 351.204(b)(1), July 1, 2015, through June 30, 2016.

## Scope of the Investigations

The product covered by these investigations is rebar from Japan, Taiwan, and Turkey. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' at Appendix I of this notice. Note that one paragraph in the description of the scope of these investigations in Appendix I applies by its express terms solely to the merchandise covered by the concurrent countervailing duty investigation of rebar from Turkey and does not apply to these less-than-fair-value investigations.

## Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Daylight Time (EDT) on October 31, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (also should be limited to public information), must be filed by 5:00 p.m. EST (Eastern Standard Time) on November 10, 2016, which is 10 calendar days after the initial comments. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. As stated above, all such comments must be filed on the records of each of the concurrent AD and CVD investigations.

## Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[8] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

## Comments on Product Characteristics for AD Questionnaires

The Department will be giving interested parties an opportunity to provide comments on the appropriate physical characteristics of rebar to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of

''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Taiwan: Supplemental Questions,'' dated September 23, 2016 (Taiwan Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled ''Petition for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' dated September 23, 2016 (Turkey Supplemental Questionnaire); *see also* Memorandum to the File from Vicki Flynn, Senior Policy Analyst, Office of Policy, Re: ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey and Antidumping Duties on Imports from Japan and Taiwan, Subject: Telephone Conversation with Petitioners' Counsel,'' dated September 30, 2016 (Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope and Other Issues).

[5] *See* Letter from Petitioners to the Department entitled ''Re: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Response to the Department's Supplemental Questions,'' dated September 28, 2016 (General Issues Supplement); *see also* Letter from Petitioners to the Department entitled ''Re: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Japan: Response to the Department's Supplemental Questions,'' dated September 28, 2016 (Japan Supplement); *see also* Letter from Petitioners to the Department entitled ''Re: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Taiwan: Response to the Department's Supplemental Questions,'' dated September 28, 2016 (Taiwan Supplement); *see also* Letter from Petitioners to the Department entitled ''Re: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from the Republic of Turkey: Response to the Department's Supplemental Questions,'' dated September 28, 2016 (Turkey Supplement); *see also* Letter from Petitioners to the Department entitled ''Re: Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Response to the Department's Supplemental Questions,'' dated October 4, 2016 (Second General Issues Supplement); *see also* Letter from Petitioners to the Department entitled ''Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Revised Scope, Amendment to Petition for the Imposition of Antidumping and Countervailing Duties,'' dated October 5, 2016 (Third General Issues Supplement).

[6] *See* the ''Determination of Industry Support for the Petitions'' section below.

[7] *See* General Issues Supplemental Questionnaire and General Issues Supplement; *see also* Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope and Other Issues and Third General Issues Supplement.

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe rebar, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. EDT on October 31, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. EST on November 10, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of each of the concurrent AD investigations.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[9] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[10]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that rebar, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[11]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, Petitioners provided their 2015 shipments of the domestic like product, and compared their shipments to estimated total shipments of the domestic like product for the entire domestic industry.[12] Because production data for the U.S. rebar industry for 2015 is not reasonably available to Petitioners and Petitioners have established that shipments are a reasonable proxy for production data,[13] we have relied upon the shipment data provided by Petitioners for purposes of measuring industry support.

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[14] First, the Petitions established support from domestic producers and workers accounting for more than 50 percent of the total shipments [15] of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[16] Second, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petitions account for at least 25 percent of the total shipments of the domestic like

[9] *See* section 771(10) of the Act.

[10] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[11] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from Japan (Japan AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey (Attachment II); Antidumping Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from Taiwan (Taiwan AD Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from the Republic of Turkey (Turkey AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[12] *See* Volume I of the Petitions, at 3 and Exhibits I–4 and I–31; *see also* General Issues Supplement, at 3–6 and Exhibits I–Supp–4 and I–Supp–7.

[13] *See* General Issues Supplement, at 5 and Exhibits I–Supp–4 and I–Supp–5.

[14] *See* Japan AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[15] As discussed above, Petitioners established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

[16] *See* section 732(c)(4)(D) of the Act; *see also* Japan AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

product.[17] Finally, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petitions account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[18] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (E) of the Act and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting the Department initiate.[19]

**Allegations and Evidence of Material Injury and Causation**

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[20]

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declines in production, capacity utilization, and U.S. shipments; negative impact on employment variables; and decline in financial performance.[21] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[22]

**Allegations of Sales at Less-Than-Fair Value**

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate investigations of imports of rebar from Japan, Taiwan, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

**Export Price**

For Japan, Petitioners based export price (EP) on quoted sales offers or transactions to customers in the United States for rebar produced in, and exported from, Japan.[23] Where applicable, Petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms.[24] Petitioners also deducted from U.S. price brokerage and handling expenses.[25]

For Taiwan, and Turkey, Petitioners based EP on transaction-specific average unit values (AUVs) for shipments of rebar identified from each of these countries entered under the relevant Harmonized Tariff Schedule of the United States (HTSUS) subheading for one month during the POI into a specific port.[26] Under this methodology,[27] Petitioners linked data from an independent source to monthly U.S. port-specific import statistics (obtained from the ITC's Dataweb). Petitioners linked imports of rebar entered under the relevant HTSUS subheading to shipments from producers in the subject countries identified in the independent source data to ensure that the Dataweb statistics were only for subject merchandise.[28] To calculate ex-factory prices, Petitioners made adjustments for foreign inland freight and brokerage and handling expenses; Petitioners made no adjustments to EP for international freight and insurance expenses, consistent with the manner in which the data is reported in Dataweb.[29]

**Normal Value Based on Constructed Value**

For Japan, Taiwan, and Turkey, Petitioners were unable to obtain information regarding home market prices and, therefore, calculated NV based on constructed value (CV).[30] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, financial expenses, packing expenses, and profit. Petitioners calculated COM based on a U.S. producer of rebar (U.S. surrogate's) experience, adjusted for known differences between producing in the United States and producing in the respective country (*i.e.*, Japan, Taiwan, or Turkey), during the proposed POI.[31] Using publicly-available data to account for price differences, Petitioners multiplied the surrogate raw material and packing usage quantities by the submitted value of the inputs used to manufacture rebar in each country.[32] For Japan, Taiwan, and Turkey, labor and energy rates were derived from publicly-available sources multiplied by the U.S. surrogate's product-specific usage quantities.[33] For Japan, Taiwan, and Turkey, to determine the factory overhead, SG&A, and financial rates, Petitioners relied on the audited financial statements of companies that were producers of identical merchandise operating in the respective subject country.[34] Petitioners also relied on the audited financial statements of the same producers that they used for calculating the factory overhead, SG&A, and financial expenses to calculate the profit rate.[35]

**Fair Value Comparisons**

Based on the data provided by Petitioners, there is reason to believe that imports of rebar from Japan, Taiwan, and Turkey, are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV in accordance

[17] *See* Japan AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.*

[20] *See* General Issues Supplement, at 6–7 and Exhibit I–Supp–8; *see also* Volume I of the Petitions, at Exhibit I–23.

[21] *See* Volume I of the Petitions, at 14, 18–48 and Exhibits I–5, I–8, I–20, and I–23 through I–59; *see also* General Issues Supplement, at 6–8 and Exhibits I–Supp–7 through I–Supp–10.

[22] *See* Japan AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey (Attachment III); *see also* Taiwan AD Initiation Checklist, at Attachment III; and Turkey AD Initiation Checklist, at Attachment III.

[23] *See* Japan AD Initiation Checklist; *see also* Volume II of the Petitions, at 2–3 and Exhibit AD–JP–2.

[24] *See* Japan AD Initation Checklist; *see also* Volume II of the Petitions, at 2–7 and Exhibit AD–JP–11; *see also* Japan Supplement, at Exhibit AD–JP–Supp–2.

[25] *Id.*

[26] *See* Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *See* Japan AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist. In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations, the Department will request information necessary to calculate the cost of production (COP) and CV to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

[31] *See* Japan AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

with sections 773(a) and (e) of the Act, the estimated dumping margin(s) for rebar are as follows: (1) Japan, 204.91 to 209.46 percent;[36] (2) Taiwan, 84.66 percent;[37] and (3) Turkey, 66.55 percent.[38]

**Initiation of Less-Than-Fair-Value Investigations**

Based upon the examination of the AD Petitions on rebar from Japan, Taiwan, and Turkey, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of rebar for Japan, Taiwan, and Turkey, are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[39] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[40] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[41]

**Respondent Selection**

Based on information from an independent source and other open source research, Petitioners identified 20 companies in Japan, 8 companies in Taiwan, and 35 companies in Turkey, as producers/exporters of rebar.[42] Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate HTSUS numbers listed with the ''Scope of the Investigations,'' in Appendix I, below. We also intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of each respective investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Comments for the above-referenced investigations must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. ET by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Japan, Taiwan, and Turkey via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of rebar from Japan, Taiwan, and/or Turkey are materially injuring or threatening material injury to a U.S. industry.[43] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[44] otherwise, these investigations will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under Part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits;*

[36] *See* Japan Supplement, Exhibit AD–JP–Supp–3, and Japan AD Initiation Checklist.

[37] *See* Taiwan Supplement, Exhibit AD–TW–Supp–6, and Taiwan AD Initiation Checklist.

[38] *See* Turkey Supplement, Exhibit AD–TR–Supp–6, and Turkey AD Initiation Checklist.

[39] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[40] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[41] *Id.*, at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[42] *See* Volume I of the Petition, at 12–13 and Exhibit I–19.

[43] *See* section 733(a) of the Act.

[44] *Id.*

*Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in this segment.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[45] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of Petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[46] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: October 11, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigations**

The merchandise subject to these investigations is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (*e.g.*, mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject country or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the rebar.

Specifically excluded are plain rounds (*i.e.*, nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.

At the time of the filing of the petition, there was an existing countervailing duty order on steel reinforcing bar from the Republic of Turkey. *Steel Concrete Reinforcing Bar From the Republic of Turkey*, 79 FR 65,926 (Dep't Commerce Nov. 6, 2014) (2014 Turkey CVD Order). The scope of this countervailing duty investigation with regard to rebar from Turkey covers only rebar produced and/or exported by those companies that are excluded from the 2014 Turkey CVD Order. At the time of the issuance of the 2014 Turkey CVD Order, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. was the only excluded Turkish rebar producer or exporter.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

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[45] *See* section 782(b) of the Act.

[46] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 7, 2016. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number:* 15–061. Applicant: Yale School of Medicine, 333 Cedar St., New Haven, CT 06510. Instrument: SuperK Extreme EXR–20 white light laser. Manufacturer: NKT Photonics, Denmark. Intended Use: The instrument will be used as an excitation sources for the study of intracellular processes and structures at super resolution. The experiments require a high power pulsed excitation source at a wavelength of 590 nm, and minimal after pulse tail and sub 100 ps pulse width. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 18, 2016.

*Docket Number:* 16–002. Applicant: University of Massachusetts Medical School, 55 Lake Avenue North, Worcester, MA 01655. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to understand the three-dimensional structure of purified proteins and protein complexes at the atomic level, and how this is related to their function. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 18, 2016.

*Docket Number:* 16–004. Applicant: Purdue University, 315 N. Grant St., West Lafayette, IN 47907. Instrument: SGR YAG pulsed laser. Manufacturer: Beamtech Optronics, Co. LTD, China. Intended Use: The instrument will be used for pulsed laser annealing and nanostructure integrated laser shock peening, to improve the microstructure of thin film for better electrical and optical properties. Requirements for the experiment include three wave lengths (355nm, 532nm, 1064nm), pulse energy 2J, flat hat beam, and pulse duration tunable from 10ns to 25ns. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 18, 2016.

*Docket Number:* 16–005. Applicant: Rutgers University, Administrative Services Bldg. I, Rm. 300, Plant Funds, 65 Davidson Road, Piscataway, NJ 08854–8076. Instrument: Electron

Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to achieve sub-nanometer resolution structures of protein complexes, characterize interactions between various components of protein complexes and understand biological activities by imaging protein assemblies in cellular or physiologic conditions. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 14, 2016.

*Docket Number:* 16–008. Applicant: California Institute of Technology, 1200 E. California Blvd., Pasadena, CA 91125. Instrument: Cryogenic Temperature Scanning Tunneling Microscope System. Manufacturer: Unisoku Co., LTd., Japan. Intended Use: The instrument will be used to investigate structural and electrical surface properties with atomic resolution at cryogenic temperatures (-459 Fahrenheit—0.4 K) and high magnetic fields, at which conditions materials can exhibit unusual quantum properties such as topological superconductivity and fractionalization of charge carriers. Experiments to be conducted with the instrument include mapping of the local electronic density of states of gated nanostructures by measuring current—voltage curves at different points, mapping of the electron spin structure using scanning tips made of magnetic materials, and probing the size of the energy gap in topological insulators and topological superconductors. For this type of research an instrument capable of performing scanning tunneling microscopy (STM) and atomic force microscopy (AFM) at cryogenic temperatures and high magnetic fields is essential. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 14, 2016.

*Docket Number:* 16–010. Applicant: University of California, Riverside, 900 University Drive, Riverside, CA 92521. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used teaching and associated research, including materials science, earth science and life science, all of which rely on the characterization of morphology and structure at microscopic down to atomic scale of materials and biological tissues. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 18, 2016.

*Docket Number:* 16–011. Applicant: Van Andel Research Institute, 333 Botswick Avenue NE., Grand Rapids, MI 49503. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to computationally process images of protein complexes and apply averaging techniques to 3D models of isolated cellular components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 21, 2016.

*Docket Number:* 16–012. Applicant: Van Andel Research Institute, 333 Botswick Avenue NE., Grand Rapids, MI 49503. Instrument: Electron Microscope. Manufacturer: FEI, Co., the Netherlands. Intended Use: The instrument will be used to computationally process images of protein complexes and apply averaging techniques to 3D models of isolated cellular components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 16, 2016.

*Docket Number:* 16–013. Applicant: Van Andel Research Institute, 333 Botswick Avenue NE., Grand Rapids, MI 49503. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to computationally process images of protein complexes and apply averaging techniques to calculate 3D models of isolated cellular components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 15, 2016.

*Docket Number:* 16–014. Applicant: Iowa State University, 3616 Administrative Services Bldg., Stange Road, Ames, Iowa 50011–3616. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study atom arrangement/motion in defects, interface, precipitate and their effect on property using high-resolution (scanning) electron microscopy, nanospectroscopy, electron diffraction, electron holography and Lorentz microscopy. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 14, 2016.

*Docket Number:* 16–015. Applicant: Yale University, 2 Whitney Avenue, Suite 540, P.O. Box 208202, New Haven, CT 06520. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to obtain atomic-resolution maps of macromolecular complexes, to obtain three-dimensional tomograms of cellular contents, and to observe the arrangements of organelles and macromolecular complexes that participate in cellular processes. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 18, 2016.

*Docket Number:* 16–016. Applicant: State University of New York at Stony Brook, Research & Development Campus, Development Drive, Bldg. 17, Stony Brook, NY 117964–6000. Instrument: Cryo-Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to image and visualize purified proteins, nucleic acid-protein complexes, and thin sections of biological materials such as cells or tissues by cryo-electron microscopy. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 24, 2016.

Dated: October 11, 2016.

**Gregory W. Campbell,**

*Director of Subsidies Enforcement, Enforcement and Compliance.*

[FR Doc. 2016–25173 Filed 10–17–16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–471–807]**

### Certain Uncoated Paper From Portugal: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the ''Department'') preliminarily determines that The Navigator

Company, S.A. and Navigator Fine Paper, S.A. (collectively ''Navigator'') is the successor in interest to Portucel, S.A. and Portucel Soporcel Fine Paper, S.A. (collectively ''Portucel'') for purposes of the antidumping duty order on certain uncoated paper from Portugal and, as such, is entitled to Portucel's cash deposit rate with respect to entries of subject merchandise. Interested parties are invited to comment on these preliminary results.

**DATES:** Effective October 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** Carrie Bethea, 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) 482–1491.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published the antidumping duty order for certain uncoated paper from Portugal in the **Federal Register** on March 3, 2016.[1] In the underlying less than fair value investigation, the Department collapsed Portucel, S.A. and Portucel Soporcel Fine Paper, S.A. for purposes of antidumping treatment.[2] On August 26, 2016, the Department received a request on behalf of Navigator for an expedited changed circumstance review (''CCR'') to establish Navigator as the successor-in-interest to Portucel for purposes of the antidumping duty order on certain uncoated paper from Portugal.[3] We received no comments opposing Navigator's request.

## Scope of the Order

The merchandise covered by this order includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level[4] of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

The product is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216(c)–(d), the Department will only conduct a changed circumstances review less than 24 months after the date of publication of the final determination with good cause and upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order.

Navigator has shown that good cause exists to conduct a changed circumstance review because the name change will affect its import documentation before U.S. Customs and Border Protection (''CBP''), thus affecting CBP's treatment of its entries. The information submitted by Navigator claiming that Navigator is the successor-in-interest to Portucel also demonstrates changed circumstances sufficient to warrant a review. Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(c)–(d), the Department is initiating a changed circumstances review to determine whether Navigator is the successor-in-interest to Portucel.

## Preliminary Results

The Department may issue the notice of initiation of the review and the preliminary results concurrently when it concludes that expedited action is warranted.[5] We find that expedited action is warranted because we have the information necessary on the record to make a preliminary finding. Therefore, we are combining the notice of initiation and the notice of preliminary results in accordance with 19 CFR 351.221(c)(3)(ii).

In determining whether one company is the successor to another for purposes of applying the antidumping duty (''AD'') law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base.[6] While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be the successor to another company if its resulting operation is essentially the same as that of its predecessor.[7] Thus, if the evidence demonstrates that, with

[1] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 42 FR 11174 (March 3, 2016) (''*Order*'').

[2] *See Certain Uncoated Paper from Portugal: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 80 FR 51777 (August 26, 2015) (unchanged in final results), *Certain Uncoated Paper from Portugal: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 3105 (January 20, 2016).

[3] Letter to the Secretary from Navigator, regarding, ''Certain Uncoated Paper from Portugal: Request for Changed Circumstances Review,'' dated August 26, 2016 (''CCR Request'').

[4] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ''Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

[5] 19 CFR 351.221(c)(3)(ii); *see also Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,* 80 FR 7842 (Feb. 12, 2015); *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation and Preliminary Results of Changed Circumstances Review,* 77 FR 4993 (February 1, 2012).

[6] *See, e.g., Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan,* 69 FR 61796, 61797 (October 21, 2004).

[7] *Id.*

respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.[8]

In its August 26, 2016 submission, Navigator provided documentation demonstrating that Navigator is the successor in interest to Portucel in that no major changes occurred with respect to management, production process, customer base, or suppliers.[9]

According to the information provided, no material changes in management,[10] operations,[11] or ownership [12] have occurred in the businesses as a result of the name change from Portucel to Navigator. Navigator's General Managers, Board of Directors, and shareholders have not materially changed from Portucel's following its name change.[13] Navigator's production facilities and production of subject merchandise remain the same as Portucel.[14] Navigator has maintained Portucel's business model as a vertically integrated producer such that there are no material changes in its suppliers.[15] Navigator continues to export to the same sole customer in the United States as Portucel, thus there are no material changes between Portucel's and Navigator's customer bases.[16]

Should our final results remain the same as these preliminary results, effective the date of publication of the final results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by Navigator the antidumping duty cash-deposit rate applicable to Portucel.

## Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[17] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 14 days after the date of publication of this notice.[18] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: October 7, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–25172 Filed 10–17–16; 8:45 am]

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[8] *See, e.g.,Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstance Review,* 70 FR 17063, 17064 (April 4, 2005); *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[9] *See, generally,* CCR Request.

[10] *Id.* at Attachment 2 and 4 (showing any changes in Board of Directors to be routine and unrelated to the successor-in-interest claim).

[11] *Id.* at Attachment 1, 6, and 7.

[12] *Id.* at Attachment 8; *see also Certain Pasta from Turkey: Preliminary Results of Countervailing Duty Changed Circumstances Review,* 74 FR 47225 (September 15, 2009) (unchanged in final) (''the types of changes that we normally consider to be significant {. . . does not include. . .} regular buying and selling of publicly owned shares held by a broad array of investors'').

[13] CCR Request at 3–4 and Attachments 2, 4, 6, and 7.

[14] *Id.* at Attachments 1, 6, and 7.

[15] *Id.* at Attachment 9.

[16] *Id.* at Attachment 10 (showing Navigator's U.S. affiliate's customers for fiscal year 2015 and January through July of 2016).

[17] *See* 19 CFR 351.309.

[18] *See* 19 CFR 351.310(c).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–830]**

### Steel Concrete Reinforcing Bar From the Republic of Turkey: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**DATES:** Effective October 11, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kaitlin M. Wojnar at (202) 482–3857, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## The Petition

On September 20, 2016, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey),[1] filed in proper form, on behalf of the Rebar Trade Action Coalition and its individual members (collectively, Petitioners).[2] The CVD petition was accompanied by antidumping duty (AD) petitions concerning imports of rebar from Japan, Taiwan, and the Turkey.[3] Petitioners are domestic producers of rebar.

On September 22 and 23, 2016, the Department requested additional information and clarification of certain aspects of the Petition.[4] Petitioners responded to these requests on between September 27 and October 5, 2016.[5]

[1] *See* Letter from Petitioners, ''Petition for the Imposition of Antidumping and Countervailing Duties: Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey,'' September 20, 2016 (Petition), at Volume V.

[2] The Rebar Trade Action Coalition includes Bayou Steel Group, Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc. *Id.,* Volume I at 1.

[3] *See* Petition, Volumes II–IV.

[4] *See* Letter from the Department, ''Petition for the Imposition of Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' September 22, 2016; *see also* Letter from the Department, ''Petitions for the Imposition of Antidumping Duties on Imports of Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey and Countervailing Duties on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Questions,'' September 23, 2016 (General Issues Supplemental Questionnaire).

[5] *See* Letter from Petitioners, ''Supplement to the Petition for the Imposition of Countervailing Duties on Steel Concrete Reinforcing Bar from the Republic of Turkey: Response to the Department's

Continued

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that the Government of Turkey (the GOT) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to manufacturers, producers, or exporters of rebar from Turkey and that imports of such rebar are materially injuring, or threatening material injury to, an industry in the United States. Additionally, consistent with section 702(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations of programs in Turkey on which we are initiating a CVD investigation.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties, as defined by section 771(9)(C) of the Act. As discussed in the ''Determination of Industry Support for the Petition'' section, below, the Department also finds that Petitioners demonstrated sufficient industry support with respect to initiation of the requested CVD investigation.

## Period of Investigation

The period of investigation is January 1, 2015, through December 31, 2015.[6]

## Scope of the Investigation

The product covered by this investigation is rebar from Turkey. For a full description of the scope of this investigation, see the Appendix to this notice.

## Comments on the Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope to ensure that the scope language in the Petition accurately reflected the products for which the domestic industry is seeking relief.[7] As a result of those exchanges, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The class or kind of merchandise covered by this initiation, as described in the Appendix to this notice, reflects that clarification.

As discussed in the preamble to the Department's regulations,[8] we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received and, if necessary, consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[9] all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on October 31, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 10, 2016, which is 10 calendar days after the deadline for initial comments.

The Department requests that any factual information parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments and information must be filed on the record of this CVD investigation, as well as the record of each of the concurrent AD investigations.

## Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically-filed document must be successfully received, in its entirety, by the date and time it is due. Any document excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.

## Consultations

Pursuant to section 702(b)(4)(A) of the Act, the Department notified representatives of the GOT of its receipt of the Petition and provided them with the opportunity for consultations regarding the CVD allegations.[11] On October 6, 2016, the Department held consultations with the GOT.[12] All letters and memoranda pertaining to these consultations are available via ACCESS.

## Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to

Supplemental Questions,'' September 27, 2016; *see also* Letter from Petitioners, ''Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Response to the Department's Supplemental Questions,'' September 28, 2016 (General Issues Supplement); Letter from Petitioners, ''Supplement to the Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Response to the Department's Supplemental Questions,'' October 4, 2016 (Second General Issues Supplement); Letter from Petitioners, ''Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Revised Scope, Amendment to the Petition for the Imposition of Antidumping and Countervailing Duties,'' October 5, 2016.

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement.

[8] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 2007).

[9] *See* 19 CFR 351.102(b)(21).

[10] *See* 19 CFR 351.303 (describing general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) (detailing the Department's electronic filing requirements, which went into effect on August 5, 2011). Helpful information on using ACCESS can be found at *https://access.trade.gov/help.aspx,* and the ACCESS handbook is available at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[11] *See* Letter from the Department, ''Petition for Countervailing Duties on Steel Concrete Reinforcing Bar from the Republic of Turkey,'' September 21, 2016.

[12] *See* Department Memorandum, ''Countervailing Duty Petition on Steel Concrete Reinforcing Bar from the Republic of Turkey,'' October 6, 2016.

producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that rebar, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, Petitioners provided their 2015 shipments of the domestic like product, and compared their shipments to estimated total shipments of the domestic like product for the entire domestic industry.[16] Because production data for the U.S. rebar industry for 2015 is not reasonably available to Petitioners, and Petitioners have established that shipments are a reasonable proxy for production data,[17] we have relied upon the shipment data provided by Petitioners for purposes of measuring industry support.

Our review of the data provided in the Petition, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[18] First, the Petition established support from domestic producers and workers accounting for more than 50 percent of the total shipments of the domestic like product,[19] and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petition account for at least 25 percent of the total shipments of the domestic like product.[21] Finally, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petition account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties, as defined in sections 771(9)(C) and (F) of the Act, and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate.[23]

## Injury Test

Because Turkey is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

## Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; declines in production, capacity utilization, and U.S. shipments; negative impact on employment variables; and decline in financial performance.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[26]

## Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a) of the Act and (2) is accompanied by information

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Steel Concrete Reinforcing Bar from the Republic of Turkey (CVD Initiation Checklist), at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey.'' The CVD Initiation Checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[16] *See* Petition, Volume I at 3, Exhibit I–4, and Exhibit I–31; *see also* General Issues Supplement at 3–6, Exhibit I–Supp–4, and Exhibit I–Supp–7.

[17] *See* General Issues Supplement at 5, Exhibit I–Supp–4, and Exhibit I–Supp–5.

[18] *See* CVD Initiation Checklist at Attachment II.

[19] As discussed above, Petitioners established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states, ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

[20] *See* section 702(c)(4)(D) of the Act; *see also* CVD Initiation Checklist at Attachment II.

[21] *See* CVD Initiation Checklist at Attachment II.

[22] *Id.*

[23] *Id.*

[24] *See* General Issues Supplement at 6–8, Exhibit I–Supp–8, and Exhibit I–Supp–9; *see also* Second General Issues Supplement at 1–2.

[25] *See* Petition, Volume I at 14, 18–48, Exhibit I–5, Exhibit I–8, Exhibit I–20, and Exhibits I–23 through I–59; *see also* General Issues Supplement at 6–8, Exhibit I–Supp–7, Exhibit I–Supp–8, Exhibit I–Supp–9 and Exhibit I–Supp–10; Second General Issues Supplement at 1–2.

[26] *See* CVD Initiation Checklist at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey.''

reasonably available to Petitioners supporting the allegations.

Petitioners allege that exporters/producers of rebar in Turkey benefited from countervailable subsidies bestowed by the GOT. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, and/or exporters of rebar from Turkey not covered by an existing CVD order on rebar from Turkey receive countervailable subsidies from the GOT.

On June 29, 2015, the President of the United States signed the Trade Preferences Extension Act of 2015 (TPEA) into law, which made numerous amendments to the Act.[27] The TPEA does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[28] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.[29]

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 21 of 23 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on *ACCESS.*

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination in this investigation no later than 65 days after the date of initiation.

**Respondent Selection**

Petitioners named one company as an exporter/producer of rebar from Turkey that is not currently subject to an existing CVD order on imports of rebar from Turkey.[30] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of rebar from Turkey during the period of investigation. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOT via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter/producer, as named in the Petition,[31] consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

Within 45 days of the date on which the Petition was filed, the ITC will preliminarily determine whether there is a reasonable indication that imports of rebar from Turkey are materially injuring, or threatening material injury to, a U.S. industry.[32] A negative ITC determination will result in the investigation being terminated.[33] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i) through (iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Specific time limits for submission of factual information, based on the type of factual information being submitted, are provided at 19 CFR 351.301. Parties should review the regulations prior to submitting factual information in this investigation.

**Extension of Time Limits**

Parties may request the extension of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary, before the applicable time limit has expired. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different deadline after which extension requests will be considered untimely for submissions that are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum establishing the applicable time limit. An extension request must be made in a separate, stand-alone submission. In limited circumstances, we will grant untimely-filed extension requests.[34]

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify the accuracy and completeness of that information.[35] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after

[27] *See* TPEA, Public Law 114–27, 129 Stat. 362 (2015).

[28] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[29] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*), at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[30] *See* Petition, Volume V at 1.

[31] *See* Petition, Volume I at Exhibit I–19.

[32] *See* section 703(a)(2) of the Act.

[33] *See* section 703(a)(1) of the Act.

[34] *See Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[35] *See* section 782(b) of the Act.

August 16, 2013, should use the revised certification formats provided at the end of the *Final Rule.*[36] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* filing letters of appearance, as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: October 11, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (*e.g.,* mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject country or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the rebar.

Specifically excluded are plain rounds (*i.e.,* nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size, or grade) and without being subject to an elongation test.

At the time of the filing of the petition, there was an existing countervailing duty order on steel reinforcing bar from the Republic of Turkey. *Steel Concrete Reinforcing Bar From the Republic of Turkey,* 79 FR 65,926 (Dep't Commerce Nov. 6, 2014) (2014 Turkey CVD Order). The scope of this countervailing duty investigation with regard to rebar from Turkey covers only rebar produced and/or exported by those companies that are excluded from the 2014 Turkey CVD Order. At the time of the issuance of the 2014 Turkey CVD Order, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. was the only excluded Turkish rebar producer or exporter.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

[FR Doc. 2016–25178 Filed 10–17–16; 8:45 am]

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[36] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE937**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

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

**ACTION:** Notice; receipt of application for Letters of Authorization; request for comments and information.

**SUMMARY:** NMFS' Office of Protected Resources has received a request from the NMFS Alaska Fisheries Science Center (AFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the AFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the AFSC's application and request.

**DATES:** Comments and information must be received no later than November 17, 2016.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

An electronic copy of the AFSC's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm*. The AFSC has separately released a draft Environmental Assessment (EA), prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is available at the same Web site.

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the

mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

### Summary of Request

On June 28, 2016, NMFS received an adequate and complete application from the AFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by the AFSC. The requested regulations would be valid for five years from the date of issuance. The AFSC plans to conduct fisheries research surveys in multiple geographic regions, including the Gulf of Alaska, Bering Sea, and Arctic Ocean. It is possible that marine mammals may interact with fishing gear (*e.g.,* trawls nets, longlines) used in AFSC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, the AFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, the AFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

### Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based, Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The AFSC is the research arm of NMFS in U.S. waters off of Alaska.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The AFSC proposes to administer and conduct these survey programs over the five-year period.

### Information Solicited

Interested persons may submit information, suggestions, and comments concerning the AFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the AFSC, if appropriate.

Dated: October 13, 2016.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016–25191 Filed 10–17–16; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XE960**

## Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (MAFMC's) *Summer Flounder, Scup,* and *Black Sea Bass* Monitoring Committee will hold a public meeting.

**DATES:** The meeting will begin at 1 p.m. on Wednesday, November 9, 2016, and end at 3 p.m. on Thursday, November 10, 2016, to view the agenda see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held at the Admiral Fell Inn, 888 S. Broadway, Baltimore, MD 21231; telephone: (410) 522–7377.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site, at *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:**

### Agenda

The Mid-Atlantic Fishery Management Council's *Summer Flounder, Scup,* and *Black Sea Bass* Monitoring Committee will meet November 9 and 10 to develop recommendations for recreational management measures for the *summer flounder, scup,* and *black sea bass* fisheries for the 2017 fishing year. The Committee may also discuss initial analyses related to a possible *scup* commercial seasons framework action. A detailed agenda and background documents will be made available on the Council's Web site (*www.mafmc.org*) prior to the meeting.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 12, 2016.

**Tracey L. Thompson,**

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

[FR Doc. 2016–25090 Filed 10–17–16; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XE911**

## Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Commercial Fisheries Research Foundation and Rhode Island Department of Environmental Management contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow seven commercial fishing vessels and one party/charter vessel to collect black sea bass catch data while on routine fishing trips and retain a limited amount of black sea bass for laboratory analysis. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before November 2, 2016.

**ADDRESSES:** You may submit written comments by any of the following methods:

- *Email to: nmfs.gar.efp@noaa.gov.* Include in the subject line ''BSB Research Fleet EFP.''
- *Mail to:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on BSB Research Fleet EFP.''

**FOR FURTHER INFORMATION CONTACT:** Reid Lichwell, Fisheries Management Specialist, 978–281–9112.

**SUPPLEMENTARY INFORMATION:** The Commercial Fisheries Research Foundation (CFRF) and Rhode Island Department of Environmental Management (RI DEM) submitted a complete application for an EFP on September 9, 2016, to develop a research fleet that would collect fishery-dependent information on black sea bass for eight months, November 2016 through July 2017. The EFP would authorize seven commercial fishing vessels and one party/charter vessel to collect data on black sea bass catch, and retain a limited amount of black sea bass for a laboratory study conducted by RI DEM. This EFP would exempt the participating vessels from the following Federal regulations:

1. Recreational possession limits specified at 50 CFR 648.145;
2. Commercial and party/charter minimum size limits for black sea bass specified at 50 CFR 648.147(a) and (b) respectively;

The research fleet would be comprised of vessels fishing with different gear types including trawls, lobster pots, gillnets, and hook and line. All gear deployments would be typical of the routine fishing practices associated with the fishery being targeted. All vessels fishing under this research would have either a black sea bass moratorium or charter/party federal permit allowing them to legally land black sea bass. There will be no increase in fishing effort associated with this project.

Each vessel would be randomly selected to conduct sampling events during three trips per month within Southern New England and the Mid-Atlantic Bight. During each sampling event, up to 50 black sea bass would be temporarily held to record their length and sex. Some may be retained for shoreside analysis. Each vessel would be allowed to retain 100 black sea bass per month, not to exceed a cumulative total of 6,400 individual fish or 10,880 lb (4,935 kg) of black sea bass catch over the course of the project.

All legal sized black sea bass retained for sampling by commercial vessels would be reported through a dealer as ''research'' landings and attributed to the state of Rhode Island's allocated commercial black sea bass quota. Undersize black sea bass retained for sampling would be weighed and recorded as bycatch on all appropriate fishing logs. The participating vessels would be able to sell their additional catch as they typically would under the permits they possess. Catch not retained for sale or sampling will be returned to the sea as soon as practicable. The participating vessels would be issued the appropriate state exemptions to all applicable state regulations. If the Federal commercial coastwide quota for black sea bass is reached and leads to a Federal black sea bass closure, then no retention of black sea bass would occur under this EFP until the fishery reopens.

Vessels fishing under this research permit would be exempt from the commercial and party/charter minimum size limits for black sea bass, to allow for the retention of both adult and undersized juvenile black sea bass. The party/charter vessel would be exempt from the possession limits found at § 648.145 to retain black sea bass for sampling above the designated possession limit; there are no federal commercial possession limits for black sea bass.

If approved, CFRF and RI DEM may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: October 13, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–25137 Filed 10–17–16; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[OMB Control Number 0704–0225; Docket Number DARS–2016–0041]**

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Administrative Matters

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

**ACTION:** Notice and request for comments regarding a proposed revision of an approved information collection requirement.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed revision of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2017. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

**DATES:** DoD will consider all comments received by December 19, 2016.

**ADDRESSES:** You may submit comments, identified by OMB Control Number

0704–0225, using any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0225 in the subject line of the message.

*Fax:* 571–372–6094.

*Mail:* Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, at 571–372–6093. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Carrie Moore, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Part 204, Administrative Matters and Related Clauses at 252.204; OMB Control Number 0704–0225.

*Needs and Uses:* DFARS 204.404–70(a) prescribes the use of the clause at DFARS 252.204–7000, Disclosure of Information, when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public. Upon receipt of a contractor's request, the Government reviews the information provided by the contractor to determine if it is sensitive or otherwise inappropriate for release for the stated purpose.

*Affected Public:* Businesses or other for-profit and not-for profit institutions.

*Number of Respondents:* 1,196.

*Responses per Respondent:* Approximately 2.35.

*Annual Responses:* 2,806.

*Average Burden per Response:* Approximately 3 hours.

*Annual Burden Hours:* 8,418.

*Reporting Frequency:* On occasion.

**Summary of Information Collection**

DFARS 204.404–70(a) prescribes use of DFARS Clause 252.204–7000, Disclosure of Information, in contracts that require the contractor to access or generate unclassified information that may be sensitive and inappropriate for release to the public. The clause requires the contractor to obtain approval of the contracting officer before release of any unclassified contract-related information outside the contractor's organization, unless the information is already in the public domain. In requesting this approval, the contractor must identify the specific information to be released, the medium to be used, and the purpose for the release.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2016–25182 Filed 10–17–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Availability of the Fiscal Year 2015 Inventory of Contracted Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of availability.

**SUMMARY:** DoD announces the availability of the Inventory of Contracted Services for Fiscal Year 2015 pursuant to section 2330a of title 10, United States Code. The inventory is available to the public.

**FOR FURTHER INFORMATION CONTACT:** Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD(AT&L)DPAP/CPIC, 3060 Defense Pentagon, Washington, DC 20301–3060. Mr. Jeff Grover may be contacted by email at *jeffrey.c.grover.civ@mail.mil* or by telephone at 703–697–9352.

**SUPPLEMENTARY INFORMATION:** In accordance with section 2330a of title 10 United States Code, the Office of the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting (DPAP/CPIC) will make available to the public the annual inventory of contracted services. The inventory is posted to the Defense Procurement and Acquisition Policy Web site at: *http://www.acq.osd.mil/dpap/cpic/cp/inventory_of_services_contracts.html.*

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2016–25185 Filed 10–17–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2016–ICCD–0091]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins Loan Program Regulations and General Provisions 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 an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 17, 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–0091. 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–347, 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:* Federal Perkins Loan Program Regulations and General Provisions Regulations.

*OMB Control Number:* 1845–0019.

*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:* 11,616,710.

*Total Estimated Number of Annual Burden Hours:* 6,247,152.

*Abstract:* This request is for continued approval of the reporting and record-keeping requirements that are contained in the General Provisions regulations as well as the specific program regulations for the Federal Perkins Loan program, the Federal Work-Study program, and the Federal Supplemental Educational Opportunities Grant program. This purpose of this submission is to renew this collection for the next three year period. The information collection requirements are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: October 13, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–25142 Filed 10–17–16; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, November 3, 2016 6:00 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda:*

- Call to Order, Introductions, Review of Agenda
- Approval of October Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments From the Board
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on October 12, 2016.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2016–25100 Filed 10–17–16; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Submission for Office of Management and Budget (OMB) review; comment request.

**SUMMARY:** The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Financial Assistance Information Collection, OMB Control Number 1910–0400. This information collection request covers information necessary to administer and manage DOE's financial assistance programs.

**DATES:** Comments regarding this collection must be received on or before November 17, 2016. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Written comments should be sent to the following:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

And to:

Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management, 1000 Independence Avenue SW., Washington, DC 20585–0121; or by email at *Richard.bonnell@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Bonnell by email at *richard.bonnell@hq.doe.gov* . Please put ''2016 DOE Agency Information Collection Extension'' in the subject line when sending an email.

**SUPPLEMENTARY INFORMATION:** This information collection request contains:

(1) OMB No. 1910–0400 (Renewal); (2) Information Collection Request Title: DOE Financial Assistance Information Clearance; (3) Type of Request: Renewal; (4) Purpose: This package contains information collections necessary to annually plan, solicit, negotiate, award, administer, and closeout grants and cooperative agreements under the Department's financial assistance programs; (5) Annual Estimated Number of Respondents: 11,134; (6) Annual Estimated Number of Total Responses: 39,378; (7) Estimated Number of Burden Hours: 532,067; and (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

**Statutory Authority:** Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308. Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

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

**John R. Bashista,**

*Director, Office of Acquisition Management, Department of Energy.*

[FR Doc. 2016–25135 Filed 10–17–16; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–431]**

## Application To Export Electric Energy; Tenaska Power Services Co.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Tenaska Power Services Co. (Applicant or TPS) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or motions to intervene must be submitted on or before November 17, 2016.

**ADDRESSES:** Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On September 28, 2016, DOE received an application from TPS for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, TPS states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that TPS proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning TPS's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–431. An additional copy is to be provided to both Norma Rosner Iacovo, Tenaska Power Services Co., 1701 E. Lamar Blvd., Suite 100, Arlington, TX 76006, and Neil L. Levy, KING & SPALDING LLP, 1700 Pennsylvania Ave. NW., Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on October 12, 2016.

**Christopher Lawrence,**

*Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2016–25136 Filed 10–17–16; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER17–47–000]**

## DifWind Farms LTD VI; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of DifWind Farms LTD VI's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25155 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–3140–024.
*Applicants:* Inland Empire Energy Center, LLC.
*Description:* Clarification to September 9, 2016 Supplement to June 28, 2016 Triennial Market Power Analysis of Inland Empire Energy Center, LLC.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5345.
*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER16–2222–002.
*Applicants:* Alcoa Power Generating Inc.
*Description:* Tariff Amendment: Amendment to Initial Long Sault Division Open Access Transmission Tariff to be effective 10/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5273.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* ER16–2223–002.
*Applicants:* Alcoa Power Generating Inc.
*Description:* Tariff Amendment: Amendment to Initial Tapoco Division Open Access Transmission Tariff to be effective 10/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5277.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* ER16–2639–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Report Filing: Supplement to Filing in Docket No. ER16–2639 to be effective N/A.
*Filed Date:* 9/27/16.
*Accession Number:* 20160927–5129.
*Comments Due:* 5 p.m. ET 10/18/16.

*Docket Numbers:* ER17–56–000.
*Applicants:* Macquarie Energy LLC.
*Description:* § 205(d) Rate Filing: Revised MBR Tariff to be effective 10/12/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5253.
*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–57–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Errata to ER16–1737 to Clarify Rev to Definitions Sections in OATT, OA and RAA to be effective 12/12/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5254.
*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–58–000.
*Applicants:* NorthWestern Corporation.
*Description:* Compliance filing: Order Nos. 827 and 828 Combined Compliance Filing (South Dakota OATT) to be effective 10/14/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5297.
*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–59–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: Updates to Service Agreement Nos. 622 and 623 for the Portal Ridge Solar Project to be effective 10/13/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5048.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–60–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: SPP–MISO JOA Ministerial Filing to Correct Attachment 1 Section 7 Appendix C to be effective 7/25/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5054.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–61–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* Compliance filing: Compliance filing—Order Nos. 827 828—pro forma LGIA, SGIA to be effective 10/13/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5072.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–62–000.
*Applicants:* Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: Filing of Certificate of Concurrence to be effective 1/1/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5073.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–63–000.
*Applicants:* ORNI 47 LLC.
*Description:* § 205(d) Rate Filing: ORNI 47 Shared Facilities Agreement to be effective 12/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5078.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–64–000.
*Applicants:* ORNI 47 LLC.
*Description:* § 205(d) Rate Filing: ORNI 47 Co-Tenancy Agreement to be effective 12/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5079.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–65–000.
*Applicants:* ORNI 37 LLC.
*Description:* § 205(d) Rate Filing: ORNI 37 Shared Facilities Agreement to be effective 12/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5080.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–66–000.
*Applicants:* ORNI 37 LLC.
*Description:* § 205(d) Rate Filing: ORNI 37 Co-Tenancy Agreement to be effective 12/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5083.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–67–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2016–10–12_Reorganization of Module C Section 40.3.3 to be effective 11/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5087.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–68–000.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* § 205(d) Rate Filing: Market Rule 1 Revisions to Increase Resource Dispatchability to be effective 12/12/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5088.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–68–001.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* Tariff Amendment: Market Rule 1 Revisions to Increase Resource Dispatchability—Part 2 to be effective 6/1/2020.

*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5141.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–69–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original WMPA SA No. 4563, Queue Position AA2–048 to be effective 9/22/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5089.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–70–000.
*Applicants:* KCP&L Greater Missouri Operations Company.
*Description:* Tariff Cancellation: cancellation filing to be effective 10/13/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5090.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–72–000.
*Applicants:* Kansas City Power & Light Company.
*Description:* Tariff Cancellation: cancellation filing to be effective 12/11/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5102.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–73–000.
*Applicants:* Western Interconnect LLC.
*Description:* § 205(d) Rate Filing: Revision Filing to be effective 12/1/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5113.
*Comments Due:* 5 p.m. ET 11/2/16.

*Docket Numbers:* ER17–74–000.
*Applicants:* Western Interconnect LLC.
*Description:* Initial rate filing: Initial OATT to be effective 12/1/2016.
*Filed Date:* 10/12/16.
*Accession Number:* 20161012–5143.
*Comments Due:* 5 p.m. ET 11/2/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25157 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–3–000.
*Applicants:* 8point3 Energy Partners LP, Desert Stateline LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act of 8point3 Energy Partners LP and Desert Stateline LLC, Waivers and Confidential Treatment.
*Filed Date:* 10/5/16.
*Accession Number:* 20161005–5153.
*Comments Due:* 5 p.m. ET 10/26/16.

*Docket Numbers:* EC17–4–000.
*Applicants:* Luning Energy LLC, Liberty Utilities (CalPeco Electric) LLC.
Description: Application of Luning Energy LLC, et al. for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5067.
*Comments Due:* 5 p.m. ET 10/27/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2290–005.
*Applicants:* Avista Corporation.
*Description:* Second Amendment to June 30, 2016 Triennial Market Power Update for the Northwest Region of Avista Corporation.
*Filed Date:* 9/30/16.
*Accession Number:* 20160930–5385.
*Comments Due:* 5 p.m. ET 10/21/16.

*Docket Numbers:* ER16–893–001.
*Applicants:* 62SK 8ME LLC.
*Description:* Notice of Change in Status of 62SK 8ME LLC.
*Filed Date:* 10/5/16.
*Accession Number:* 20161005–5157.
*Comments Due:* 5 p.m. ET 10/26/16.

*Docket Numbers:* ER17–31–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: Attachment W Revisions for East River Electric Power Cooperative, Inc. to be effective 12/5/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5029.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–32–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: PSCo-TSGT—JM Shafer-E&P-Mtrg Mod-459–0.0.0 to be effective 10/5/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5030.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–33–000.
*Applicants:* Breadbasket LLC.
*Description:* Tariff Cancellation: Cancellation of MBR Tariff to be effective 10/6/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5055.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–34–000.
*Applicants:* Roundtop Energy LLC.
*Description:* Compliance filing: Compliance Filing of Revised Rate Schedule to be effective 4/1/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5070.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–35–000.
*Applicants:* Beaver Dam Energy LLC.
*Description:* Compliance filing: Compliance Filing of Revised Rate Schedule to be effective 6/1/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5071.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–36–000.
*Applicants:* Florida Power & Light Company.
*Description:* § 205(d) Rate Filing: FPL Revised Delivery Point A.17 for Transmission Service Agreement No. 162 to be effective 7/1/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5078.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–37–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Notice of cancellation of Interconnection Service Agreements Nos. 1716 and 1717 of PJM Interconnection, L.L.C.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5084.
*Comments Due:* 5 p.m. ET 10/27/16.

*Docket Numbers:* ER17–38–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Compliance filing: Order Nos. 827 and 828 Compliance Filing to be effective 10/14/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5104.
*Comments Due:* 5 p.m. ET 10/27/16.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES17–2–000.

*Applicants:* Oklahoma Gas and Electric Company.

*Description:* Application for Authorization of Issuance of Short-Term Debt Securities Under Section 204 of the Federal Power Act of Oklahoma Gas and Electric Company.

*Filed Date:* 10/5/16.

*Accession Number:* 20161005–5146.

*Comments Due:* 5 p.m. ET 10/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 6, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25150 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL16–119–000]**

### Illinois Power Generating Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 7, 2016, the Commission issued an order in Docket No. EL16–119–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Illinois Power Generating Company's proposed rate reduction. *Illinois Power Generating Company*, 157 FERC ¶ 61, 015 (2016).

The refund effective date in Docket No. EL16–119–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL16–119–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2016), within 21 days of the date of issuance of the order.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25152 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** October 20, 2016, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1030TH—MEETING, REGULAR MEETING

[October 20, 2016, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **ADMINISTRATIVE** | |
| A–1 | AD16–1–000 | Agency Administrative Matters. |
| A–2 | AD16–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD06–3–000 | 2016–2017 Winter Energy Market Assessment. |
| A–4 | AD16–24–000 | Winter Operations and Market Performance in Regional Transmission Organizations and Independent System Operators. |
| | CP15–558–000 | PennEast Pipeline Company, L.L.C. |
| | ER13–2266–003 | ISO New England Inc. |
| | ER14–1461–002 | PJM Interconnection, L.L.C. |
| | ER15–623–009, ER15–623–010 | PJM Interconnection, L.L.C. |
| | ER15–1825–007 | California Independent System Operator Corporation. |
| | ER16–120–001, ER16–120–003 | New York Independent System Operator, Inc. |
| | ER16–372–002 | PJM Interconnection, L.L.C. |
| | ER16–551–003 | ISO New England Inc. |
| | ER16–833–002 | Midcontinent Independent System Operator, Inc. |
| | ER16–1404–000 | New York Independent System Operator, Inc. |
| | ER16–1649–000 | California Independent System Operator Corporation. |
| | ER16–1912–001 | Southwest Power Pool, Inc. |
| | ER16–2445–000 | California Independent System Operator Corporation. |
| | ER16–2529–000 | ISO New England Inc. |
| | ER16–2678–000 | Nevada Power Company. |

1030TH—MEETING, REGULAR MEETING—Continued

[October 20, 2016, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | ER16–2680–000 | PacifiCorp. |
| | ER16–2685–000 | Midcontinent Independent System Operator, Inc. |
| | ER16–2722–000 | Arizona Public Service Company. |
| | ER17–40–000 | California Independent System Operator Corporation. |
| | EL07–39–007 | New York State Public Service Commission. |
| | EL13–62–001, EL13–62–002 | Independent Power Producers of New York. |
| | EL14–48–000 | PJM Interconnection, L.L.C. |
| | EL15–29–006 | PJM Interconnection, L.L.C. |
| | EL15–37–002 | New York Independent System Operator, Inc. |
| | EL15–41–002 | PJM Interconnection, L.L.C. |
| | EL15–70–000 | Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc. |
| | EL15–71–000 | The People of the State of Illinois, By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc. |
| | EL15–72–000 | Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc. |
| | EL15–82–000 | Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc. |
| | EL16–92–000 | New York State Public Service Commission v. New York Independent System Operator, Inc. |
| | EL16–93–001 | NextEra Energy Resources, LLC v. ISO New England Inc. |
| | EL16–109–000 | Virginia Electric and Power Company v. PJM Interconnection, L.L.C. |
| | EL16–112–000 | Coalition of MISO Transmission Customers v. Midcontinent Independent System Operator, Inc. |
| | EL16–120–000 | New England Power Generators Association, Inc. |
| | RP16–618–000 | Algonquin Gas Transmission, LLC. |
| **ELECTRIC** | | |
| E–1 | ER13–1508–001 | Entergy Arkansas, Inc. |
| | ER13–1509–001 | Entergy Gulf States Louisiana, L.L.C. |
| | ER13–1510–001 | Entergy Louisiana, LLC. |
| | ER13–1511–001 | Entergy Mississippi, Inc. |
| | ER13–1512–001 | Entergy New Orleans, Inc. |
| | ER13–1513–001 | Entergy Texas, Inc. |
| E–2 | Omitted. | |
| E–3 | ER15–1861–000, ER15–1862–000 | Tucson Electric Power Company. |
| E–4 | TS16–2–000 | PPL Electric Utilities Corporation. |
| E–5 | RR16–6–000 | North American Electric Reliability Corporation. |
| E–6 | ER16–1649–004, ER16–1649–005 | California Independent System Operator Corporation. |
| E–7 | ES16–46–000 | Community Wind North, LLC. |
| E–8 | ES16–45–000 | Spring Canyon Interconnection LLC. |
| E–9 | EL16–43–000, QF16–259–001 | Bright Light Capital, LLC. |
| E–10 | EL16–58–000, QF15–793–001, QF15–794–001, QF15–795–001. | SunE B9 Holdings, LLC. |
| E–11 | EL16–111–000, QF15–792–001 | SunE M5B Holdings, LLC. |
| E–12 | Omitted. | |
| E–13 | Omitted. | |
| E–14 | EL16–38–001 | Dominion Energy Marketing, Inc., Dominion Energy Manchester Street, Inc. v. ISO New England Inc. |
| E–15 | ER15–1682–003 | TransCanyon DCR, LLC. |
| E–16 | EL16–8–001 | East Kentucky Power Cooperative, Inc. v. Louisville Gas & Electric Company/Kentucky Utilities Company. |
| E–17 | ER04–835–000 | California Independent System Operator Corporation. |
| | EL04–103–000 (Consolidated) | Pacific Gas and Electric Company v. California Independent System Operator Corporation. |
| | EL14–67–000 | The Alliance for Retail Energy Markets Shell Energy North America (US), L.P. v. California Independent System Operator Corporation. |
| | ER04–835–007, ER04–835–009 | California Independent System Operator Corporation. |
| | EL04–103–002, EL04–103–004 | Pacific Gas and Electric Company v. California Independent System Operator Corporation. |
| **GAS** | | |
| G–1 | RM17–1–000 | Revisions to Indexing Policies and Page 700 of FERC Form No. 6. |
| G–2 | RP16–300–000 | Empire Pipeline, Inc. |
| G–3 | RP16–301–000 | Iroquois Gas Transmission System, L.P. |

1030TH—MEETING, REGULAR MEETING—Continued

[October 20, 2016, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| G–4 | RP16–1057–000 | MoGas Pipeline LLC. |
| **HYDRO** | | |
| H–1 | P–2142–038 | Brookfield White Pine Hydro LLC. |
| H–2 | P–1494–434 | Grand River Dam Authority. |
| **CERTIFICATES** | | |
| C–1 | CP16–80–000 | ANR Pipeline Company. |

Dated: October 13, 2016.

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–25245 Filed 10–14–16; 11:15 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER17–48–000]**

### Terra-Gen Mojave Windfarms, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Terra-Gen Mojave Windfarms, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25156 Filed 10–17–16; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–7–000.

*Applicants:* New Creek Wind LLC.

*Description:* Application under Section 203 of the Federal Power Act of New Creek Wind LLC.

*Filed Date:* 10/7/16.

Accession Number: 20161007–5222.

*Comments Due:* 5 p.m. ET 10/28/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2474–016; ER10–2475–016; ER10–2605–012; ER10–2611–018; ER10–3246–010; ER11–2044–020; ER11–3876–020; ER12–162–017; ER12–1626–009; ER12–922–004; ER13–1266–011; ER13–1267–008; ER13–1268–008; ER13–1269–008; ER13–1270–008; ER13–1271–008; ER13–1272–008; ER13–1273–008; ER13–1441–008; ER13–1442–008; ER13–520–008; ER13–521–008; ER15–2211–008; ER16–1258–001; ER16–438–003.

*Applicants:* PacifiCorp, Nevada Power Company, Sierra Pacific Power Company, Bishop Hill Energy II LLC, MidAmerican Energy Company, MidAmerican Energy Services, LLC, Cordova Energy Company LLC, Pinyon

Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XX, LLC, Solar Star California XIX, LLC, Topaz Solar, LLC, CalEnergy, LLC,CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Saranac Power Partners, L.P., Yuma Cogeneration Associates, Marshall Wind Energy LLC, Grande Prairie Energy, LLC, Phillips 66 Company.

*Description:* Supplement to September 14, 2016 Notice of Change in Status of PacifiCorp, et al.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5219.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER10–2739–013; ER13–1430–005; ER10–2743–008; ER13–1561–005; ER10–2755–011; ER16–1652–001; ER10–2751–008.

*Applicants:* LS Power Marketing, LLC, Arlington Valley Solar Energy II, LLC, Bluegrass Generation Company, L.L.C., Centinela Solar Energy, LLC, Las Vegas Power Company, LLC, LifeEnergy LLC, Renaissance Power, L.L.C.

*Description:* Supplement to June 30, 2016 Market Power Update for the Southwest Region of LS Southwest MBR Sellers.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5233.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER16–1004–001.

*Applicants:* Roundtop Energy LLC.

*Description:* § 205(d) Rate Filing: 2016–10–11_SA 2865 Termination of ITCTransmission-Michigan Wind 3 E&P (J321) to be effective 10/26/2016.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5181.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER16–1032–001.

*Applicants:* Beaver Dam Energy LLC.

*Description:* Compliance filing: Compliance Filing of Revised Rate Schedule No. 2 to be effective 6/1/2016.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5191.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER16–2107–000; ER16–2108–000.

*Applicants:* Sundevil Power Holdings, LLC, Castleton Energy Services, LLC.

*Description:* Supplement to June 30, 2016 Castleton Energy Services, LLC and Sundevil Power Holdings, LLC Triennial Market Review.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5225.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER16–2173–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2016–10–11_SA 2927 Duke Indiana GIA (J453) Compliance to be effective 7/12/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5187.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–47–000.

*Applicants:* DifWind Farms LTD VI.

*Description:* Baseline eTariff Filing: MBR Application to be effective 12/7/2016.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5192.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER17–48–000.

*Applicants:* Terra-Gen Mojave Windfarms, LLC.

*Description:* Baseline eTariff Filing: MBR Application to be effective 12/7/2016.

*Filed Date:* 10/7/16.

*Accession Number:* 20161007–5193.

*Comments Due:* 5 p.m. ET 10/28/16.

*Docket Numbers:* ER17–49–000.

*Applicants:* Public Service Company of Colorado.

*Description:* § 205(d) Rate Filing: PSCo—TSGT Yampa OM&R—403—0.0.0 to be effective 12/10/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5013.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–50–000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: True-Up SGIA Golden Springs Development Company, LLC to be effective 12/11/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5015.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–51–000.

*Applicants:* DTE Pontiac North, LLC.

*Description:* Tariff Cancellation: Cancel Tariff to be effective 10/12/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5071.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–52–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA No. 3059, Queue No. V3–036 re: assignment to Thermal Energy to be effective 8/23/2011.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5146.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–53–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2016–10–11_SA 2865 Termination of ITCTransmission-Michigan Wind 3 E&P (J321) to be effective 10/26/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5189.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–54–000.

*Applicants:* PacifiCorp.

*Description:* § 205(d) Rate Filing: EDF Trading MDUSA Rev 1 to be effective 10/4/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5204.

*Comments Due:* 5 p.m. ET 11/1/16.

*Docket Numbers:* ER17–55–000.

*Applicants:* South Carolina Electric & Gas Company.

*Description:* Compliance filing: Orders 827 and 828 (Attachment M and N) to be effective 10/14/2016.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5236.

*Comments Due:* 5 p.m. ET 11/1/16.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH17–1–000.

*Applicants:* PGGM Vermogensbeheer B.V.

*Description:* PGGM Vermogensbeheer B.V. submits FERC 65–B Waiver Notification.

*Filed Date:* 10/11/16.

*Accession Number:* 20161011–5218.

*Comments Due:* 5 p.m. ET 11/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25151 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER17–43–000]**

### Portal Ridge Solar B, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Portal Ridge Solar B, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25153 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP17–11–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: Update Non-Conforming and Negotiated Rate Agreements—November 2016 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5145.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–12–000.
*Applicants:* Questar Pipeline, LLC.
*Description:* § 4(d) Rate Filing: Company Name Change to be effective 10/11/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5237.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–13–000.
*Applicants:* Questar Overthrust Pipeline, LLC.
*Description:* § 4(d) Rate Filing: Change of Company Name to be effective 10/11/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5239.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–14–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Cargill Inorporated (RTS) 3085–28 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5265.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–15–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Direct Energy Business Marketing, LLC (RTS) 7465–06 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5269.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–16–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Emera Energy Services Inc. (RTS) 2715–31 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5282.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–17–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Emera Energy Services Inc. (RTS) 2715–33 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5288.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–18–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Mercuria Energy America, Inc. (RTS) 7540–09 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5291.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–19–000.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* § 4(d) Rate Filing: 10/11/16 Negotiated Rates—Vitol Inc. (RTS) 7495–02 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5292.
*Comments Due:* 5 p.m. ET 10/24/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25159 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER17–44–000]**

### Portal Ridge Solar C, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Portal Ridge Solar C, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25154 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP17–6–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5101.
*Comments Due:* 5 p.m. ET 10/18/16.

*Docket Numbers:* RP17–7–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) Rate Filing: Update Creditworthiness Provisions to be effective 11/6/2016.
*Filed Date:* 10/6/16.
*Accession Number:* 20161006–5131.
*Comments Due:* 5 p.m. ET 10/18/16.

*Docket Numbers:* RP17–8–000.
*Applicants:* Vector Pipeline L.P.
*Description:* § 4(d) Rate Filing: Filing to Remove Redundant Negotiated Rate Summaries to be effective 11/8/2016.
*Filed Date:* 10/7/16.
*Accession Number:* 20161007–5016.
*Comments Due:* 5 p.m. ET 10/19/16.

*Docket Numbers:* RP17–9–000.
*Applicants:* White River Hub, LLC.
*Description:* § 4(d) Rate Filing: Statement of Rates V. 4.0.0 to be effective 11/10/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5014.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP17–10–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: Update Statement of Negotiated Rates—November 2016 to be effective 11/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5123.
*Comments Due:* 5 p.m. ET 10/24/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP16–1174–001.
*Applicants:* Kern River Gas Transmission Company.
*Description:* Compliance filing 2016 KRF–PK Compliance to be effective 9/17/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5011.
*Comments Due:* 5 p.m. ET 10/24/16.

*Docket Numbers:* RP16–1219–001.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* Compliance filing Compliance Filing in Docket No. RP16–1219–000 to be effective 10/1/2016.
*Filed Date:* 10/11/16.
*Accession Number:* 20161011–5057.
*Comments Due:* 5 p.m. ET 10/24/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–25158 Filed 10–17–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2013–0677; FRL–9953–54]**

### Receipt of Information Under the Toxic Substances Control Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing its receipt of information submitted pursuant to a test rule issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document

identifies each chemical substance and/or mixture for which information has been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the information received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8173; email address: *schaeffer.john@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Chemical Substances and/or Mixtures

Information about the following chemical substance and/or mixture is provided in Unit IV.: *Ethanedioic acid* (*CAS No. 144–62–7*).

## II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of information submitted pursuant to test rules promulgated under TSCA section 4 (15 U.S.C. 2603).

## III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document that announces the receipt of information. Upon EPA's completion of its quality assurance review, the information received will be added to the docket for the TSCA section 4 test rule that required the information. Use the docket ID number provided in Unit IV. to access the information in the docket for the related TSCA section 4 test rule.

The docket for this **Federal Register** document and the docket for each related TSCA section 4 test rule is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

## IV. Information Received

This unit contains the information required by TSCA section 4(d) for the information received by EPA about *Ethanedioic acid* (*CAS No. 144–62–7*).

1. *Chemical Use(s):* Ethanedioic acid is used as a rust remover; in antirust metal cleaners and coatings; as a flame-proofing and cross-linking agent in cellulose fabrics; as a reducing agent in mordent wool dying; as an acid dye stabilizing agent in nylon; as a scouring agent for cotton printing; and as a dye stripper for wool. Ethanedioic acid is also used for degumming silk; for the separation and recovery of rare earth elements from ore; for bleaching leather and masonry; for cleaning aluminum and wood decks; and as a synthetic intermediate for pharmaceuticals.

2. *Applicable Test Rule:* Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. *Information Received:* The following listing describes the nature of the information. The information will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. Any applicable EPA reviews of information will be added to the same docket upon completion.

*Request for exemption from testing from Niche Chem Industries Inc.* The docket ID number assigned to this information is EPA–HQ–OPPT–2007–0531.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: October 4, 2016.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2016–25160 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

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# ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2014–0011; FRL–9953–58]**

# Pesticide Product Registration; Receipt of Applications for New Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to add new food uses on previously registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before November 17, 2016.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number of interest as shown in the body of this document, by one of the following methods:

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

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

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

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

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

**II. Registration Applications**

EPA has received applications to add new food uses on previously registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Addition of New Food Uses on Previously Registered Pesticide Products

1. *Registration Number:* 10163–277 (Onager® Miticide; Decision No. 513683). *Docket Number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed Use(s):* Sugar beet. *Contact:* RD.

2. *Registration Number:* 10163–277 (Onager® Miticide; Decision No. 513683). *Docket Number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed Use(s):* Bermudagrass. *Contact:* RD.

3. *Registration Number:* 10163–337 (Onager® EW Miticide; Decision No. 513685). *Docket Number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed Use(s):* Sugar beet. *Contact:* RD.

4. *Registration Number:* 10163–337 (Onager® EW Miticide; Decision No. 513684). *Docket Number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed Use(s):* Bermudagrass. *Contact:* RD.

5. *Registration Number:* 71711–37 (Pyrifluquinazon Insecticide; Decision No. 513684). *Docket Number:* EPA–HQ–OPP–2011–0971. *Company name and address:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE, 19808. *Active ingredient:* Pyrifluquinazon. *Proposed Use(s):* Almond, hulls; *Brassica,* head and stem vegetables (crop group 5–16); Cattle, fat; Cattle, meat; Cattle, meat byproducts; Citrus fruits (crop group 10–10); Citrus, oil; Cotton, gin byproducts; Cotton, undelinted seed; Cucurbit vegetables (crop group 9); Fruiting vegetables, tomato (crop group 8–10A); Fruiting vegetables, pepper/eggplant (crop group 8–10B); Goat, fat; Goat, meat; Goat, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Leaf petiole vegetables (crop subgroup 22B); Leafy vegetables (crop group 4–16); Milk; Pome fruits (crop group 11–10); Sheep, fat; Sheep, meat; Sheep, meat byproducts; Small fruit vine climbing subgroup (crop subgroup 13–07F) (except fuzzy kiwifruit); Stone fruits, cherry (crop group 12–12A); Stone fruits, peach (crop group 12–12B); Stone fruits, plum (crop group 12–12C); Tree nuts (crop group 14–12); and Tuberous and corm vegetables (crop subgroup 1C). Citrus. *Contact:* RD.

6. *Registration Number:* 71711–38 (Pyrifluquinazon Technical; Decision No. 513684). *Docket Number:* EPA–HQ–OPP–2011–0971. *Company name and address:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE, 19808. *Active ingredient:* Pyrifluquinazon. *Proposed Use(s):* Almond, hulls; *Brassica,* head and stem vegetables (crop group 5–16); Cattle, fat; Cattle, meat; Cattle, meat byproducts; Citrus fruits (crop group 10–10); Citrus, oil; Cotton, gin byproducts; Cotton, undelinted seed; Cucurbit vegetables (crop group 9); Fruiting vegetables, tomato (crop group 8–10A); Fruiting vegetables, pepper/eggplant (crop group 8–10B); Goat, fat; Goat, meat; Goat, meat byproducts; Horse, fat; Horse, meat; Horse, meat byproducts; Leaf petiole vegetables (crop subgroup 22B); Leafy vegetables (crop group 4–16); Milk; Pome fruits (crop group 11–10); Sheep, fat; Sheep, meat; Sheep, meat byproducts; Small fruit vine climbing subgroup (crop subgroup 13–07F) (except fuzzy kiwifruit); Stone fruits, cherry (crop group 12–12A); Stone fruits, peach (crop group 12–12B); Stone fruits, plum (crop group 12–12C); Tree nuts (crop group 14–12); and Tuberous and corm vegetables (crop subgroup 1C). Citrus. *Contact:* RD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 11, 2016.

**Michael L. Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–25165 Filed 10–17–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–9953–42]**

## Access to Confidential Business Information by Abt Associates, Inc. and Its Identified Subcontractor, Versar, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Abt Associates of Bethesda, MD, and Versar, Inc., of Springfield, VA to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data occurred on or about July 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

*II. What action is the Agency taking?*

Under EPA contract number EP–W–16–009, contractor Abt Associates of 4800 Montgomery Lane, Bethesda, MD and 55 Wheeler Street, Cambridge, MA; and Versar, Inc., of 6850 Versar Center, Springfield, VA, are assisting the Office of Pollution Prevention and Toxics (OPPT) by supporting scientific and engineering assessments of chemicals. For chemicals identified by the Agency, they are assisting in preparing evaluations of the following: physical/chemical properties, hazards, and functions; production/processing/use methods; occupational exposure, environmental release, fate, transport, and other human and environmental exposure risks; life-cycle environmental impacts; methods to prevent or control waste generation, releases or exposure; and comparison of substitute chemicals or technologies. They will also assist in developing methods for chemical ranking by hazard and other factors and for assessing exposure and release.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–W–16–009, Abt Associates and Versar were given access to CBI submitted to EPA under all section(s) of TSCA to perform successfully the duties specified under the contract. Abt Associates and Versar personnel were given access to information submitted to EPA under all section(s) of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA has provided Abt Associates and Versar access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract is taking place at EPA Headquarters and Abt Associates' sites located in Bethesda, MD and Cambridge, MA, in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until March 30, 2021. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Abt Associates and Versar personnel have signed nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: September 29, 2016.

**Pamela S. Myrick,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2016–25174 Filed 10–17–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9954–28–Region 5]**

## Proposed Prospective Purchaser Agreement for the Willow Run Powertrain Site in Ypsilanti, Michigan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Prospective Purchaser Agreement, notice is hereby given of a proposed administrative settlement concerning the Willow Run Powertrain Site in Ypsilanti, Michigan with the following settling parties: Willow Run Arsenal of Democracy Landholdings Limited Partnership and the American Center for Mobility. The settlement requires the Settling Parties to, if necessary, execute and record a Declaration of Restrictive Covenant; provide access to the Site and exercise due care with respect to existing contamination. The settlement includes a covenant not to sue the Settling Parties pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act with respect to the Existing Contamination. Existing Contamination is defined as any hazardous substances, pollutants, or contaminants or Waste Material present or existing on or under the Property as of the Effective Date of the Settlement Agreement; any hazardous substances, pollutants, or contaminants or Waste Material that migrated from the Property prior to the Effective Date; and any hazardous substances, pollutants, or contaminants or Waste Material presently at the Site that migrates onto, on, under, or from the Property after the Effective Date.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

**DATES:** Comments must be submitted on or before 30 days after publication in the **Federal Register**.

**ADDRESSES:** The proposed settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604. Comments should reference the Willow Run Powertrain Site, Ypsilanti, Michigan and should be addressed to Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., Mail Code: C–14J, Chicago, Illinois 60604.

**SUPPLEMENTARY INFORMATION:** The Settling Parties propose to acquire ownership of the former General Motors Corporation North American operation, at 2930 Ecorse Road in Ypsilanti, Michigan. The Site is one of the 89 sites that were placed into an Environmental Response Trust (the ''Trust'') as a result of the resolution of the 2009 GM bankruptcy. The Trust is administrated by Revitalizing Auto Communities Environmental Response.

Dated: September 23, 2016.

**Douglas Ballotti,**

*Acting Director, Superfund Division.*

[FR Doc. 2016–25168 Filed 10–17–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–xxxx]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–xxxx.

*Title:* Sections 80.233, Technical requirements for Automatic Identification System Search and Rescue Transmitter (AIS–SART) equipment, 80.1061 Special requirements for 406.0–406.1 MHz EPIRB stations, 95.1402 Special requirements for 406 MHz PLBs, 95.1403 Special Requirements for Maritime Survivor Locating Devices.

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 80 respondents and 80 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement and on occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted.

*Total Annual Burden:* 80 hours.

*Annual Cost Burden:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this information collection.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them.

The information collections contained in these rule sections require manufacturers of certain emergency radio beacons to include supplemental information with their equipment certification application which are due to the I formation collection requirements which were adopted by the Federal Communications Commission in FCC 16–119 on August 30, 2016. Manufacturers of Automatic Identification System Search and Rescue Transmitters (AIS–SARTS), 406 MHz Emergency Position Indicating RadioBeacons (EPRIBs) and Maritime Survivor Locating Device (MSLD) must provide a copy of letter from the U.S. Coast Guard stating their devices satisfies technical requirements specified in the IEC 61097–17 technical standard for AIS–SARTs, or Radio Technical Commission for Maritime Services (RTCM) Standard 11000 for 406 MHz EPIRBs, or that RTCM Standard 11901 for MSLDs. They must also provide a copy or the technical test data, and the instruction manual(s). For 406 MHz PLBs manufacturers must include documentation from COSPAS/SARSAT recognized test facility that the PLB satisfies the technical requirements specified in COSPAS–SARSAT Standard C/S T.001 and COSPAS–SARSAT Standard C/S T.007 standards and documentation from an independent test facility stating that the PLB complies RTCM Standard 11010.2. The information is used by Telecommunications Certification Bodies (TCBs) to determine if the devices meets the necessary international technical standards and insure compliance with applicable rules. If this information were not available, operation of marine safety equipment could be hindered threatening the ability of rescue personnel to locate vessels in distress.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2016–25067 Filed 10–17–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1121]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–1121.

*Title:* Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

*Form No.:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities and Not-for-profit Institutions.

*Number of Respondents and Responses:* 1,195 respondents and 1,195 responses.

*Estimated Time per Response:* 1–2 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 1,960 hours.

*Total Annual Cost:* $1,078,200.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* On August 14, 2013, the Commission adopted the Third Report and Order and Second Order on Reconsideration in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115. In the Third Report and Order in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the Third Report and Order the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The Third Report and Order also designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

*Information Collection Requirements Contained in this Collection:* 47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower

owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002–1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as ''expedited,'' and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

47 CFR 73.1675(c)(1) states that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

47 CFR 73.1690(c) requires FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2016–25066 Filed 10–17–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0853]**

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before November 17, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0853.

*Title:* Certification by Administrative Authority to Billed Entity Compliance with the Children's Internet Protection Act Form, FCC Form 479; Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act Form, FCC Form 486; and Funding Commitment Adjustment Request Form, FCC Form 500.

*Form Numbers:* FCC Forms 479, 486 and 500.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents and Responses:* 63,700 respondents, 63,700 responses.

*Estimated Time per Response:* 1 hour for FCC Form 479, 1 hour for FCC Form 486, 1 hour for FCC Form 500, and .75 hours for maintaining and updating the Internet Safety Policy.

*Frequency of Response:* On occasion and annual reporting requirements and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405.

*Total Annual Burden:* 58,575 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 C.F.R 0.459 of the FCC's rules.

*Needs and Uses:* The Commission seeks to revise OMB 3060–0853 to conform the FCC Forms 479, 486 and 500 to changes implemented in the *Order and FNPRM* (*E-rate Modernization Order*) (WC Docket No. 13–184, FCC 14–99; 79 FR 49160, August 19, 2014). The FCC Form 486 transitioned to an online platform for applicants that seek universal service support for funding year 2016 and later. Applicants needing to file FCC Form 486 for a funding year earlier than funding year 2016 will need to use a different version of the FCC Form 486 which will be available on the Universal Service Administrative Company's (USAC's) Web site. The FCC Form 500 will also be transitioned to an online platform. Applicants needing to file FCC Form 500 for a funding year earlier than funding year 2016 will need to use a different version of the FCC Form 500 which will be available on USAC's Web site for completion and upload into USAC's online portal.

The Commission will submit this information collection to OMB during this comment period to obtain the full three-year clearance from them. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet Access services (Category One), and Broadband Internal Connections, Managed Internal Broadband Services, and Basic Maintenance of Broadband Internal Connections (Basic Maintenance) (known together as Category Two Services) have in place Internet safety policies. Schools and libraries receiving these services must certify, by completing FCC Form 486 (Receipt of Service Confirmation and Certification of Compliance with the Children's Internet Protection Act), that respondents are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. Also, respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service funding must file FCC Form 486 to indicate their service start date and to start the payment process. In addition, all members of a consortium must submit signed certifications to the Billed Entity of their consortium using FCC Form 479; Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act, in language consistent with the certifications adopted for the FCC Form 486. Consortia must, in turn, certify collection of the FCC Forms 479 on the FCC Form 486. FCC Form 500 is used by E-rate participants to make adjustments to previously filed forms, such as changing the contract expiration date filed with the FCC Form 471, changing the funding year service start date filed with the FCC Form 486, cancelling or reducing the amount of funding commitments, requesting extensions of the deadline for non-recurring services, and notifying USAC of equipment transfers. All of the requirements contained herein are necessary to implement the congressional mandate for universal service.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of Secretary.*

[FR Doc. 2016–25064 Filed 10–17–16; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1094]**

## Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1094.

*Title:* Licensing, Operation, and Transition of the 2500–2690 MHz Band.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal Government.

*Number of Respondents:* 10 respondents, 250 responses.

*Estimated Time per Response:* 0.50 hours.

*Frequency of Response:* Third-party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for the collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 316.

*Total Annual Burden:* 125 hours.

*Total Annual Cost:* No cost.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this information collection.

*Needs and Uses:* The information collection requirements for this collection are contained under 47 CFR 27.1221(f) which states a Broadband Radio Service/Educational Broadband Service (BRS/EBS) licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in a proximate GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

The third party disclosure coordination and information exchange requirements are necessary to ensure that licensees do not cause interference to each other.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2016–25065 Filed 10–17–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10372—Mountain Heritage Bank Clayton, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Mountain Heritage Bank, Clayton, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Mountain Heritage Bank on June 24, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 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: October 13, 2016.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2016–25130 Filed 10–17–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice for comment regarding the Federal Reserve proposal to extend without revision the clearance under the Paperwork Reduction Act for the following information collection activity.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to extend for three years, without revision, the following reporting and recordkeeping requirements related to amendments made by the Gramm-Leach-Bliley Act, to the Bank Holding Company Act, the Federal Reserve Act, and related regulations:

- The mandatory Declarations to Become a Financial Holding Company (FHC) (FR 4010); [1]
- The voluntary Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011);
- The mandatory Notices of Failure to Meet Capital or Management Requirements (FR 4012); [2]
- The mandatory Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017);
- The mandatory Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019); and
- The mandatory Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023).

[1] Savings and Loan Holding Companies (SLHCs) were added to the FR 4010 as a result of Regulation LL. 12 CFR 238.65. (76 FR 56508) September 13, 2011.

[2] SLHCs were added to the FR 4012 as a result of Regulation LL. 12 CFR 238.65. (76 FR 56508) September 13, 2011.

These collections of information are event-generated and as such, there are no formal reporting forms associated with them. In each case, the type of information required to be filed is described in the Board's regulations.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**DATES:** Comments must be submitted on or before December 19, 2016.

**ADDRESSES:** You may submit comments, identified by *GLB Filings,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

## Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

## Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Information Collection

*Report title:* Certain Filings Related to the GLB Act.

*Agency form number:* FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023.

*OMB control number:* 7100–0292.

*Frequency:* On occasion.

*Respondents:* BHCs, SLHCs, foreign banking organizations, and state member banks.

*Estimated number of respondents:* FR 4010: BHCs and SLHCs, 31, Foreign banks, 1; FR 4011: 5; FR 4012: BHCs decertified as an FHC, 2, FHCs back into compliance—BHC, 14; FR 4017: 1; FR 4019: Regulatory relief requests, 4, Portfolio company notification 2; FR 4023: 30.

*Estimated average hours per response:* FR 4010: BHCs and SLHCs, 3 hours, Foreign banks, 4 hours; FR 4011: 10 hours; FR 4012: BHCs decertified as an FHC, 1 hour, FHCs back into compliance—BHC, 10 hours; FR 4017: 4 hours; FR 4019: Regulatory relief requests, 1 hour, Portfolio company notification, 1 hour; FR 4023: 50 hours.

*Estimated annual burden hours:* FR 4010: BHCs and SLHCs, 93 hours, Foreign banks, 4 hours; FR 4011: 50 hours; FR 4012: BHCs decertified as an FHC, 2 hours, FHCs back into compliance—BHC, 140 hours; FR 4017: 4 hours; FR 4019: Regulatory relief requests, 4 hours, Portfolio company notification, 2 hours; FR 4023: 1500 hours.

### *General Description of Report*

FR 4010

The BHC Act, and Regulations Y and LL specify the information to be included in a declaration.[3] In most cases, FHC declarations are filed in the form of a letter addressed to the appropriate Federal Reserve Bank.

An FHC declaration filed by a U.S. BHC must state that the BHC elects to become an FHC, must be signed by an authorized official or representative, and must provide the following information:

- The name and head office address of the BHC and of each depository institution controlled by the BHC (multi-tiered filers may file a single declaration, provided the name and head office address of each tiered company is listed.)
- a certification that the BHC and all depository institutions controlled by the BHC are well capitalized and well managed as of the declaration date
- the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each depository institution the BHC controls

An FHC declaration filed by a U.S. SLHC must state that the SLHC elects to be treated as an FHC, must be signed by an authorized official or representative,

[3] 12 U.S.C. 1843(l)(1); 12 CFR 225.82, 238.65(b) and 225.91.

and must provide the following information:

• The name and head office address of the SLHC and of each depository institution controlled by the SLHC (Multi-tiered filers may file a single declaration, provided the name and head office address of each tiered company is listed.)

• a certification that the SLHC and all depository institutions controlled by the SLHC are well capitalized and well managed as of the declaration date

• the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each depository institution the SLHC controls

An FHC declaration filed by an FBO must state that the FBO elects to be treated as an FHC, must be signed by an authorized official or representative, and must provide the following information:

• With respect to each foreign bank controlled by the FBO, the bank's risk-based capital ratios, amount of tier 1 capital, and total assets, as of the close of the most recent quarter and as of the close of the most recent audited reporting period

• a certification that each foreign bank controlled by the FBO is well-capitalized and well-managed

• a certification that all U.S. depository institutions controlled by the FBO are well capitalized and well managed as of the declaration date

• the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each U.S. depository institution controlled by the FBO

FR 4011

Regulation Y specifies the information to be collected in connection with each type of request.[4] A request for a determination that an activity is financial in nature or incidental to a financial activity must be in writing and:

• Identify, define, and describe the activity and explain how the activity would be conducted,

• explain why the activity should be considered financial in nature or incidental to a financial activity; and

• include information supporting the request and any other information required by the Board.

A request for an advisory opinion that a specific activity is within the scope of activities previously determined to be financial in nature, or incidental to a financial activity, must be in writing and:

• Identify and describe the proposed activity or the proposed product or service,

• offer support for the desired interpretation, and

• include any other information requested by the Board.

An applicant seeking prior approval to engage in an activity that the applicant believes is complementary to a financial activity must submit a written request that:

• Identifies, defines, and describes the activity and explains how the activity would be conducted;

• identifies the financial activity to which the proposed activity would be complementary and provides information sufficient to support a finding that the proposed activity is complementary to the financial activity;

• describes the scope and relative size of the proposed activity, measured by the percentage of the FHC's projected revenues expected to be derived from, and assets associated with, the activity;

• discusses the risks the activity may reasonably be expected to pose to the safety and soundness of the FHC's depository institutions and to the financial system generally;

• describes the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that the activity could cause, and the measures the FHC proposes to take to address those potential effects;

• describes the potential benefits to the public, such as greater convenience, increased competition, or gains in efficiency, the proposal may be reasonably expected to produce; and

• provides information about the FHC's financial and managerial resources and any other information requested by the Board.

FR 4012

Regulation Y provides that the notice must identify the noncompliant banking entity and the area of noncompliance. Regulation Y does not prescribe a format for such notices, however, they typically take the form of a letter.[5] Plans submitted to remediate capital and management deficiencies typically include the following:

• An explanation of the specific actions the FHC will take to correct all areas of noncompliance

• a schedule within which each action will be taken

• any other information the Board may require

FR 4017

Regulation H requires FR 4017 notices to be in the form of a letter with enclosures and to:[6]

• Describe the proposed transaction by which the bank would acquire the stake in the financial subsidiary;

• provide the name and head office address of the subsidiary;

• describe each current and proposed activity of the financial subsidiary and the legal authority for each activity;

• provide the capital ratios, as of the end of the most recent calendar quarter, for the bank and each of its depository institution affiliates;

• certify that the bank and each of its depository institution affiliates were well-capitalized at the close of the previous calendar quarter and as of the notice date;

• certify that the bank and each of its depository institution affiliates are well-managed as of the notice date;

• certify that the bank meets any applicable debt rating or alternative requirements and complies both before and after the transaction with the limit on the aggregate amount of assets held by the bank's financial subsidiaries; and

• describe the insurance activities, if the financial subsidiary will engage in insurance activities, to be conducted and identify each state in which the company holds an insurance license and the state insurance authority that issued the license.

FR 4019

Regulation Y requires requests for extension of the holding period for a merchant bank investment to include the following information:[7]

• The reasons for the request, including information addressing the factors the Board must consider in acting on such a request (including the costs and risks to the FHC of disposing of the investment, market conditions, the extent and history of the FHC's involvement in managing or operating the portfolio company, and the FHC's average holding period for its merchant banking investments)

• an explanation of the FHC's plan for divesting the investment

A notice of extended routine management or operation of a portfolio company can be in the form of a brief letter and must identify the portfolio company, the date on which the FHC first became involved in the routine management or operation of the portfolio company, the reasons for the FHC's involvement, the actions taken by the FHC to address the circumstances

[4] 12 CFR 225.88(b) and (e), and 225.89.

[5] 12 CFR 225.83(b)(1), 225.93(b)(1) and 238.66(b).

[6] 12 CFR 208.76.

[7] 12 CFR 225.172(b)(4).

giving rise to its involvement, and an estimate of when the FHC anticipates ceasing routinely managing or operating the portfolio company.

FR 4023

The general policies and procedures that an FHC must establish with respect to merchant banking must be reasonably designed to: [8]

- Monitor, with respect to each investment and the entire portfolio, carrying and market values and performance;
- identify and manage market, credit, and other risks of such investments;
- identify and monitor terms and risks of transactions of companies in which the FHC has merchant banking investments;
- ensure the corporate separateness of the FHC and the companies in which it has merchant banking investments;
- ensure compliance with sections 23A and 23B of the FRA, anti-tying statutes, Regulation Y, and any other applicable provisions of law.

*Legal Authorization and Confidentiality*

- FR 4010 is authorized by section 4(*l*)(1)(C) of the BHC Act (12 U.S.C. 1843 (*l*)(1)(C)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); sections 225.82 and 225.91 of the Board's Regulation Y (12 CFR 225.82, 225.91; and section 238.65 of the Board's Regulation LL (12 CFR 238.65)).
- FR 4011 is authorized by section 4(j) and (k) of the BHC Act (12 U.S.C. 1843(j)–(k)), and sections 225.88 and 225.89 of the Board's Regulation Y (12 CFR 225.88, 225.89).
- FR 4012 is authorized by section 4(*l*)(1) and 4(m) of the BHC Act (12 U.S.C. 1843(*l*)(1), (m)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); sections 225.83 and 225.93 of the Board's Regulation Y (12 CFR 225.83, 225.93); and section 238.66(b) of the Board's Regulation LL (12 CFR 238.66(b)).
- FR 4017 is authorized by section 9 of the FRA (12 U.S.C. 335), and section 208.76 of the Board's Regulation H (12 CFR 208.76).
- FR 4019 is authorized by section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)); sections 225.171(e)(3), 225.172(b)(4); and section 225.173(c)(2) of the Board's Regulation Y (12 CFR 225.171(e)(3), 225.172(b)(4), 225.173(c)(2)).
- FR 4023 is authorized by section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)), and sections 225.171(e)(4) and 225.175 of the Board's Regulation Y (12 CFR 225.171(e)(4), 225.175).

The obligation to respond to the FR 4011 is voluntary (for requests to determine that an activity is financial in nature or to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature) and required to obtain or retain benefits (for approvals to engage in an activity that is complementary to a financial activity). The obligation to respond to the FR 4010, FR 4017, and FR 4019 is required to obtain or retain benefits. The obligation to respond to FR 4012 and the obligation to comply with the recordkeeping requirements of the FR 4023 is mandatory.

The information collected on the FR 4010, FR 4011, FR 4017, and FR 4019 and information related to a failure to meet capital requirements on the FR 4012 is not generally considered confidential. Nevertheless, a respondent may request confidential treatment of information contained in these information collections in accordance with section (b)(4) or (b)(6) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4), (b)(6)). Any request for confidential treatment of information must be accompanied by a detailed justification for confidentiality. Information related to a failure to meet management requirements on the FR 4012 is considered confidential and exempt from disclosure under section (b)(4), because the release of this information would cause substantial harm to the competitive position of the entity, and section (b)(8), if the information is related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(4), (b)(8)).

Additionally, the records kept in accordance with the Recordkeeping Requirements Associated with Merchant Banking Activities are retained by the respondent itself and the FOIA would only be implicated if the Board's examiners retained a copy of the records as part of an examination or supervision of a banking institution. In this case, the records would likely be exempt from disclosure under exemption (b)(8), for examination material. 5 U.S.C. 552(b)(8). In addition, the records may also be exempt under (b)(4) and (b)(6).

Board of Governors of the Federal Reserve System, October 13, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–25129 Filed 10–17–16; 8:45 am]

BILLING CODE 6210–01–P

[8] 12 CFR 225.175(a)(1).

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0094]; [Docket 2016–0053; Sequence 11]**

## Submission for OMB Review; Debarment and Suspension and Other Responsibility Matters

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing 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 an extension of a previously approved information collection requirement concerning debarment and suspension. This request also incorporated two other related information collection requirements (''Information Regarding Responsibility Matters'' and ''Prohibition on Contracting with Inverted Domestic Corporations—Representation and Notification''), which will be cancelled upon approval of this clearance. A notice was published in the **Federal Register** at 81 FR 8719 on February 22, 2016. One comment was received.

**DATES:** Submit comments on or before November 17, 2016.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally, submit a copy to GSA 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 9000–0094, Debarment and Suspension and Other Responsibility Matters''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0094, Debarment and Suspension and Other Responsibility Matters'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0094, Debarment and Suspension.

*Instructions:* Please submit comments only and cite Information Collection 9000–0094, Debarment and Suspension and Other Responsibility Matters, 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).

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, Office of Acquisition Policy, at 202–219–0202 or via email at *cecelia.davis@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Purpose

*1. Suspension and Debarment*

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm, its principals, or subcontractors, have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by a Government contracting officer in making a responsibility determination. FAR 52.209–5 and 52.212–3(h), Certification Regarding Responsibility Matters, and FAR 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, require the disclosure of this and other information relating to responsibility.

*2. Information Regarding Responsibility Matters (Transfer From OMB Clearance Number 9000–0174)*

The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to meet the statutory requirement to develop and maintain an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), as well as proceedings information and suspension/debarment information from the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) functions in the System for Award Management (SAM).

The prescription at FAR 9.104–7(b) requires contracting officers to insert the provision at 52.209–7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed $550,000. This provision contains a check box to be completed by the offeror indicating whether or not it has current active Federal contracts and grants with total value greater than $10,000,000. If the offeror indicated that it has current active Federal contracts and grants with total value greater than $10,000,000, then the offeror must enter certain responsibility information into FAPIIS.

FAR 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, requires each contractor that checked in the provision at 52.209–7 that it has current active Federal contracts and grants with total value greater than $10,000,000, to update responsibility information in FAPIIS on a semiannual basis, throughout the life of the contract.

*3. Prohibition on Contracting With Inverted Domestic Corporations—Representation and Notification (Transfer From OMB Clearance Number 9000–0190)*

FAR 52.209–2 and 52.212–3(n), Prohibition on Contracting with Inverted Domestic Corporations—Representation, is prescribed at 9.108–5(a) for use in each solicitation for the acquisition of products and services (including construction). The provision requires each offeror to represent whether it is, or is not, an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

FAR 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, is prescribed for use at FAR 9.108–5(b) for use in ach solicitation and contract for the acquisition of products and services (including construction). This clause requires the contractor to promptly notify the contracting officer in the event the contractor becomes an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

## B. Discussion and Analysis

The analysis of the public comment is summarized as follows:

One response was received. The commenter supports the efforts to contract with only responsible parties and to assure contracting officers engage in appropriate due diligence to support this effort.

*Comment:* According to the respondent, the Federal Government has drastically underestimated the burden associated with compiling and reporting the requisite information by failing to take into account the offeror's obligation to assure that the information provided is current, accurate, and complete. It also fails to account for the requirement to update the information no less than semi-annually.

*Response:* FAR 52.209–7 requires the contractor to enter information into FAPIIS and FAR 52.209–9 requires the contractor to update this information semi-annually. The initial burden estimate for FAR 52.209–9 does take into account entering the information semi-annually. However, based on the comment, an adjustment was made from .5 hours to 1 hour per response, for FAR 52.209–9. The change doubles the initial burden estimate for that clause to allow more time for this action.

*Comment:* The commenter stated that the Government may have understated the recordkeeping burden by several orders of magnitude. The number of recordkeepers does not equal the number of respondents and is unclear as to why. One cannot reasonably expect an offeror to provide the required information and certify it as current, accurate, and complete without maintaining the requisite litigation, employment, and corporate records.

*Response:* In this situation, the estimate for recordkeeping is based on the number of offerors submitting data into FAPIIS, whether or not they receive an award. This provision requires that for each solicitation where the resultant contract value is expected to exceed $550,000, the offeror responds in paragraph (b) as to whether or not it has active Federal contracts that total more than $10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. The recordkeppers maintain the company's information internally. This explains the difference between the number of respondents and the number of recordkeepers.

*Comment:* According to the commenter, the requirement to provide

''Information Regarding Responsibility Matters'' under 52.209–7 violates Executive Order 13610, Identifying and Reducing Regulatory Burdens, in that it is a redundant collection of information and fails to maximize the re-use of data that are already collected. The commenter states that FAR clauses 52.209–5 and 52.209–7 request for information overlaps and yet is different enough to create substantial additional burden and confusion for offerors evaluating instance of litigation under both standards.

*Response:* FAR 52.209–7 is a statutory clause that requires the Government to collect information that is loaded into FAPIIS. The clause must be implemented as intended. Some of the information being collected may seem redundant but it has different criteria. It is not identical information and used differently. Furthermore, the thresholds are different.

FAR 52.209–5 implements policy guidance on debarment, suspension and ineligibility. FAR 52.209–5 is a certification that is placed in all solicitations when the contract value is expected to exceed the simplified acquisition threshold and covers 3 years. FAR 52.209–7 goes in solicitations expected to exceed $550,000 and covers 5 years and requires that the information be placed into FAPIIS (as required by statute).

*Comment:* The existence of FAR 52.209–5 and 52.209–11 obviate the need for FAR 52.209–7 because all three clauses use offeror's litigation history as an indicator of it present responsibility.

*Response:* These data requirements are different. One major difference between these clauses is that FAR 52.209–7 collects data to be added into FAPIIS. The others do not. Therefore, FAR 52.209–7 has a different requirement intent and needed.

*Comment:* FAR 52.209–7 requires offerors to report information on matters so old they are no longer relevant to present responsibility.

*Response:* The statute that this clause is based requires that it collects 5 years of data.

**C. Annual Reporting and Recordkeeping Burden**

*Annual Reporting Burden*

*Respondents:* 486,000.
*Responses per Respondent:* 2.55.
*Total Annual Responses:* 1,239,602.
*Hours per Response:* 0.34.
*Total Burden Hours:* 415,687.

*Annual Recordkeeping Burden*

*Recordkeepers:* 5,080.
*Hours per Recordkeeper:* 100.
*Total Annual Recordkeeping Hours:* 508,000.

*Public Comments*

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0094, Debarment and Suspension and Other Responsibility Matters, in all correspondence.

Dated: October 13, 2016.

**Lorin S. Curit,**

*Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2016–25123 Filed 10–17–16; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket No. CDC–2016–0094]**

### Proposed Revised Vaccine Information Materials for MMR (Measles, Mumps, and Rubella and MMRV (Measles, Mumps, Rubella, and Varicella) Vaccines

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) develops vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. HHS/CDC seeks written comment on the proposed updated vaccine information statements for MMR (measles, mumps, and rubella) and MMRV (measles, mumps, rubella, and varicella) vaccines.

**DATES:** Written comments must be received on or before December 19, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2016–0094, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments should be addressed to Suzanne Johnson-DeLeon (*VIScomments@cdc.gov*), National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop A–19, 1600 Clifton Road NE., 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 *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Skip Wolfe, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop A–19, 1600 Clifton Road NE., Atlanta, Georgia 30329, email: *VIScomments@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program (VICP).

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and

the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: Hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and seasonal influenza vaccines. Instructions for use of the vaccine information materials are found on the CDC Web site at: *http://www.cdc.gov/vaccines/hcp/vis/index.html.*

HHS/CDC is proposing updated versions of the MMR (measles, mumps, and rubella) and MMRV (measles, mumps, rubella, and varicella) vaccine information statements.

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

We invite written comment on the proposed revised vaccine information materials entitled ''MMR Vaccine (Measles, Mumps, and Rubella): What You Need to Know'' and ''MMRV Vaccine (Measles, Mumps, Rubella, and Varicella): What You Need to Know.'' Copies of the proposed vaccine information materials are available at *http://www.regulations.gov* (see Docket Number CDC–2016–0094). Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

Dated: October 13, 2016.

**Sandra Cashman,**

*Executive Secretary, Centers for Disease Control and Prevention.*

[FR Doc. 2016–25144 Filed 10–17–16; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:*

*Title:* Renewal of Office of Community Services (OCS) Community Economic Development (CED) Standard Reporting Format.

*OMB No.:* 0970–0386.

*Description:* The Office of Community Services (OCS) will continue collecting key information about projects funded through the Community Economic Development (CED) program. The legislative requirement for this program is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 1998, Public Law 105–285, section 680(b) as amended. The reporting format, Performance Progress Report (PPR), collects information concerning the outcomes and management of CED projects. OCS will use the data to critically review the overall design and effectiveness of the program.

The PPR will continue to be administered to all active grantees of the CED program. Grantees will be required to use this reporting tool for their semi-annual reports to be submitted twice a year. The current PPR replaced both the annual questionnaire and other semi-annual reporting formats, which resulted in an overall reduction in burden for the grantees while significantly improving the quality of the data collected by OCS. OCS seeks to renew this PPR to continue to collect quality data from grantees. To ensure the burden on grantees is not increased, but that the information collected demonstrates the full impact of the program, OCS has conducted an in-depth review to remove indicators that are not being used; add indicators that will allow OCS to better demonstrate the impact of the program; and clarify language of some indicators to reduce grantee confusion. Based on this review, proposed changes to the CED PPR are minimal and focused on clarifying language, removing outdated indicators, and gathering minimal additional data that will not increase the burden on grantees. These measures will result in a stronger and streamlined CED PPR that will allow for the following:

—More clarity for grantees and ability to avoid confusion around what data should be provided.

—Increased consistency across data.

—Ability for OCS and grantees to better demonstrate the impact of these projects.

A summary of all proposed changes can be provided upon request.

*Respondents:* Active CED Grantees

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| PPR for Current OCS–CED Grantees | 170 | 2 | 1.5 | 510 |

*Estimated Total Annual Burden Hours:*

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–25120 Filed 10–17–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–3118]**

### Mallinckrodt Pharmaceuticals; Proposal To Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of an abbreviated new drug application (ANDA) for methylphenidate hydrochloride (HCl) extended-release (ER) tablets and is announcing an opportunity for the holder of the ANDA to request a hearing on this proposal.

**DATES:** Mallinckrodt Pharmaceuticals may submit a request for a hearing by November 17, 2016. Submit all data, information, and analyses upon which the request for a hearing relies by December 19, 2016. Submit written or electronic comments by December 19, 2016.

**ADDRESSES:** The request for a hearing may be submitted by Mallinckrodt Pharmaceuticals by either of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *http://www.regulations.gov*, including any attachments to the request for hearing, will be posted to the docket unchanged.

*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.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you may not wish to be publicly posted, such as confidential business information, *e.g.*, a manufacturing process. The request for a hearing must include the Docket No. FDA–2016–N–3118 for ''Mallinckrodt Pharmaceuticals; Proposal to Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and 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.

Mallinckrodt Pharmaceuticals may submit all data and analysis upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- *Confidential Submissions*—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. 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 any decisions on this matter. 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* or available at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Division of Dockets Management. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

*Comments Submitted by Other Interested Parties:* For all comments submitted by other interested parties, 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–2016–N–3118 for ''Mallinckrodt Pharmaceuticals; Proposal to Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing.'' 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:**

Maryll W. Toufanian, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1716, Silver Spring, MD 20993–0002, 240–402–7944.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Approval of ANDAs Referencing CONCERTA*

CONCERTA (methylphenidate HCl) ER tablet is the subject of new drug application (NDA) 021121, held by Janssen Pharmaceuticals, Inc., and was approved on August 1, 2000. CONCERTA is a central nervous system stimulant intended for the treatment of attention deficit hyperactivity disorder in children 6 years of age and older, adolescents, and adults up to the age of 65. CONCERTA is a multiphasic modified-release product that is formulated to release a bolus of methylphenidate, resulting in an initial rapid rise in plasma concentration comparable to the effect of an immediate-release (IR) methylphenidate formulation, followed by sustained delivery later in the day, thereby allowing for once daily dosing. The relative bioavailability of CONCERTA in adults is comparable to IR methylphenidate administered three times daily, but the CONCERTA formulation minimizes the fluctuations between peak and trough concentrations associated with IR methylphenidate administered three times daily. CONCERTA is approved for the following strengths: 18 milligrams (mg), 27 mg, 36 mg, and 54 mg. CONCERTA was approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the product is safe for its intended uses and has the effects claimed for it.

FDA's Office of Generic Drugs (OGD) approved ANDA 202608, held by Mallinckrodt Pharmaceuticals (Mallinckrodt), for a generic version of CONCERTA under the requirements of section 505(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)) and FDA's implementing regulations. OGD approved ANDA 202608 on December 28, 2012, for the 27-mg, 36-mg, and 54-mg strengths.

At the time of approval, FDA determined that the ANDA included data sufficient to demonstrate the bioequivalence of the Mallinckrodt product to CONCERTA. The bioequivalence (BE) testing and data submitted in the ANDA conformed to recommendations provided in a draft guidance for industry on ''Methylphenidate hydrochloride.'' The draft guidance was issued on September 14, 2012 (77 FR 56851), and provided information and recommendations for establishing bioequivalence to CONCERTA that reflected FDA's understanding, at that time, of how to evaluate the pharmacokinetic (PK) properties of CONCERTA to support a demonstration of bioequivalence. The demonstration of bioequivalence was necessary to the approval of Mallinckrodt's product. Unlike CONCERTA, Mallinckrodt was not required to submit clinical studies to demonstrate the safety and effectiveness of its product. Instead, Mallinckrodt's ANDA was approved based on a finding that the product was bioequivalent to CONCERTA and met the other requirements for ANDA approval in section 505(j) of the FD&C Act.

### *B. Concerns About Insufficient Therapeutic Effect*

#### 1. ANDA 202608

Mallinckrodt began marketing its generic version of CONCERTA in March 2013. OGD routinely monitors all newly approved ANDA products for safety and efficacy concerns as they penetrate the marketplace, including the monitoring of adverse events reported to the Agency. In May 2013, the FDA Adverse Event Reporting System (FAERS) began receiving reports that described insufficient therapeutic effect of the Mallinckrodt product, particularly reports describing insufficient effect later in the day.[1] These reports indicated potential therapeutic inequivalence of the Mallinckrodt product as compared to CONCERTA. In light of the reports received, CDER began an investigation of the Mallinckrodt product.[2]

#### 2. CDER's Investigations

a. *Tracked safety issue (TSI).* CDER began its investigation of the Mallinckrodt product with a reevaluation of the data and information submitted in the application to demonstrate bioequivalence; an assessment of FAERS data; and a comparative analysis of the design, composition, dissolution, and active pharmaceutical ingredient (API) degradation of the generic product as compared to CONCERTA. The findings of these investigations led to the initiation of a TSI. In general, when CDER staff suspect that a potential safety issue could be significant, a TSI is opened and an interdisciplinary team assesses the safety issue, reevaluates the risk-benefit profile of the drug, and determines the need for further action. CDER considers postmarketing safety issues to be significant for tracking purposes if these issues have the potential to lead to, among other things, withdrawal of FDA approval of a drug application.

The initial meeting of the TSI Committee occurred in December 2013.

[1] In addition to reports submitted to FAERS, FDA received complaints related to therapeutic failure from multiple other sources, including FDA's Detroit District Office and a director of anesthesia support at a children's hospital.

[2] FDA investigated ANDA 202608 concurrently with ANDA 091695, which is another generic product referencing CONCERTA, held by Kremers Urban Pharmaceuticals Inc. Elsewhere in this issue of the **Federal Register**, FDA is proposing to withdraw approval of ANDA 091695.

The TSI Committee was composed of CDER physicians, pharmacists, and chemists, as well as other CDER scientists and experts, who carefully reviewed all of the data and information related to the Mallinckrodt product. Key information reviewed and discussed by the TSI Committee is summarized as follows:

• *Adverse event reports.* An analysis was conducted of FAERS reports, along with additional data regarding therapeutic failure provided by Mallinckrodt and Janssen (CONCERTA's NDA holder), to assess, among other things, the reporting rate for therapeutic failure for the Mallinckrodt product as compared to the reporting rate for therapeutic failure for the authorized generic version of CONCERTA marketed by Actavis plc.[3] The reporting rate for therapeutic failure was found to be 88 per 100,000 person-years of exposure for the Mallinckrodt product and 7.0 per 100,000 person-years of exposure for the authorized generic drug product.

• *Product composition.* The Mallinckrodt product and CONCERTA were tested in FDA laboratories to evaluate differences in drug design, composition, stability, and dissolution. The testing identified concerns with API degradation and in vivo dissolution, which could result in differences in drug release. These differences could, in turn, result in differences in therapeutic effect of the generic product compared to CONCERTA.

• *BE data.* A review and reanalysis were conducted of the data that were submitted in the ANDA to establish bioequivalence to CONCERTA. In particular, an outlier analysis was performed on the BE data to evaluate the difference in product absorption between the Mallinckrodt product and CONCERTA across various PK sampling time points. The analysis showed that the greatest difference in product absorption between the Mallinckrodt product and CONCERTA occurred at 10 hours post-dosing under fasting conditions.

• *Modeling of potential clinical impact.* In light of the close relationship between the PK profile and clinical effect of methylphenidate products (Ref. 1), modeling was done based on the BE data submitted in the ANDA to predict the potential clinical significance of the difference in PK profile, *i.e.*, product absorption, of the Mallinckrodt product compared to CONCERTA. The modeling suggested some potential clinical inequivalence between the generic product and CONCERTA after 6 hours post-dosing. The greatest mean percent reduction in clinical efficacy for the Mallinckrodt product is predicted to be approximately 21 percent at 10 hours post-dosing under fasting condition.

The TSI was concluded in June 2014. Based on the information considered, the TSI Committee determined that the Mallinckrodt product may deliver methylphenidate into the body at a slower rate than CONCERTA during the time period of 7 to 12 hours post-dosing, and therefore, the product may not be bioequivalent or therapeutically equivalent to CONCERTA. Following the TSI Committee's investigation, CDER concluded that the therapeutic equivalence (TE) rating for the Mallinckrodt product in FDA's ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (commonly referred to as the ''Orange Book'') should be changed from AB to BX to indicate that the data are insufficient to determine that the Mallinckrodt product is therapeutically equivalent to CONCERTA.[4]

On November 6, 2014 (79 FR 65978), CDER issued a revised draft guidance for industry on ''Bioequivalence Recommendations for CONCERTA (Methylphenidate Hydrochloride) Extended-Release Tablets'' (revised draft BE guidance) (Ref. 2), with recommendations for establishing bioequivalence to CONCERTA that reflect CDER's refined understanding of the relationship between the PK profile of CONCERTA and its therapeutic effect. The revised draft BE guidance is available on FDA's Web site and will be placed in Docket No. FDA–2016–N–3118.

On November 12, 2014, representatives from OGD and other CDER offices notified Mallinckrodt by telephone of CDER's concerns regarding its generic product. OGD explained that the TE rating for the product would be changed from AB to BX immediately. OGD requested that Mallinckrodt: (1) Voluntarily withdraw its product from the market under 21 CFR 314.150(d) and request that FDA withdraw approval of the ANDA or (2) confirm bioequivalence of its product within 6 months, consistent with the recommendations in the revised draft BE guidance issued on November 6, 2014. Mallinckrodt declined to voluntarily withdraw its product from the market, and it has not submitted data or information that confirms bioequivalence of its product to CONCERTA.

b. *Post-TSI investigation.* After communicating CDER's concerns to Mallinckrodt about its methylphenidate product and changing the TE rating for the product to BX, CDER continued to evaluate data and information related to the bioequivalence of Mallinckrodt's product to CONCERTA. CDER reanalyzed the BE data originally submitted in Mallinckrodt's ANDA in accordance with the recommendations provided in the November 6, 2014, revised draft BE guidance. The reanalysis showed that the 54-mg Mallinckrodt product on which the in vivo BE testing was conducted does not provide the same extent of methylphenidate exposure as CONCERTA during the 7- to 12-hour time period after administration. Specifically, the 90 percent confidence interval (CI) of the geometric mean ratio of the test product (Mallinckrodt's) to reference product (CONCERTA) for $AUC_{7-12}$[5] (at 64.41 percent to 72.49

[3] *Authorized generic drug* is defined in section 505(t) of the FD&C Act and in § 314.3(b) (21 CFR 314.3(b)) *(Authorized generic drug* means a listed drug, as defined in § 314.3(b), that has been approved under section 505(c) of the FD&C Act and is marketed, sold, or distributed directly or indirectly to retail class of trade with labeling, packaging (other than repackaging as the listed drug in blister packs, unit doses, or similar packaging for use in institutions), product code, labeler code, trade name, or trademark that differs from that of the listed drug.). A *listed drug* is a new drug product that has an effective approval under section 505(c) of the FD&C Act for safety and effectiveness, or under section 505(j), that has not been withdrawn or suspended under section 505(e)(1) through (e)(5) or (j)(5) of the FD&C Act, and that has not been withdrawn from sale for what FDA determines are reasons of safety or effectiveness (§ 314.3(b)). Listed drugs are identified as drugs with an effective approval in FDA's current edition of ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (commonly referred to as the ''Orange Book'') (*Id.*). A list of currently available authorized generics is available at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm126391.htm.* (FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

[4] In the Orange Book, FDA ''classifies as therapeutically equivalent those products that meet the following general criteria: (1) [T]hey are approved as safe and effective; (2) they are pharmaceutical equivalents in that they (a) contain identical amounts of the same active drug ingredient in the same dosage form and route of administration, and (b) meet compendial or other applicable standards of strength, quality, purity, and identity; (3) they are bioequivalent in that (a) they do not present a known or potential bioequivalence problem, and they meet an acceptable in vitro standard, or (b) if they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard; (4) they are adequately labeled; (5) they are manufactured in compliance with Current Good Manufacturing Practice regulations'' (Orange Book Preface at vii, available at *http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/UCM071436.pdf.* (FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)).

[5] The area under the plasma concentration-time curve (AUC) is used to evaluate the ''extent'' of absorption of a drug. See section 505(j)(7)(B) of the FD&C Act. $AUC_{7-12}$ captures the extent of

Continued

percent) falls outside of the 80 percent to 125 percent BE acceptance criteria (Ref. 4). The lower level of methylphenidate exposure compared to CONCERTA 7 to 12 hours after administration is consistent with the reports received describing lack of therapeutic effect later in the day.

In addition to the reanalysis described above, FDA performed further clinical trial simulations based on the BE data originally submitted in the ANDA to assess the potential clinical significance of the difference in PK profile, *i.e.*, methylphenidate absorption, of the Mallinckrodt product compared to CONCERTA (Ref. 5). The simulation suggested some potential difference in effect between Mallinckrodt's product and CONCERTA after 6 hours post-dosing. Consistent with the evaluation presented during the TSI, the greatest mean percent reduction in efficacy was predicted to be 21.17 percent at 10 hours post-dosing, with individual changes ranging from a 44.09 percent decrease and a 9.04 percent increase in efficacy compared to CONCERTA.

Along with a reanalysis of data submitted in the original ANDA, in March 2015, CDER sponsored its own study to evaluate bioequivalence of the 27-mg Mallinckrodt product as compared to CONCERTA. The CDER-sponsored study was a single-dose, 4-treatment, fully replicated, crossover, randomized BE study (consistent with the study design recommended in the revised draft BE guidance) in healthy subjects under fasting conditions. The study compared: (1) The test product—Mallinckrodt's methylphenidate HCl ER tablets, 27 mg; and (2) the reference product—CONCERTA ER tablets, 27 mg. A total of 28 subjects were enrolled in the study, and 24 subjects completed all 4 periods. Plasma samples were collected for up to 24 hours following each treatment. The mean methylphenidate plasma concentration profiles for both the test and reference products exhibited PK properties consistent with those observed in the 54-mg fasting BE study submitted by Mallinckrodt in its ANDA. In particular, decreased plasma concentrations were observed with administration of the Mallinckrodt product as compared to CONCERTA after 6 to 7 hours. The 90 percent CI of the geometric mean test-to-reference ratio for $AUC_{7-12}$ was below the 80 percent to 125 percent BE acceptance range (at 60.99 percent to 70.50 percent). All other metrics were found to be within the BE acceptance range of 80 percent to 125 percent. The observed lower level of methylphenidate exposure compared to CONCERTA 7 to 12 hours after administration is consistent with that observed in the reanalysis of the 54-mg BE study submitted in Mallinckrodt's ANDA.

Finally, FDA analyzed FAERS reports from February 2014 to May 2015. The types and quality of reports received by FDA during that time period were very similar to the reports received before FDA changed the TE rating. The reports continued to contain specific complaints describing the failure of therapeutic effect during the latter part of the day.

The applicant has not submitted data that confirms bioequivalence of its product to CONCERTA. A memorandum describing in detail the information considered following the TSI and explaining CDER's determination will be placed in Docket No. FDA–2016–N–3118 (Ref. 6).

## II. Conclusions and Proposed Action

An NDA (or reference listed drug) applicant must submit ''full reports of investigations'' to show that the drug for which the applicant is seeking approval is safe and effective. In other words, reference listed drugs must meet the safety and substantial evidence of effectiveness standard (see section 505(b)(1) and (2), (c), and (d) of the FD&C Act). A reference listed drug applicant can meet the standard by conducting its own clinical studies (stand-alone application) or relying, in part, on the Agency's previous finding of safety and/or effectiveness or literature (a 505(b)(2) application). An ANDA applicant does not submit independent clinical studies to demonstrate safety and effectiveness. Rather, an ANDA applicant relies on the Agency's previous finding of safety and effectiveness for the reference listed drug and is required to meet other requirements such as demonstrating bioequivalence to the reference listed drug to support approval. In the absence of information showing bioequivalence between the generic drug at issue and the reference listed drug, there is no basis for concluding that the Agency's finding of safety and efficacy (or substantial evidence of effectiveness) supporting approval of the reference listed drug likewise supports approval of the generic drug.

Therefore, based on all available data and information, notice is given to Mallinckrodt and to all other interested persons that the Director of CDER proposes to issue an order, under section 505(e)(3) of the FD&C Act and § 314.150(a)(2)(iii), withdrawing approval of ANDA 202608 and all amendments and supplements to it on the grounds that, on the basis of new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

## III. Hearing Procedures

In accordance with section 505(e) of the FD&C Act, the applicant is hereby provided an opportunity to request a hearing to show why approval of ANDA 202608 should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product covered by this application.

An applicant who decides to seek a hearing must file the following: (1) A written notice of participation and request for hearing (see **DATES**), and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing to resolve (see **DATES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the application and constitutes a waiver of any contentions concerning the legal status of the drug product. FDA will then withdraw approval of the application, and the drug product may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary

absorption from 7 to 12 hours post-dosing. See, *e.g.*, the draft guidance for industry entitled ''Bioequivalence Studies with Pharmacokinetic Endpoints for Drugs Submitted under an ANDA'' (Ref. 3).

judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

This notice is issued under section 505(e) of the FD&C Act and under the authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

## IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.


1. Swanson, J.M., et al., ''A Comparison of Once-Daily Extended-Release Methylphenidate Formulations in Children With Attention-Deficit/Hyperactivity Disorder in the Laboratory School (The Comacs Study),'' *Pediatrics,* vol. 113, pp. 206–216, 2004.
2. FDA, draft guidance for industry, ''Bioequivalence Recommendations for CONCERTA (Methylphenidate Hydrochloride) Extended-Release Tablets,'' November 2014 (available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM320007.pdf*).
3. FDA, draft guidance for industry, ''Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an ANDA,'' December 2013 (available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM377465).*
4. Dighe, S.V. and W.P. Adams. ''Bioequivalence: A United States Regulatory Perspective.'' In Welling, P.G., L.S. Tse, and S.V. Dighe, eds., *Pharmaceutical Bioequivalence.* New York: Marcel Dekker, Inc., pp. 347–380, 1991.
5. Kimko, H., et al., ''Population Pharmacodynamic Modeling of Various Extended-Release Formulations of Methylphenidate in Children With Attention Deficit Hyperactivity Disorder Via Meta-Analysis,'' *Journal of Pharmacokinetics and Pharmacodynamics,* vol. 39(2), pp. 161–176, 2012.
6. Memorandum to Janet Woodcock, Director, Center for Drug Evaluation and Research, in Support of Beginning Approval Withdrawal Proceedings for ANDA 202608 (October 1, 2016, Peters).


Dated: October 12, 2016.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 2016–25093 Filed 10–17–16; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–3120]**

### Kremers Urban Pharmaceuticals Inc.; Proposal To Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of an abbreviated new drug application (ANDA) for methylphenidate hydrochloride (HCl) extended-release (ER) tablets and is announcing an opportunity for the holder of the ANDA to request a hearing on this proposal.

**DATES:** Kremers Urban Pharmaceuticals Inc., may submit a request for a hearing by November 17, 2016. Submit all data, information, and analyses upon which the request for a hearing relies by December 19, 2016. Submit written or electronic comments by December 19, 2016.

**ADDRESSES:** The request for a hearing may be submitted by Kremers Urban Pharmaceuticals Inc., by either of the following methods:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Your request for a hearing submitted electronically to *http://www.regulations.gov,* including any attachments to the request for hearing, will be posted to the docket unchanged.

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper request for a hearing):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Because your request for a hearing will be made public, you are solely responsible for ensuring that your request does not include any confidential information that you may not wish to be publicly posted, such as confidential business information, *e.g.,* a manufacturing process. The request for a hearing must include the Docket No. FDA–2016–N–3120 for ''Kremers Urban Pharmaceuticals Inc.; Proposal to Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and 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.

Kremers Urban Pharmaceutical Inc., may submit all data and analysis upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data and analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analysis. 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 any decisions on this matter. The second copy, which will have the claimed information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov* or available at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Division of Dockets Management. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

*Comments Submitted by Other Interested Parties:* For all comments submitted by other interested parties 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 to *http://www.regulations.gov,* including attachments, 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–2016–N–3120 for ''Kremers Urban Pharmaceuticals Inc.; Proposal to Withdraw Approval of an Abbreviated New Drug Application for Extended-Release Methylphenidate Tablets; Opportunity for a Hearing.'' 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:** Maryll W. Toufanian, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1716, Silver Spring, MD 20993–0002, 240–402–7944.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Approval of ANDA Referencing CONCERTA*

CONCERTA (methylphenidate HCl) ER tablet is the subject of new drug application (NDA) 021121, held by Janssen Pharmaceuticals, Inc., and was approved on August 1, 2000. CONCERTA is a central nervous system stimulant intended for the treatment of attention deficit hyperactivity disorder in children 6 years of age and older, adolescents, and adults up to the age of 65. CONCERTA is a multiphasic modified-release product that is formulated to release a bolus of methylphenidate, resulting in an initial rapid rise in plasma concentration comparable to the effect of an immediate-release (IR) methylphenidate formulation, followed by sustained delivery later in the day, thereby allowing for once daily dosing. The relative bioavailability of CONCERTA in adults is comparable to IR methylphenidate administered three times daily, but the CONCERTA formulation minimizes the fluctuations between peak and trough concentrations associated with IR methylphenidate administered three times daily. CONCERTA is approved for the following strengths: 18 milligrams (mg), 27 mg, 36 mg, and 54 mg. CONCERTA was approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the product is safe for its intended uses and has the effects claimed for it.

FDA's Office of Generic Drugs (OGD) approved ANDA 091695, held by Kremers Urban Pharmaceuticals Inc. (Kremers),[1] for a generic version of CONCERTA pursuant to the requirements of section 505(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)) and FDA's implementing regulations. OGD approved ANDA 091695 on July 9, 2013, for the 18-mg and 27-mg strengths and approved the 36-mg and 54-mg strengths on September 23, 2013.

At the time of approval, FDA determined that the ANDA included data sufficient to demonstrate the bioequivalence of the Kremers product to CONCERTA. The bioequivalence (BE) testing and data submitted in the ANDA conformed to recommendations provided in a draft guidance for industry on ''Methylphenidate hydrochloride.'' The draft guidance was issued on September 14, 2012 (77 FR 56851), and provided information and recommendations for establishing bioequivalence to CONCERTA that reflected FDA's understanding, at that time, of how to evaluate the pharmacokinetic (PK) properties of CONCERTA to support a demonstration of bioequivalence. The demonstration of bioequivalence was necessary to the approval of Kremers' product. Unlike CONCERTA, Kremers was not required to submit clinical studies to demonstrate the safety and effectiveness of its product. Instead, Kremers' ANDA was approved based on a finding that the product was bioequivalent to CONCERTA and met the other requirements for ANDA approval in section 505(j) of the FD&C Act.

[1] The ANDA applicant was originally Kudco Ireland, Ltd.; subsequently, all rights to the ANDA were transferred to Kremers. For ease of reference, throughout this document, the ANDA holder will be referred to as Kremers.

*B. Concerns About Insufficient Therapeutic Effect*

1. ANDA 091695

Kremers began marketing the 18-mg and 27-mg strengths of its generic version of CONCERTA in August 2013 and began marketing the 36-mg and 54-mg strengths in October 2013. OGD routinely monitors all newly approved ANDA products for safety and efficacy concerns as they penetrate the marketplace, including the monitoring of adverse events reported to the Agency. Beginning in September 2013, the FDA Adverse Event Reporting System (FAERS) received reports describing insufficient therapeutic effect of the Kremers product, particularly reports of insufficient effect later in the day.[2] These reports indicated potential therapeutic inequivalence of the Kremers product as compared to CONCERTA. In light of the reports received, CDER began an investigation of the Kremers product.[3]

2. CDER's Investigations

a. *Tracked safety issue (TSI).* CDER began its investigation of the Kremers product with a reevaluation of the data and information submitted in the application to demonstrate bioequivalence; an assessment of FAERS data; and a comparative analysis of the design, composition, dissolution, and active pharmaceutical ingredient (API) degradation of the generic product as compared to CONCERTA. The findings of these investigations led to the initiation of a TSI. In general, when CDER staff suspect that a potential safety issue could be significant, a TSI is opened and an interdisciplinary team assesses the safety issue, reevaluates the risk-benefit profile of the drug, and determines the need for further action. CDER considers postmarketing safety issues to be significant for tracking purposes if those issues have the potential to lead to, among other things, withdrawal of FDA approval of a drug application.

The initial meeting of the TSI Committee occurred in December 2013. The TSI Committee was composed of CDER physicians, pharmacists, and chemists, as well as other CDER scientists and experts, who carefully reviewed all of the data and information related to the Kremers product. Key information reviewed and discussed by the TSI Committee is summarized as follows.

- *Adverse event reports.* An analysis was conducted of FAERS reports, along with additional data regarding therapeutic failure provided by Kremers and Janssen (CONCERTA's NDA holder), to assess, among other things, the reporting rate for therapeutic failure for the Kremers product as compared to the reporting rate for therapeutic failure for the authorized generic version of CONCERTA marketed by Actavis plc.[4] The reporting rate for therapeutic failure was found to be 67 per 100,000 person-years of exposure for the Kremers product and 7.0 per 100,000 person-years of exposure for the authorized generic drug product.
- *Product composition.* The Kremers product and CONCERTA were tested in FDA laboratories to evaluate differences in drug design, composition, stability, and dissolution. The testing identified concerns with API degradation and in vivo dissolution, which could result in differences in drug release. These differences could, in turn, result in differences in therapeutic effect of the generic product compared to CONCERTA.
- *BE data.* A review and reanalysis were conducted of the data that were submitted in the ANDA to establish bioequivalence to CONCERTA. In particular, an outlier analysis was performed on the BE data to evaluate the difference in product absorption between the Kremers product and CONCERTA across various PK sampling time-points. The analysis showed that the greatest difference in product absorption between the Kremers product and CONCERTA occurred at 8 hours post-dosing under fasting conditions.

The TSI was concluded in June 2014. Based on the information considered, the TSI Committee determined that the Kremers product may deliver methylphenidate into the body at a slower rate than CONCERTA during the time period of 7 to 12 hours post-dosing, and therefore, the product may not be bioequivalent or therapeutically equivalent to CONCERTA. Following the TSI Committee's investigation, CDER concluded that the therapeutic equivalence (TE) rating for the Kremers product in FDA's ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (commonly referred to as the ''Orange Book'') should be changed from AB to BX to indicate that the data are insufficient to determine that the Kremers product is therapeutically equivalent to CONCERTA.[5]

On November 6, 2014 (79 FR 65978), CDER issued a revised draft guidance for industry on ''Bioequivalence Recommendations for CONCERTA (Methylphenidate Hydrochloride) Extended-Release Tablets'' (revised draft BE guidance) (Ref. 1)), with recommendations for establishing bioequivalence to CONCERTA that reflect CDER's refined understanding of the relationship between the PK profile of CONCERTA and its therapeutic effect. The revised draft BE guidance is available on FDA's Web site and will be placed in Docket No. FDA–2016–N–3120.

On November 12, 2014, representatives from OGD and other CDER offices notified Kremers by telephone of CDER's concerns regarding its generic product. OGD explained that

[2] In addition to reports submitted to FAERS, FDA received complaints related to therapeutic failure from multiple other sources, including FDA's Detroit District Office and a director of anesthesia support at a children's hospital.

[3] FDA investigated ANDA 091695 concurrently with ANDA 202608, which is another generic product referencing CONCERTA, held by Mallinckrodt Pharmaceuticals. Elsewhere in this issue of the **Federal Register**, FDA is proposing to withdraw approval of ANDA 202608.

[4] *Authorized generic drug* is defined in section 505(t) of the FD&C Act and in § 314.3(b) (21 CFR 314.3(b)) (*Authorized generic drug* means a listed drug, as defined in § 314.3(b), that has been approved under section 505(c) of the FD&C Act and is marketed, sold, or distributed directly or indirectly to retail class of trade with labeling, packaging (other than repackaging as the listed drug in blister packs, unit doses, or similar packaging for use in institutions), product code, labeler code, trade name, or trademark that differs from that of the listed drug.). A *listed drug* is a new drug product that has an effective approval under section 505(c) of the FD&C Act for safety and effectiveness, or under section 505(j), that has not been withdrawn or suspended under section 505(e)(1) through (e)(5) or (j)(5) of the FD&C Act, and that has not been withdrawn from sale for what FDA determines are reasons of safety or effectiveness (§ 314.3(b)). Listed drugs are identified as drugs with an effective approval in FDA's current edition of ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (commonly referred to as the ''Orange Book'') (*Id.*). A list of currently available authorized generic drugs is available at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm126391.htm.* (FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)

[5] In the Orange Book, FDA ''classifies as therapeutically equivalent those products that meet the following general criteria: (1) [T]hey are approved as safe and effective; (2) they are pharmaceutical equivalents in that they (a) contain identical amounts of the same active drug ingredient in the same dosage form and route of administration, and (b) meet compendial or other applicable standards of strength, quality, purity, and identity; (3) they are bioequivalent in that (a) they do not present a known or potential bioequivalence problem, and they meet an acceptable in vitro standard, or (b) if they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard; (4) they are adequately labeled; (5) they are manufactured in compliance with Current Good Manufacturing Practice regulations'' (Orange Book Preface at vii, available at *http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/UCM071436.pdf.* (FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.)).

the TE rating for the product would be changed from AB to BX immediately. OGD requested that Kremers: (1) Voluntarily withdraw its product from the market under § 314.150(d) (21 CFR 314.150(d)) and request that FDA withdraw approval of the ANDA or (2) confirm bioequivalence of its product within 6 months, consistent with the recommendations in the revised draft BE guidance issued on November 6, 2014. Kremers declined to voluntarily withdraw its product from the market. In June 2015, Kremers submitted data from new BE studies that were conducted in accordance with the design recommended in the revised draft BE guidance; these data are discussed in section I.B.2.b.

b. *Post-TSI investigations.* After communicating CDER's concerns to Kremers about its methylphenidate product and changing the TE rating for the product to BX, CDER continued to evaluate data and information related to the bioequivalence of Kremers' product to CONCERTA. CDER reanalyzed the BE data originally submitted in Kremers' ANDA in accordance with the recommendations provided in the November 6, 2014, revised draft BE guidance. The reanalysis showed that the 54-mg Kremers product on which the in vivo BE testing was conducted does not provide the same extent of methylphenidate exposure as CONCERTA during the 7- to 12-hour post-dosing time period under fasting conditions and 8- to 12-hour post-dosing time period under fed conditions. Specifically, the 90 percent confidence interval (CI) of the geometric mean ratio of the test product (Kremer's) to reference product (CONCERTA) for $AUC_{7-12}$ [6] under fasting conditions (at 73.06 percent to 85.92 percent) falls outside of the 80 percent to 125 percent BE acceptance range (Ref. 3). The 90 percent CI of the geometric mean ratio of the test to reference product for $AUC_{8-12}$ [7] under fed conditions (at 76.19 percent to 83.09 percent) also falls outside of the 80 percent to 125 percent BE acceptance range. The lower level of methylphenidate exposure compared to CONCERTA at 7 to 12 hours (under fasting conditions) and 8 to 12 hours (under fed conditions) after tablet administration is consistent with the reports received describing lack of therapeutic effect later in the day.

In light of the close relationship between the PK profile and therapeutic effect of methylphenidate products (Refs. 4 and 5), FDA performed a clinical trial simulation based on the BE data submitted in the ANDA to predict the potential clinical significance of the difference in PK profile, *i.e.*, methylphenidate absorption, of the Kremers product compared to CONCERTA. The simulation suggested some potential difference in effect between Kremers' product and CONCERTA after 6 hours post-dosing. The greatest mean percentage reduction in efficacy for the Kremers product was predicted to be 13.12 percent at 10 hours post-dosing, with individual changes ranging from a 37.76 percent decrease and an 18.22 percent increase in efficacy compared with CONCERTA.

In addition to a reanalysis of data submitted in the original ANDA, FDA also reviewed BE data submitted by Kremers in June 2015. Kremers conducted fully replicated BE studies under fasting and fed conditions using the 54-mg strength product, in accordance with the recommendations in the revised draft BE guidance. FDA independently analyzed the data submitted and found that Kremers' product failed to meet the criteria for bioequivalence under fed conditions because it did not provide the same extent of methylphenidate exposure as CONCERTA during the 8- to 12-hour time period after administration.

Finally, FDA analyzed FAERS reports from February 2014 to May 2015. The types and quality of reports received by FDA during that time period were very similar to the FAERS reports received before the change in TE rating. The reports continued to contain specific complaints describing the lack of therapeutic effect during the latter part of the day.

A memorandum describing in detail the information considered following the TSI and explaining CDER's determination will be placed in Docket No. FDA–2016–N–3120 (Ref. 6).

## II. Conclusions and Proposed Action

An NDA (or reference listed drug) applicant must submit ''full reports of investigations'' to show that the drug for which the applicant is seeking approval is safe and effective. In other words, reference listed drugs must meet the safety and substantial evidence of effectiveness standard (see section 505(b)(1), (b)(2), (c), and (d) of the FD&C Act). A reference listed drug applicant can meet the standard by conducting its own clinical studies (stand-alone application) or relying, in part, on the Agency's previous finding of safety and/or effectiveness or literature (a 505(b)(2) application). An ANDA applicant does not submit independent clinical studies to demonstrate safety and effectiveness. Rather, an ANDA applicant relies on the Agency's previous finding of safety and effectiveness for the reference listed drug and is required to meet other requirements, such as demonstrating bioequivalence to the reference listed drug to support approval. In the absence of information showing bioequivalence between the generic drug at issue and the reference listed drug, there is no basis for concluding that the Agency's finding of safety and efficacy (or substantial evidence of effectiveness) supporting approval of the reference listed drug likewise supports approval of the generic drug.

Therefore, based on all available data and information, notice is given to Kremers and to all other interested persons that the Director of CDER proposes to issue an order, under section 505(e)(3) of the FD&C Act and § 314.150(a)(2)(iii), withdrawing approval of ANDA 091695 and all amendments and supplements to it on the grounds that, on the basis of new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

## III. Hearing Procedures

In accordance with section 505(e) of the FD&C Act, the applicant is hereby provided an opportunity to request a hearing to show why approval of ANDA 091695 should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product covered by this application.

An applicant who decides to seek a hearing must file the following: (1) A written notice of participation and request for hearing (see **DATES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing to resolve (see **DATES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

[6] The area under the plasma concentration-time curve (AUC) is used to evaluate the extent of absorption of a drug (see section 505(j)(7)(B) of the FD&C Act). $AUC_{7-12}$ captures the extent of absorption from 7 to 12 hours post-dosing (see, *e.g.*, the draft guidance for industry entitled ''Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an ANDA'' (Ref. 2)).

[7] $AUC_{8-12}$ captures the extent of absorption from 8 to 12 hours post-dosing.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the application and constitutes a waiver of any contentions concerning the legal status of the drug product. FDA will then withdraw approval of the application, and the drug product may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

This notice is issued under section 505(e) of the FD&C Act and under the authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

## IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.


1. FDA, draft guidance for industry, ''Bioequivalence Recommendations for CONCERTA (Methylphenidate Hydrochloride) Extended-Release Tablets,'' November 2014 (available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM320007.pdf*).
2. FDA, draft guidance for industry, ''Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an ANDA,'' December 2013 (available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM377465*).
3. Dighe, S. V. and W. P. Adams, ''Bioequivalence: A United States Regulatory Perspective.'' In: Welling, P. G., L. S. Tse, and S. V. Dighe, eds., *Pharmaceutical Bioequivalence.* New York: Marcel Dekker, Inc., pp. 347–380, 1991.
4. Swanson, J. M., S. B. Wigal, T. Wigal, et al., ''A Comparison of Once-Daily Extended-Release Methylphenidate Formulations in Children With Attention-Deficit/Hyperactivity Disorder in the Laboratory School (The Comacs Study),'' *Pediatrics,* vol. 113, pp. 206–216, 2004.
5. Kimko, H., E. Gibiansky, L. Gibiansky, et al., ''Population Pharmacodynamic Modeling of Various Extended-Release Formulations of Methylphenidate in Children With Attention Deficit Hyperactivity Disorder Via Meta-Analysis,'' *Journal of Pharmacokinetics and Pharmacodynamics,* vol. 39(2), pp. 161–176, 2012.
6. Memorandum to Janet Woodcock, Director, Center for Drug Evaluation and Research, in Support of Beginning Approval Withdrawal Proceedings for ANDA 091695 (October 1, 2016, Peters).


Dated: October 12, 2016.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 2016–25092 Filed 10–17–16; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; National Practitioner Data Bank Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, and Certain Other Health Care Entities

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR must be received no later than November 17, 2016.

**ADDRESSES:** Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* National Practitioner Data Bank (NPDB) Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, and Health Centers OMB No. 0906–xxxx—NEW.

*Abstract:* The National Practitioner Data Bank (NPDB) plans to collect data from hospitals, medical malpractice payers, health plans, and certain other health care entities [1] that are subject to NPDB reporting requirements to assist these entities in understanding and meeting their reporting requirements to the NPDB. The NPDB currently collects similar data (OMB No. 0915–0126) from state licensing boards on a regular basis and this information collection request would expand beyond current activities to include hospitals, medical malpractice payers, health plans, and certain other health care entities.

NPDB began operation on September 1, 1990. The statutory authorities establishing and governing the NPDB are Title IV of Public Law (Pub. L.) 99–660, the Health Care Quality Improvement Act of 1986, as amended, Section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, codified as Section 1921 of the Social Security Act, and Section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, codified as Section 1128E of

[1] Unless otherwise noted, the term ''certain other health care entities'' refers to health centers whose access and reporting obligations are addressed in the NPDB statutory and regulatory requirements for health care entities. In this document, ''health center'' refers to organizations that receive grants under the HRSA Health Center Program as authorized under section 330 of the Public Health Service Act, as amended (referred to as ''grantees'') and FQHC Look-Alike organizations, which meet all the Health Center Program requirements but do not receive Health Center Program grants. It does not refer to FQHCs that are sponsored by tribal or Urban Indian Health Organizations, except for those that receive Health Center Program grants.

the Social Security Act. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB implementation and operation resides in the Bureau of Health Workforce, HRSA, HHS.

NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, health-related civil judgments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from, and disseminated to, eligible entities such as licensing boards, hospitals, and certain other health care entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

NPDB outlines specific reporting requirements for hospitals, medical malpractice payers, health plans, and certain other health care entities per 45 CFR 60.7, 60.12, 60.14, 60.15, and 60.16. These reporting requirements are further explained in Chapter E of the NPDB e-Guidebook, which can be found at: *http://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp.*

Through a process called Attestation, hospitals, medical malpractice payers, health plans, and certain other health care entities will be required to attest that they understand and have met their responsibility to submit all required reports to the NPDB. The Attestation process will be completely automated through the secure NPDB system (*https://www.npdb.hrsa.gov*), using both secure email messaging and system notifications to alert entities registered with the NPDB of their responsibility to attest. All entities with reporting requirements and querying access to the NPDB must register with the NPDB before gaining access to the secure NPDB system for all reporting and querying transactions.

Although the Attestation process and forms are new, the secure NPDB system currently used by hospitals, medical malpractice payers, health plans, and certain other health care entities to conduct reporting and querying will not change, ensuring that these entities are familiar with the interface needed to complete the Attestation process. NPDB will ask these entities to attest their reporting compliance every 2 years. If the organization is responsible for privileging or credentialing individuals who provide services for other sites, those sites will be included in the Attestation process.

The Attestation forms will collect the following information: information regarding sub-sites and entity relationships; contact information for the Attesting Official; and a statement attesting whether or not all required reports have been submitted.

*Need and Proposed Use of the Information:* The NPDB engages in compliance activities to ensure the accuracy and completeness of the information in the NPDB. Through the Attestation process, the NPDB can better determine which hospitals, medical malpractice payers, health plans, and certain other health care entities are meeting the reporting requirements, and which of these entities may require additional outreach and assistance. The biennial Attestation process will strengthen the robustness of the data in the NPDB, improving the accuracy of query responses for entities with access to NPDB reports.

*Likely Respondents:* Hospitals medical malpractice payers, health plans, certain other health care entities, and their representatives.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Health Center Form | 1,500 | 1 | 1,500 | 1 | 1,500 |
| Generic Form [1] • Hospitals. • Medical Malpractice Payers. • Health Plans. | 4,875 | 1 | 4,875 | 1 | 4,875 |
| Total | [2] 6,375 | | 6,375 | | 6,375 |

[1] Hospitals, medical malpractice payers, and health plans will attest using the generic form.

[2] There are approximately 6,800 hospitals, 575 medical malpractice payers, 1,400 health plans, and 2,200 health centers registered with the NPDB. However, the reporting entities may include multiple sites that are registered independently in the system, thereby increasing the total number of respondents. Therefore, we estimate there will be 7,500 respondents for hospitals, 750 respondents for medical malpractice payers, 1,500 respondents for health plans, and 3,000 respondents for health centers for 12,750 total respondents. Given that entities will only be required to complete attestation biennially, these estimates are divided in half for the annualized burden hours.

**Amy McNulty,**

*Deputy Director, Division of the Executive Secretariat.*

[FR Doc. 2016–25074 Filed 10–17–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Performance Review Board Members

Title 5, U.S.C. 4314(c) (4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Members be published in the **Federal Register**.

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of

the Department of Health and Human Services:

| Last name | First name |
|---|---|
| Avula | Deepa |
| Corierre | Michael |
| Del Vecchio | Paolo |
| Enomoto | Kana |
| Etzinger | Michael |
| Feit | Monica |
| Goldstein | Gregory |
| Harding | Frances |
| Hendriksson | Marla |
| Johnson | Kimberly |
| Kade | Daryl |
| Lopez | Elizabeth |
| Power | Kathryn |
| Wheeles | Timothy (NIH) |

**Michael Etzinger,**

*Executive Officer and Director, Office of Management, Technology and Operations.*

**Carlos Castillo,**

*SAMHSA Committee Management Officer, Office of Policy, Planning and Innovation.*

[FR Doc. 2016–25099 Filed 10–17–16; 8:45 am]

BILLING CODE 4151–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of Mira Applications.

*Date:* November 9–10, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, Ten Thomas Circle, Washington, DC 20005.

*Contact Person:* Lisa A. Dunbar, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 12, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–25071 Filed 10–17–16; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of The Director, Office of Science Policy, Office of Biotechnology Activities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Science Advisory Board for Biosecurity, November 04, 2016, 12:00 p.m. to November 04, 2016, 03:00 p.m., National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892 which was published in the **Federal Register** on October 11, 2016, 81FR 196.

The call-in number has changed to 1 (866) 939–3921. The meeting date, time and location remains the same. The meeting is open to the public.

Dated: October 12, 2016.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–25072 Filed 10–17–16; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Growing Great Ideas: Research Education Course in Product Development and Entrepreneurship for Life Science Researchers (R25).

*Date:* October 24, 2016.

*Time:* 1:00 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:* Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Exploratory Studies of Smoking Cessation Interventions for People with Schizophrenia.

*Date:* November 2, 2016.

*Time:* 9:00 a.m. to 12:00 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:* Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–827–5840, *rogersn2@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA Medications Development.

*Date:* November 4, 2016.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–827–5842, *ruizjf@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Multi-site Clinical Trials.

*Date:* November 9, 2016.

*Time:* 3:00 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:* Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Collaborative R01 Applications.

*Date:* December 6, 2016.

*Time:* 9:00 a.m. to 1:00 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:* Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–827–5840, *rogersn2@nida.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 12, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–25070 Filed 10–17–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2016–0301]**

### Navigation Safety Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** The Navigation Safety Advisory Council will meet in Tampa, Florida to discuss matters relating to maritime collisions, rammings, and groundings, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. These meetings will be open to the public.

**DATES:** The Navigation Safety Advisory Council will meet on Wednesday, November 2, 2016, from 8 a.m. to 5:30 p.m., and on Thursday, November 3, 2016, from 8 a.m. to 5:30 p.m. Please note these meetings may close early if the Council has completed its business.

**ADDRESSES:** The meeting will be held at Hilton Saint Petersburg Bayfront, 333 1st Street S., Saint Petersburg, Florida 33701–4342. The hotel Web site *http://www3.hilton.com/en/hotels/florida/hilton-st-petersburg-bayfront-SPTSHHF/index.html.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Lahn listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

*Instructions:* To facilitate public participation, written comments on the issues in the ''Agenda'' section below must be submitted no later than October 30, 2016 if you want Council members to be able to review your comments before the meeting. You must include ''Department of Homeland Security'' and the docket number, USCG–2016–0301. Written comments may also be submitted using Federal eRulemaking Portal: *http://www.regulations.gov.* For technical difficulties, contact Mr. Lahn listed in **FOR FURTHER INFORMATION CONTACT**. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. 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).

*Docket Search:* For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov* insert USCG–2016–0301 in the Search box, press Enter, and then click on the item you wish to view.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about these meetings, please contact Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer, Commandant (CG–NAV–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7418, Washington, DC 20593, telephone 202–372–1566 or email *George.H.Detweiler@uscg.mil* or Mr. Burt Lahn, Commandant (CG–NAV–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7418, Washington, DC 20593, telephone 202–372–1526 or email *Burt.A.Lahn@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is in compliance with the Federal Advisory Committee Act, Title 5 United States Code, Appendix.

The Navigation Safety Advisory Council is an advisory committee authorized in 33 U.S.C. 2073 and chartered under the provisions of the Federal Advisory Committee Act. The Navigation Safety Advisory Council provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to prevention of maritime collisions, rammings, and groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

**Agenda**

*Wednesday, November 2, 2016:* The Navigation Safety Advisory Council members will receive presentations on the following topics from agency representatives who performed the studies:

(1) The Vessel Traffic Service Study conducted by the National Transportation Safety Board; and

(2) The Atlantic and Gulf Coast Seacoast Waterways and Analysis Management System Study being conducted by the Coast Guard.

Following the above presentations, the Designated Federal Officer will form subcommittees to continue discussions on the following task statements:

(1) Navigation Safety Advisory Council Task 16–01 Review the navigation safety consequences of ships using Ultra Low Sulphur Fuel Oil and recommend measures to mitigate those consequences; and

(2) Navigation Safety Advisory Council Task 16–02 Develop criteria for reporting ''near miss'' incidents.

Public comments or questions will be taken during the meeting as the Council discusses each issue and prior to the Council formulating recommendations on each issue. There will also be a public comment period at the end of the meeting.

*Thursday, November 3, 2016:*

(1) Subcommittee discussions continued from Wednesday, November 2, 2016;

(2) Subcommittee reports presented to the Council;

(3) New Business; and

a. Summary of Navigation Safety Advisory Council action items.

b. Schedule next meeting date—Summer, 2017.

c. Council discussions and acceptance of new tasks.

A public comment period will be held after the discussion of new tasks. Speakers are requested to limit their comments to 10 minutes each. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendations, and new business portion of the meeting. Please contact Mr. Lahn, listed in the **FOR FURTHER**

**INFORMATION CONTACT** section, to register as a speaker.

Dated: October 13, 2016.

**M. D. Emerson,**

*Director, Marine Transportation Systems.*

[FR Doc. 2016–25119 Filed 10–17–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0068]**

### Agency Information Collection Activities: Registration for Classification as a Refugee, Form I–590; Revision of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on July 19, 2016, at 81 FR 46952, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 17, 2016. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0068.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (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–2007–0036 in the search box. 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 Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refuge.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–590; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Registration for Classification—100,000 respondents at 3.25 hours per response; Request for Interview—1,500 respondents at 1 hour per response; DNA Evidence—100 respondents at 2 hours per response; Biometric processing—101,600 respondents at 20 minutes per response.

(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 360,228 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 $12,000.

Dated: October 12, 2016.

**Samantha Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2016–25107 Filed 10–17–16; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615—NEW]**

### Agency Information Collection Activities: Application for Employment Authorization for Abused Nonimmigrant Spouse, Form I–765V; New Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 27, 2016, at 81 FR 33689, allowing for a 60-day public comment period. USCIS did receive five

comments in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 17, 2016. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number [1615—NEW].

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (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–2016–0004 in the search box. 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 Request:* New Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization for Abused Nonimmigrant Spouse.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765V; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, will be used to collect information that is necessary to determine if an applicant is eligible for an initial Employment Authorization Document (EAD), a new EAD, or an interim EAD as a qualifying abused nonimmigrant spouse.

(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 Form I–765V is 1,000 and the estimated hour burden per response is 3 hours to complete the form, 1 hour for biometrics and .50 hours to obtain passport-style photographs.

(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 4,500 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 $265,000.

Dated: October 11, 2016.

**Samantha Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2016–25101 Filed 10–17–16; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5921–N–17]**

## Implementation of the Privacy Act of 1974, as Amended; Notice Amendment for Computerized Homes Underwriting Management System/Loan Application Management System

**AGENCY:** Office of Housing, HUD.

**ACTION:** Notice Amendment.

**SUMMARY:** The Department is publishing a notice advising of a system of records amendment for system of records: Computerized Homes Underwriting Management System—Development of New System of Records, Loan Application Management System, published in the **Federal Register** on October 20, 2014 at 79 FR 62656–62658. The Department discovered that information under the original notice had been omitted and reissues this notice to incorporate omitted information. In addition, the revised notice introduces a new method used by the system to collect and process new records and establishes new routine use instances. This notice adds back to the notice previously omitted information maintained by the systems on non-borrowing spouses, incorporates new records pertaining to housing counselor efforts, establishes new routine uses, and refines current record keeping procedures, the authority, and purpose statements. A detailed description of the systems updates and the new functions are contained in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6836 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** Amendments to this notice: HUD published in the **Federal Register** system of records notice for Computerized Homes Underwriting Management System—Development of New System of Records, Loan Application Management System on October 20, 2014, at 79 FR 62656–62658, and amendments are being proposed to this notice, as follows:

*Page 62657*, in the first column, under the system of records caption ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' this

section is being updated to read: Individuals who have applied for a mortgage insured under HUD/Federal Housing Administration's single-family mortgage insurance programs, including any non-borrowing spouse(s) associated with a Home Equity Conversion Mortgage (HECM) transaction. Also, HUD business partners (appraisers, inspectors, mortgagee staff underwriters) and HUD employees (appraisers, mortgage credit examiners, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks) involved in the HUD/FHA single-family underwriting process, and new records on individuals who pass the HUD Certified Housing Counselor examination whether or not they become certified; individuals seeking HUD certified housing of new records.

*Page 62657*, in the first column, under the system of records captions ''CATEGORIES OF RECORDS IN THE SYSTEM'' this section is being updated to read: Automated files contain the following categories of records:

• Mortgagors (Borrowers): name, address, Social Security number (SSN) or other identification number, racial/ethnic background (if disclosed), date of birth, credit scores (often referred to as FICO® Scores), marital status, and details about the mortgage loan, including loan application documentation. This information is supplied by lenders during the mortgage application and underwriting process.

• Non-Borrowing Spouses: name, SSN or other identification number, date of birth, and details about the mortgage loan, including loan application documentation. This information is supplied by lenders during the mortgage application and underwriting process on specific loan types to acknowledge in writing that the non-borrowing spouse has protections under the law to remain in the home after the death of their borrowing spouse or an indication that the non-borrowing spouse is not a borrower and not required to sign the loan contract and the property does not serve as their primary residence.

• Appraisers and Inspectors: name, address, SSN or other identification number, territory, workload, and minority data including racial/ethnic background, Minority Business Enterprise (MBE) Code, and sex, for statistical tracking purposes. Mortgagee (Lender) Staff Appraisers and Underwriters, 203k Consultants, and HECM Counselors: SSN or other identification number, territory and workload of the individuals.

• HUD Employees: name and SSN or other identifying number of employees involved in the single family underwriting process. This includes, but is not limited to: Homeownership Center managers, staff appraisers, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks.

• Individuals registering to access the HUD Housing Counselor Certification Examination: legal first and last name, mailing address, telephone number, email address, fax number (if applicable), SSN, and employer's HUD Housing Counseling System (HCS) number (if registrant's employer is a housing counseling agency participating in HUD's Housing Counseling Program). Registrants have the option of providing demographic information: race, ethnicity, gender and languages in which counseling services are offered. HUD is collecting information on languages to assess the number of examinees that might benefit from certification examination training materials being available in other languages. Information for fee payment will be collected by a third party vendor and will include credit card number, expiration date, and security code.

• Individuals registering for HUD Certified Housing Counselor status or for Agency Application Coordinator for FHA Connection: legal first and last name, mailing address, telephone number, email address, fax number (if applicable), SSN, HUD Housing Counselor Certification System ID number, mother's maiden name, and employer's HUD Housing Counseling System (HCS) ID number, and verification of employing agency's name.

• Examination Information: scores from housing counselor certification examination list of all test-takers who pass the certification examination.

• Client Certificate of Housing Counseling: legal first and last name and address of the housing counseling client receiving counseling services from an agency participating in HUD's Housing Counseling Program; legal first and last name and the Counselor ID number of the counselor completing the client certificate of housing counseling; name, address, telephone number, Employer Identification Number (EIN), and HCS ID number of the agency participating in HUD's Housing Counseling Program; date and type of counseling service received; fees collected or waived; and whether counseling or education occurred in-person or remotely (telephone or Internet).

• NOTE: Certain records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships that may also reflect personal information, however, only the records reflecting personal information are subject to the Privacy Act.

*Page 62658*, in the second column, under the system of records caption ''RETENTION AND DISPOSAL'' this section is being amended to read: Current Procedures: Data is retained online for 13 months after the date of endorsement, or 13–18 months for non-endorsed cases, and then archived. The archived data can be retrieved upon request. In archive data, CHUMS retains case data indefinitely. The Records Retention Schedule for CHUMS/F17 is listed in the HUD Records Disposition Schedules Handbook (2225.6) Appendix A—Single Family Home Mortgage Insurance Program Records. In addition, processes are being put in place to align all practices where information will be retained and disposed of in accordance with HUD Records Disposition Schedule Handbook (2225.6), which has been approved by the National Archives and Records Administration. According to Records Management Office and Schedule 20 of HUD's Record Retention Schedule, the requirement is to retain for 6 years after the term of the loan. In some cases, this may be up to 36 years, at which time the information should be transferred to NARA. The transfer of the data would eliminate the concern of not having access to the information if needed in the future.

According to GRS 1.2 DAA–GRS–2013–0008–0001, records collected and stored for HUD Certified Housing Counselor Certification and/or Client Housing Counseling Certificates that reside in the systems will be kept for a minimum 10 years after the final action is taken on the file, document, and/or transaction. Longer retention is authorized if required for business use (Reference: GRS 1.2 DAA–GRS–2013–0008–0001).

After the record retention requirements have been met (a minimum of 10 years), the data and records can be purged or deleted from the system. If paper records are generated from the system, they can be archived at the local Federal Records Center after the final action or transaction has taken place.

*Page 62658*, in the first column is being updated to identify new disclosure requirements related to Federal Housing Administration's Office of Housing, by adding routine use (7) to clarify that records from this SORN may be disclosed to Government Sponsored

Enterprises and other authorized entities to enhance HUD's programs operations and performance through automated underwriting, credit scoring, and risk management, and records related to counseling certification requirements, by adding routine use (11) to clarify that records will be disclosed from the system to third party fee collection service for payment of examination fees, and routine use (11) to clarify that non-PII records will be made available to the general public from the system.

Pursuant to the Privacy Act and the Office of Management and Budget (OMB) guidelines, the amended notices meets threshold requirements for having to transmit a report to OMB, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform, as instructed by paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' November 28, 2000.

**Authority:** 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: October 12, 2016.

**Helen Goff Foster,**

*Chief Privacy Officer/Senior Agency Official for Privacy.*

**SYSTEM OF RECORDS NO:**

HSNG.SF/HUP.02.

**SYSTEM NAMES:**

Computerized Homes Underwriting Management System (CHUMS) F17/ Loan Application Management System (LAMS) P292)).

**SYSTEM LOCATION:**

The CHUMS and LAMS system is hosted at the Hewlett Packard (HP) Facility at 2020 Union Carbide Drive, South Charleston, West Virginia 25303–2734. HP is the designated records management facility for LAMS and the Atlanta Federal Records Center at 4712 Southpark Boulevard, Ellenwood, GA 30294 is the records management facility for CHUMS until LAMS is fully implemented. Additionally, staff in HUD Headquarters and throughout the country access CHUMS and LAMS through HUD's standard telecommunications network from desktop work stations, and access by both HUD employees and business partners is granted via secure HTTP through the HUD FHA Connection portal. Internal and external HUD hosted locations are as follows: HUD headquarters building, 451 Seventh Street, SW., Washington, DC 20410; the HUD owned and operated Home Ownership Centers, located in Atlanta, GA; Denver, CO; Philadelphia, PA; and Santa Ana, CA; and the sixty-one (61) HUD owned and operated Field Offices [1] in various locations across the country.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have applied for a mortgage insured under HUD/FHA's single-family mortgage insurance programs, including any non-borrowing spouses associated with the transaction. Also, HUD business partners (appraisers, inspectors, mortgagee staff underwriters), HUD employees (appraisers, mortgage credit examiners, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks) involved in the HUD/FHA single-family underwriting process; individuals who pass the HUD Certified Housing Counselor examination whether or not they become certified, individuals seeking HUD certified housing counselor certification, or housing counseling clients receiving housing counseling from an agency participating in HUD's Housing Counseling Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Automated files contain the following categories of records:

- Mortgagors (Borrowers): name, address, Social Security number (SSN) or other identification number, racial/ ethnic background (if disclosed), date of birth, credit scores (often referred to as FICO® Scores), marital status, and details about the mortgage loan, including loan application documentation. This information is supplied by lenders during the mortgage application and underwriting process.
- Non-Borrowing Spouses: name, SSN or other identification number, date of birth, and details about the mortgage loan, including loan application documentation. This information is supplied by lenders during the mortgage application and underwriting process on specific loan types to acknowledge in writing that the non-borrowing spouse has protections under the law to remain in the home after the death of their borrowing spouse or an indication that the non-borrowing spouse is not a borrower and not required to sign the loan contract and the property does not serve as their primary residence.
- Appraisers and Inspectors: name, address, SSN or other identification number, territory, workload, and minority data including racial/ethnic background, minority business enterprise (MBE) Code, and sex, for statistical tracking purposes.
- Mortgagee (Lender) Staff Appraisers and Underwriters: SSN or other identification number, territory and workload of the individuals.
- HUD Employees: name, SSN or other identifying number of employees involved in the single family underwriting process. This includes, but is not limited to: Homeownership Center managers, staff appraisers, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks.
- Individuals registering to access the HUD Housing Counselor Certification Examination: Legal first and last name, mailing address, telephone number, email address, fax number (if applicable), SSN, and employer's HUD Housing Counseling System (HCS) number (if registrant's employer is a housing counseling agency participating in HUD's Housing Counseling Program). Registrants have the option of providing demographic information: Race, ethnicity, gender and languages in which counseling services are offered. HUD is collecting information on languages to assess the number of examinees that might benefit from certification examination training materials being available in other languages. Information for fee payment will be collected by a third party vendor and will include credit card number, expiration date, and security code.
- Individuals registering for HUD Certified Housing Counselor status or for Agency Application Coordinator for FHA Connection: Legal first and last name, mailing address, telephone number, email address, fax number (if applicable), SSN, HUD Housing Counselor Certification System ID number, mother's maiden name, and employer's HUD Housing Counseling System (HCS) ID number, and verification of employing agency's name.
- Examination Information: Scores from housing counselor certification examination list of all test-takers who pass the certification examination.
- Client Certificate of Housing Counseling: Legal first and last name and address of the housing counseling client receiving counseling services from an agency participating in HUD's Housing Counseling Program, legal first and last name and the Counselor ID number of the counselor completing the client certificate of housing counseling, name, address, telephone number,

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append2.pdf.*

Employer Identification Number (EIN), and HCS ID number of the agency participating in HUD's Housing Counseling Program, date and type of counseling service received, fees collected or waived and whether counseling or education occurred in-person or remotely (telephone or Internet).

**Note:** Certain records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships may also reflect personal information, however, only the records reflecting personal information are subject to the Privacy Act.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 203, National Housing Act, Public Law 73–479, enables HUD/FHA to process applications for HUD mortgage insurance and respond to inquiries regarding applications and insured mortgages; The Housing and Community Development Act of 1987, 42 U.S.C. 3543, authorizes HUD to collect SSNs Social Security numbers for FHA Connect users are collected to ensure mortgagee eligibility requirements are met, 12 U.S.C. § 1708(d)); Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010); Section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x.

**PURPOSE(S):**

The Loan Application Management System (LAMS) is developed to better assist FHA with its automated processing, analysis, and screening of the appraisal documentation. CHUMS is developed to support lenders and HUD staff in the processing of insurance applications for single-family mortgages, from the initial loan application all the way through endorsement. Various mortgage loan types are processed through CHUMS, including loans for First Time Homebuyers, Home Equity Conversion Mortgages (HECM), Section 184 Indian Home Loan Guarantee, and 203K rehabilitation loans. CHUMS provides HUD field office staff functionality for tracking and processing cases, and allows monitoring of workloads by field office management. CHUMS also contains the FHA TOTAL (Technology Open to Approved Lenders) Scorecard, which evaluates the overall creditworthiness of mortgage loan applications submitted through Automated Underwriting Systems based on a number of credit variables, and determines the associated level of risk for loans submitted for FHA insurance.

The new LAMS tool is being created to become the eventual replacement system for CHUMS. The existing functionality in CHUMS will be moved into LAMS in stages over the next five years. In its initial release, LAMS will enable HUD to start collecting case binder data into an industry-wide electronic format that is acceptable to Mortgage Industry Standard Maintenance Organization (MISMO) data standards. The improved enhancements will allow HUD to screen out errors in the appraisal and endorsement process more proficiently. In the past, HUD has identified far too late in the appraisal and endorsement process when a loan was at risk or in danger of fraud. Implementing the new LAMS tool and new evaluation process will allow HUD to better evaluate errors in the appraisal and endorsement process, and avoid endorsing unqualified loans. FHA believes that having the mortgage insurance documentation evaluated earlier on in the process will over time have a tremendous impact on the performance of HUD's mortgage insurance programs. The existing HUD data collected on applications for single-family mortgage insurance endorsements, includes electronic copies of mortgage documentation, along with the results of automated risk scoring and fraud validations, electronic copies of the lender submitted mortgage insurance appraisal records, the underlying data and metadata of documentation obtained in the application, underwriting, insuring and closing stages of the mortgage loan transaction will be used for risk management evaluation studies of the abovementioned mortgage insurance portfolios. The purpose for collecting the new records that will be maintained by this system is to verify the participating agency's compliance with HUD's Housing Counseling Program requirements. Other statutory changes to improve the effectiveness of housing counseling include increasing the breadth of counseling services so that they are comprehensive with respect to homeownership and rental counseling and issuing client Certificates of Housing Counseling to verify counseling requirements for FHA and other Federal, State, and local programs, as applicable. HUD's Housing Counseling Program currently provides comprehensive homeownership and rental counseling. As noted in the proposed rule published on September 13, 2013, an individual counselor, in contrast to multiple counseling agencies, will have to show competency (through passage of an examination) in identifying and understanding the breadth of homeownership and rental counseling services. Currently, a potential homebuyer or homeowner is likely to seek a housing counseling agency that specializes in a specific area and receive comprehensive counseling by a counselor in that specific area. As a result of increasing the breadth of counseling service knowledge, a housing counselor providing counseling on a specific area requested by the client would also be trained to identify cross-cutting issues that a client may not have identified when seeking out a specific counselor or during the intake process by the housing counseling agency. In addition, certifying individual counselors may further enhance the high regard of agencies and counselors participating in HUD's Housing Counseling Program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a (b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a (b) (3) as follows:

1. To appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I—HUD's Routine Use Inventory Notice,[2] published in the **Federal Register**.

2. To appropriate agencies, entities, and persons when:

a. HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. HUD 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 systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information;

c. HUD determines that the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise of security.

3. To a congressional office from the record of an individual in response to

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=routine_use_inventory.pdf.*

an inquiry from that congressional office made at the request of the individual to whom the record pertains.

4. To the Federal Bureau of Investigations for investigations of possible fraud revealed in FHA underwriting, insuring or monitoring process for mortgage insurance.

5. To the Department of Justice for prosecutions of fraud revealed in FHA underwriting, insuring or monitoring process for mortgage insurance.

6. To the General Accounting Office (GAO) for audit purposes.

7. To financial institutions (including Government Sponsored Enterprises), computer software companies and other Federal agencies (including the Federal Reserve) to enhance program operations and performance through automated underwriting, credit scoring and risk management.

8. To other federal agencies (including the Federal Reserve) for purposes of research not involving personally identifiable information, to evaluate program effectiveness in meeting HUD's/FHA's mission, or to inform policy makers on changes to effect program improvements.

9. To the Department's Office of Policy Development Research and its researchers for mortgage credit evaluations and statistical analysis.

10. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement with HUD, when necessary to accomplish an agency function related to these system of records, limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees. To contractors, experts, consultants with whom HUD has a contract, service agreement or other assignment of the Department, when necessary to utilize relevant data for purposes of testing new technology and systems designed to enhance program operations and performance.

11. To third party fee collection service when needed for payment of certified housing counselor examination fees. Only legal name, address for credit card billing, and telephone number will be released.

12. To the general public to verify if a certified housing counselor identification number is valid. Only certified housing counselor first and last name and housing counseling agency(ies) that employ this counselor will be released under this be routine use for valid certified housing counselor identification numbers. The information will be released to any interested person only through a specific Web page on either *www.hud.gov* or the HUD Exchange designated by HUD.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored on magnetic tape/disc/drum. If paper records are generated, they will be stored from unauthorized use and stored at the Federal Records facility.

**RETRIEVABILITY:**

Electronic/paper records are retrieved by case number, name, social security number housing counselor ID number, or other identification number. Office of Housing Counseling Staff will be able to retrieve counselor employment history for specific time periods. The general public will be able to verify if a counselor is currently certified by HUD through a public access Web page on HUD.gov or HUD Exchange. The public search will identify the name of the housing counselor and agency(ies) the counselor is employed by. Full access to HUD Certified Housing Counselor Database information in CHUMS will be limited to a few individuals on an as-needed basis for compliance purposes.

**SAFEGUARDS:**

Electronic records are maintained in secure areas, and access is limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Current Procedures: Data is retained online for 13 months after the date of endorsement, or 13–18 months for non-endorsed cases, and then archived. The archived data can be retrieved upon request. In archive data, CHUMS retains case data indefinitely. The Records Retention Schedule for CHUMS/F17 is listed in the HUD Records Disposition Schedules Handbook (2225.6), Schedule 20,[3] and Single Family Home Mortgage Insurance Program Records.

**FUTURE PROCEDURES:**

Processes are being put in place to align all practices where information will be retained, archived, then destroyed in accordance with HUD approved Records Disposition Schedule Handbook (2225.6), Schedule 20. According to Records Management Office and Schedule 20 of HUD's Record Retention Schedule, records will be retained, archived, and destroyed a minimum of 6 years after the term of the mortgage. In some cases, this may be up to 36 years, at which time the information should be transferred to NARA. The transfer of the data would eliminate the concern of not having access to the information if needed in the future. The records collected and stored for HUD Certified Housing Counselor Certification and/or Client Housing Counseling Certificates that reside in the systems will be kept for a minimum 10 years after the final action is taken on the file, document, and/or transaction. Longer retention is authorized if required for business use (Reference: GRS 1.2 DAA–GRS–2013–0008–0001). After the record retention requirements have been met (a minimum of 10 years), the data and records can be purged or deleted from the system. Backup and Recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006). This complies with all Federal regulations.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

**NOTIFICATION AND RECORD ACCESS PROCEDURES:**

For Information, assistance, or inquiries about the existence of records, contact Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6836 (this is not a toll-free number). When seeking records about yourself from this system of records or any other HUD system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16 ''Procedures for Inquiries''. You must first verify your identity by providing your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

(1) Explain why you believe HUD would have information on you.

(2) Identify which HUD office you believe has the records about you.

(3) Specify when you believe the records would have been created.

(4) Provide any other information that will help the FOIA staff determine

[3] *http://portal.hud.gov/hudportal/documents/huddoc?id=22256x20admh-1.pdf.*

which HUD office may have responsive records.

If you are seeking records pertaining to another living individual, you must obtain a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD Office may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, ''Procedures for Inquiries.'' Additional assistance may be obtained by contacting Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10110, Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

Records in the system are obtained from: Mortgagors, appraisers, inspectors, mortgagee staff appraisers, mortgagee staff underwriters, housing counselors, individuals that pass the HUD Certified Housing Counselor examination, HUD Housing Counseling Program clients that receive education and counseling from a HUD participating housing counseling agency, and HUD employees.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 2016–25177 Filed 10–17–16; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5909–N–72]**

## 30-Day Notice of Proposed Information Collection: HOME Investment Partnership Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for renewal of 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.

**DATES:** *Comments Due Date:* November 17, 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: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@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:** Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. 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. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for renewal of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 22, 2016 at 81 FR 47815.

### A. Overview of Information Collection

*Title of Information Collection:* HOME Investment Partnerships Program (HOME).

*OMB Control Number:* 2506–0171.

*Type of Request:* Extension of currently approved collection.

*Form Number:* HUD 40093, SF 1199A, HUD 27055, HUD 40107, HUD 4010.

*Description of the need for the information and proposed use:* The information collected through HUD's Integrated Disbursement and Information System (IDIS) (24 CFR 92.502) is used by HUD Field Offices, HUD Headquarters, and HOME Program Participating Jurisdictions (PJs). The information on program funds committed and disbursed is used by HUD to track PJ performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 92.500(d)). The project-specific property, tenant, owner, and financial data is used to compile annual reports to Congress required at Section 284(b) of the HOME Investment Partnerships Act, as well as to make program management decisions about how well program participants are achieving the statutory objectives of the HOME Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HOME funds. These reports are provided to HUD staff as well as to HOME PJs.

Management reports required in conjunction with the Annual Performance Report (§ 92.509) are used by HUD Field Offices to assess the effectiveness of locally designed programs in meeting specific statutory requirements and by Headquarters in preparing the Annual Report to Congress. Specifically, these reports permit HUD to determine compliance with the requirement that PJs provide a 25 percent match for HOME funds expended during the Federal fiscal year (Section 220 of the Act) and that program income be used for HOME eligible activities (Section 219 of the Act), as well as the Women and Minority Business Enterprise requirements (§ 92.351(b)).

Financial, project, tenant and owner documentation is used to determine compliance with HOME Program cost limits (Section 212(e) of the Act), eligible activities (§ 92.205), and eligible costs (§ 92.206), as well as to determine whether program participants are achieving the income targeting and affordability requirements of the Act (Sections 214 and 215). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 92.504) and tenant protections (§ 92.253) are required to ensure that the property owner complies with these important elements of the HOME Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks PJ performance and compliance with the requirements of 24 CFR parts 91 and 92. PJs use the required information in the execution of

their program, and to gauge their own performance in relation to stated goals.

BILLING CODE 4210–67–P

| Reg. Section | Paperwork Requirement | Number of Responses | Frequency of Response | Responses Per Annum | Burden Hour Per Response | Annual Burden Hours | Hourly Cost* | Annual Cost |
|---|---|---|---|---|---|---|---|---|
| § 92.61 | Program Description and Housing Strategy for Insular Areas | 4 | 1 | 4 | 10.00 | 40.00 | $37.00 | $1,480.00 |
| § 92.66 | Reallocation - Insular Areas | 4 | 1 | 4 | 3.00 | 12.00 | $37.00 | $444.00 |
| § 92.101 | Consortia Designation | 36 | 1 | 36 | 5.00 | 180.00 | $37.00 | $6,660.00 |
| § 92.201 | State Designation of Local Recipients | 51 | 1 | 51 | 1.50 | 76.50 | $37.00 | $2,830.50 |
| § 92.200 | Private-Public Partnership | 594 | 1 | 594 | 2.00 | 1,188.00 | $37.00 | $43,956.00 |
| § 92.201 | Distribution of Assistance | 594 | 1 | 594 | 2.00 | 1,188.00 | $37.00 | $43,956.00 |
| § 92.202 | Site and Neighborhood Standards | 594 | 1 | 594 | 2.00 | 1,188.00 | $37.00 | $43,956.00 |
| § 92.203 | Income Determination | 85,000 | 1 | 85,000 | 0.75 | 63,750.00 | $37.00 | $2,358,750.00 |
| § 92.205(e) | Terminated Projects | 180 | 1 | 180 | 5.00 | 900.00 | $37.00 | $33,300.00 |
| § 92.206 | Eligible Costs - Refinancing | 100 | 1 | 100 | 4.00 | 400.00 | $37.00 | $14,800.00 |
| § 92.210 | Troubled HOME-Assisted Rental Projects | 25 | 1 | 25 | 0.50 | 12.50 | $37.00 | $462.50 |
| | | | | | | | | |
| Reg. Section | Paperwork Requirement | Number of Responses | Frequency of Response | Responses Per Annum | Burden Hour Per Response | Annual Burden Hours | Hourly Cost* | Annual Cost |
| § 92.251(a) | Rehabilitation Projects – New Construction | 3,400 | 1 | 3,400 | 3.00 | 10,200.00 | $37.00 | $377,400.00 |
| § 92.251(b) | Rehabilitation Projects – Rehabilitation | 5,100 | 1 | 5,100 | 2.00 | 10,200.00 | $37.00 | $377,400.00 |
| § 92.252 | Qualification as affordable housing: Rental Housing: | 50 | 1 | 50 | 25.00 | 1,250.00 | $37.00 | $46,250.00 |
| § 92.252(j) | Fixed and Floating HOME Rental Units | 45 | 1 | 45 | 1.00 | 45.00 | $37.00 | $1,665.00 |
| § 92.251 | Written Property Standards | 6,667 | 1 | 6,667 | 3.00 | 20,001.00 | $37.00 | $740,037.00 |
| § 92.253 | Tenant Protections (including lease requirement) | 6,667 | 1 | 6,667 | 5.00 | 33,335.00 | $37.00 | $1,233,395.00 |
| § 92.254 | Homeownership - Median Purchase Price | 80 | 1 | 80 | 5.00 | 400.00 | $37.00 | $14,800.00 |
| § 92.254 | Homeownership - Alternative to Resale/recapture | 100 | 1 | 100 | 5.00 | 500.00 | $37.00 | $18,500.00 |
| § 92.254(a)(5) | Homeownership – Approval of Resale & Recapture | 2,000 | 1 | 2,000 | 1.50 | 3,000.00 | $37.00 | $111,000.00 |
| § 92.254(a)(5) | Homeownership – Fair Return & Affordability | 2 | 1 | 2 | 1.00 | 2.00 | $37.00 | $74.00 |
| §92.254(f) | Homeownership program policies | 600 | 1 | 600 | 5.00 | 3,000.00 | $37.00 | $111,000.00 |
| § 92.300 | CHDO Identification | 594 | 1 | 594 | 2.00 | 1,188.00 | $37.00 | $43,956.00 |
| § 92.300 | CHDO Project Assistance | 594 | 1 | 594 | 2.00 | 1,188.00 | $37.00 | $43,956.00 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| § 92.303 | Tenant Participation Plan | 4,171 | 1 | 4,171 | 10.00 | 41,710.00 | $37.00 | $1,543,270.00 |
| § 92.351 | Affirmative Marketing | 1,290 | 1 | 1,290 | 5.00 | 6,450.00 | $37.00 | $238,650.00 |
| § 92.354 | Labor | 6,667 | 1 | 6,667 | 2.50 | 16,667.50 | $37.00 | $616,697.50 |
| Reg. Section | Paperwork Requirement | Number of Responses | Frequency of Response | Responses Per Annum | Burden Hour Per Response | Annual Burden Hours | Hourly Cost* | Annual Cost |
| § 92.357 | Debarment and Suspension | 6,667 | 1 | 6,667 | 1.00 | 6,667.00 | $37.00 | $246,679.00 |
| § 92.504 | Participating Jurisdiction's Written Agreements | 6,667 | 1 | 6,667 | 10.00 | 66,670.00 | $37.00 | $2,466,790.00 |
| § 91.616 | Confirm first-time homebuyer status | 427 | 1 | 427 | 0.50 | 213.50 | $37.00 | $7,899.50 |
| § 92.300 | Designation of CHDOs | 480 | 1 | 480 | 1.50 | 720.00 | $37.00 | $26,640.00 |
| § 92.501 | HOME Investment Partnership Agreement (HUD 40093) | 598 | 1 | 598 | 1.00 | 598.00 | $37.00 | $22,126.00 |
| § 92.502 | Homeownership and Rental Set-Up and Completion | 594 | 1 | 594 | 16.00 | 9,504.00 | $37.00 | $351,648.00 |
| § 92.502 | Tenant-Based Rental Assistance Set-Up (IDIS) | 225 | 1 | 225 | 5.50 | 1,237.50 | $37.00 | $45,787.50 |
| § 92.502 | Performance Measurement Set-Up and Completion Screens (IDIS) | 6,671 | 1 | 6,671 | 21.00 | 140,091.00 | $37.00 | $5,183,367.00 |
| § 92.502 | Input first-time homebuyer status (IDIS) | 427 | 1 | 427 | 0.50 | 213.50 | $37.00 | $7,899.50 |
| § 92.502 | IDIS Access Request form (HUD 27055) | 50 | 1 | 50 | 0.50 | 25.00 | $37.00 | $925.00 |
| § 92.502(a) | Required Reporting of Program Income | 645 | 1 | 645 | 12.00 | 7,740.00 | $37.00 | $286,380.00 |
| | | | | | | | | |
| Reg. Section | Paperwork Requirement | Number of Responses | Frequency of Response | Responses Per Annum | Burden Hour Per Response | Annual Burden Hours | Hourly Cost* | Annual Cost |
| § 92.504(c) | Written Agreement | 8,500 | 1 | 8,500 | 1.00 | 8,500.00 | $37.00 | $314,500.00 |
| § 92.504(d)(2) | Financial Oversight and HOME Rental projects | 18,500 | 1 | 18,500 | 1.00 | 18,500.00 | $37.00 | $684,500.00 |
| § 92.508 | Recordkeeping-Subsidy Layering and Underwriting | 13,302 | 1 | 13,302 | 4.00 | 53,208.00 | $37.00 | $1,968,696.00 |
| § 92.508 | Recordkeeping (Additional) | 10,110 | 1 | 10,110 | 1.00 | 10,110.00 | $37.00 | $374,070.00 |
| § 92.509 | Annual Performance Reports (HUD 40107) | 598 | 1 | 598 | 2.50 | 1,495.00 | $37.00 | $55,315.00 |
| § 92.509 | Management Reports - FY Match Report (HUD 40107A) | 594 | 1 | 594 | 0.75 | 445.50 | $37.00 | $16,483.50 |
| § 92.550 § 91.525 | HUD Monitoring of Program Documentation and Activities | 645 | 1 | 645 | 0.25 | 161.25 | $37.00 | $5,966.25 |
| § 91.220 | Describe the use of ADDI funds | 427 | 1 | 427 | 1.00 | 427.00 | $37.00 | $15,799.00 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| § 91.220 | Describe the plan for outreach | 427 | 1 | 427 | 1.00 | 427.00 | $37.00 | $15,799.00 |
| § 91.220 | Describe plan to ensure suitability | 427 | 1 | 427 | 1.00 | 427.00 | $37.00 | $15,799.00 |
| § 91.604 | Describe prior commitment | 37 | 1 | 37 | 1.00 | 37.00 | $37.00 | $1,369.00 |
| | Direct Deposit Sign up form (SF 1199A) | 10 | 1 | 10 | 0 | 0 | $0 | $0 |
| Totals | | 202,237 | | | | 545,488.75 | | $20,183,083.75 |

Annual cost is based on Actual Burden Hours (545,441) * the hourly rate for a GS-12 ($37)

BILLING CODE 4210–67–C

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A 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. HUD encourages interested parties to submit comments in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 6, 2016.

**Anna P. Guido,**

*Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. 2016–25175 Filed 10–17–16; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–R–2016–N177; FXRS126109HD000–167–FF09R23000]**

### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Revealing Opportunities for Local-Level Stakeholder Engagement and Social Science Inquiry in Landscape Conservation Design

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** You must submit comments on or before November 17, 2016.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *tina_campbell@fws.gov (*email). Please include ''1018–LCD'' in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Tina Campbell at *tina_campbell@fws.gov* (email) or 703–358–2676 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior information collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

## Information Collection Request

*OMB Control Number:* 1018–XXXX.

*Title:* Revealing Opportunities for Local-Level Stakeholder Engagement and Social Science Inquiry in Landscape Conservation Design.

*Service Form Number:* None.

*Type of Request:* Request for a new OMB control number.

*Description of Respondents:* Individuals, private sector, and State and local governments.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* One time.

| Activity | Number of annual responses | Completion time per response (10 minutes for initial contact + 60-minute interview) | Total annual burden hours (rounded) |
|---|---|---|---|
| Complete Interview—Individuals | 5 | 70 minutes | 6 |
| Complete Interview—Private Sector | 35 | 70 minutes | 41 |
| Complete Interview—State, Local, and Tribal Governments | 50 | 70 minutes | 58.3 |
| Total | 90 | | 105 |

*Estimated Annual Nonhour Burden Cost:* None.

*Abstract:* We have entered into a cooperative agreement with Cornell University to study the role of local stakeholder engagement and social data integration in Landscape Conservation Design (LCD) planning and implementation processes. Promoting ecosystem-level conservation based on LCD will rely on engaging local stakeholders, *i.e.,* local community members and locally based interest groups potentially impacted by conservation actions, in conservation design, planning, and implementation processes. To date, no systematic assessment of local stakeholders' role in LCD has been conducted. Lacking such assessment, questions remain as to what, when, and where social data (related to stakeholders' values, interests, and knowledge) and public engagement (the direct participation of

stakeholders in information sharing and decision making) are most valuable in LCD processes. Information gathered in this study will provide essential, non-duplicative data and insights for ongoing and future LCD efforts. In addition to literature review and participant observation, this study will employ a multiple case study approach focused on three LCD efforts. We will conduct semi-structured interviews of 90 non-Federal LCD partners and local stakeholders to ascertain how LCD efforts have attempted to integrate social information, how these efforts have worked, and how they might be improved under varying social-ecological conditions.

**Comments Received and Our Responses**

On May 19, 2016, we published in the **Federal Register** (81 FR 31654) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 18, 2016. We received two comments from the same individual in response to that notice. The commenter did not address the information collection requirements.

**Request for Public Comments**

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

**Submitting Comments**

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

**Tina A. Campbell,**

*Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–25108 Filed 10–17–16; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR957000–L14400000–BJ0000–16XL1109AF: HAG 16–0205]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 20 S., R. 5 W., accepted July 25, 2016
T. 34 S., R. 2 E., accepted August 9, 2016
Tps. 15 & 16 S., R. 11 E., accepted August 9, 2016

**ADDRESSES:** A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

**FOR FURTHER INFORMATION CONTACT:** Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

**F. David Radford,**

*Acting Chief Cadastral Surveyor of Oregon/Washington.*

[FR Doc. 2016–25113 Filed 10–17–16; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[17X LLIDB00100.LF1000000.HT0000.LXSS024D0000.241A00]**

### Notice of Public Meeting: Resource Advisory Council (RAC) to the Boise District, Bureau of Land Management, U.S. Department of the Interior

**AGENCY:** Bureau of Land Management, U.S. Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

**DATES:** The meeting will be held November 9, 2016, at the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 beginning at 9:00 a.m. and adjourning by 4:00 p.m. Members of the public are invited to attend. A public comment period will be held from 11:00 a.m. to 11:10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Seth Flanigan, Public Affairs Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, Idaho 83705, telephone (208) 384–3393.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. During the November meeting the Boise District RAC will receive updates on

wild horses gathered from Herd Management Areas burned in the Soda Fire, the Soda Fire fuel breaks Environmental Assessment, and the Paradigm Fuel Breaks project process. The RAC's subcommittee on the proposed Tri-State Fuels Breaks Project will provide a report about their final meeting. BLM staff will provide an update on the Gateway West Final Supplemental Environmental Impact Statement. Agenda items and location may be modified due to changing circumstances.

The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda 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 should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Flanigan. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Flanigan. You will receive a reply during normal business hours.

Dated: October 5, 2016.

**Lara Douglas,**

*District Manager.*

[FR Doc. 2016–25114 Filed 10–17–16; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–IMR–BITH–21364; PS.SIMLA0001.00.1]**

### Minor Boundary Revision at Big Thicket National Preserve

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of boundary revision.

**SUMMARY:** The boundary of Big Thicket National Preserve is modified to include ten tracts totaling 822.48 acres of land. These lands are located in Hardin County, Liberty County, Orange County and Tyler County, Texas, immediately adjacent to the boundary of the preserve. Subsequent to the publication of this notice, the United States will acquire fee title to those tracts of land by donation from several nonprofit conservation organizations and an individual donor.

**DATES:** The effective date of this boundary revision is October 18, 2016.

**ADDRESSES:** The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Land Resources Program Center, Intermountain Region, 12795 West Alameda Parkway, Denver, Colorado 80228 and National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Chief Realty Officer Steve Muyskens, National Park Service, Land Resources Program Center, Intermountain Region, 12795 West Alameda Parkway, Denver, Colorado 80228, telephone (303) 969–2610.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to section 1 of the Act of October 11, 1974 (Pub. L. 93–439, 88 Stat. 1254), codified as amended at 16 U.S.C. 698, the boundary of Big Thicket National Preserve is modified to include ten tracts of lands listed as follows: Tract 127–10 (1.72 acres); Tract 134–07 (114.45 acres); Tract 172–10 (18 acres); Tract 215–04 (.57-acre); Tract 219–17 (11.60 acres); Tract 219–18 (360.97 acres); Tract 219–19 (29.03 acres); Tract 222–08 (1 acre); Tract 223–14 (118.65 acres) and Tract 229–06 (166.49 acres) for a total of 822.48 acres. The boundary revision is depicted on Map No. 175/120,858 dated April 18, 2016.

16 U.S.C. 698 provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision.

Dated: October 7, 2016.

**Sue Masica,**

*Regional Director, Intermountain Region.*

[FR Doc. 2016–25179 Filed 10–17–16; 8:45 am]

**BILLING CODE 4312–CB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–22110; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, has completed an inventory of human remains and associated funerary objects recovered from Spirit Cave, NV, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the human remains and associated funerary objects should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects from Spirit Cave may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization that wish to request transfer of control of the human remains and associated funerary objects from Spirit Cave should submit a written request with information in support of the request to the BLM Nevada State Office, at the address in this notice by November 17, 2016.

**ADDRESSES:** John Ruhs, State Director, Bureau of Land Management, Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502–7147, telephone (775) 861–6590, email *jruhs@blm.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the BLM Nevada State Office, Reno, NV. The human remains and associated funerary objects were removed from Spirit Cave in Churchill County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains and associated funerary objects was made by the BLM Nevada State Office professional staff in consultation with representatives of the Comanche Nation, Oklahoma; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Duckwater Shoshone Tribe of the

Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

**History and Description of the Remains**

In 1940, human remains representing, at minimum, four individuals and 10 associated funerary objects were removed from Spirit Cave in Churchill County, NV, on lands then owned by the United States and now administered by the BLM Nevada State Office. Sydney and Georgia Wheeler located Spirit Cave during salvage excavations conducted by the Nevada State Parks Commission in and around the Lahontan Basin of western Nevada and made collections from the site. This ''Spirit Cave Assemblage'' was then curated at the Nevada State Museum in Carson City, NV. The human remains consist of one intact, well-preserved mummified skeleton of an adult male, aged 40–44 years (Spirit Cave Burial #2; NSM Catalog # Ahur 2064; commonly referred to as the ''Spirit Cave mummy''); one cremation burial (NSM Catalog #'s Ahur 752 and Ahur 773); one adult female, aged 30–35 years (NSM # Ahur 770); and a subadult male, aged approximately 15 years (NSM # Ahur 748). No known individuals were identified. The 10 associated funerary objects are one outer mat, one inner mat, two leather moccasins, one rabbit skin blanket, three woven bags, and two mat fragments. Radiocarbon dating estimates the age of the human remains to be between 5,400 to 10,600 years ago.

DNA analysis illustrates that the human remains in the Spirit Cave Assemblage are effectively more closely related to Native Americans than they are to any other population. The associated funerary objects contained within the Spirit Cave Assemblage manifest characteristics of Native American ancestry, including a rabbit skin blanket, moccasins, and woven mats. These cultural items are consistent with the raw materials used and the general types of items manufactured throughout the prehistory of the Great Basin. Therefore, the BLM Nevada State Office has determined that the human remains are Native American.

While there are similarities in material culture between items buried with the individuals that are part of the Spirit Cave Assemblage and the Northern Paiute peoples, such as the rabbit skin blanket, these similarities are at a general Numic pattern within the Great Basin that includes many tribes (''Numic pattern'' refers to items or objects similarly made by multiple tribes of Paiute, Shoshone, Ute, and Goshute peoples who all share a common language group). The manufacturing of rabbit skin blankets, woven mats, and moccasins are all material items made by multiple tribes across the Great Basin, both past and present. Oral tradition suggests that while the Northern Paiute tribes originated in the region from which Spirit Cave is located, at least one other non-Paiute tribe once occupied the region as well. The available archeological and material culture evidence suggests that the Northern Paiute peoples and their associated modern tribes may have occupied the central Great Basin by 3,000 years ago, although there is no similar evidence which places them in the western Great Basin at this time. The DNA results also do not provide evidence that the Spirit Cave individuals were a distinct biological group from other groups of that age. Additionally, the age and small sample size of the Spirit Cave Assemblage does not provide sufficient evidence from which BLM can determine that the Spirit Cave individuals were part of a an identifiable earlier cultural group, pursuant to NAGPRA 43 CFR 10.14(c)(2). BLM cannot determine cultural affiliation of the Spirit Cave Assemblage.

**Determinations Made by the BLM Nevada State Office**

Officials of the BLM Nevada State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgements of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Northern Paiute, represented by the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Summit Lake Paiute Tribe of Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Summit Lake Paiute Tribe of Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada.
- Pursuant to 43 CFR 10.11(d), transfer of the human remains and associated funerary objects to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, may proceed.

**Additional Requestors and Disposition**

Representatives of the Indian tribes that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to John Ruhs, State Director, Bureau of Land Management, Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502–7147, telephone (775) 861–6590, email *jruhs@blm.gov,* by November 17, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada may proceed.

The BLM Nevada State Office is responsible for notifying the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Summit Lake Paiute Tribe of Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; and Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada that this notice has been published.

Dated: October 5, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–25128 Filed 10–17–16; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NER–FIIS–21587; PX.XDESCPP02001]**

### Abbreviated Final Environmental Impact Statement for the Fire Island National Seashore General Management Plan

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) announces the availability of the Abbreviated Final General Management Plan/Environmental Impact Statement (Abbreviated Final GMP/EIS) for Fire Island National Seashore, New York. The focus of this plan is to guide and direct NPS management strategies for the next 15 to 20 years that support the protection of important natural resources and processes; significant recreation resources; cultural resources of national, state, and local significance; and unique residential communities. The Abbreviated Final GMP/EIS also includes revisions to the Draft Wilderness Stewardship Plan and Backcountry Camping Policy for the Otis Pike Fire Island High Dune Wilderness (WSP) which will guide decisions regarding the future use and protection of the congressionally designated Otis Pike Fire Island High Dune Wilderness and areas adjacent to the wilderness that are designated backcountry camping areas.

**DATES:** October 18, 2016.

**ADDRESSES:** The Abbreviated Final GMP/EIS and WSP are available electronically at *http://www.parkplanning.nps.gov/fiis.* A limited number of printed copies will be available upon request by contacting the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772–3596, 631–687–4770.

**FOR FURTHER INFORMATION CONTACT:** Kaetlyn Jackson, Fire Island National Seashore, 631–687–4770, *kaetlyn_jackson@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Fire Island National Seashore (the Seashore), a unit of the national park system, is located along the south shore of Long Island in Suffolk County, New York. The Seashore is composed of two distinct units: A 26-mile stretch of Fire Island, the 32-mile-long barrier island that runs parallel to the south shore of Long Island; and the William Floyd Estate, situated on the south shore of Long Island near the east end of Fire Island. The Fire Island unit encompasses 19,579 acres of upland, tidal, and submerged lands, including an extensive system of dunes, centuries-old maritime forests, solitary beaches, nearly 1,400 acres of federally designated wilderness, and the historic Fire Island Lighthouse. The William Floyd Estate is a 613-acre property that was the home of one of New York's signers of the *Declaration of Independence.*

Pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the NPS released a Draft General Management Plan/Environmental Impact Statement (Draft GMP/EIS) on June 15, 2015 for a 90-day public review period. The Draft GMP/EIS evaluated two sets of alternatives to address the specific needs of these two distinct units. One set addresses park-wide alternatives for the Seashore with a primary emphasis on the barrier island and includes a no-action alternative and two action alternatives. The other set of alternatives focuses specifically on the William Floyd Estate and includes a no-action alternative and a single action alternative.

Comments received on the Draft GMP/EIS resulted in minor changes to the text but did not significantly alter the alternatives or the impact analysis; thus, the National Park Service has prepared an Abbreviated Final General Management Plan/Environmental Impact Statement (Abbreviated Final GMP/EIS). The Abbreviated Final GMP/EIS discusses the public and agency comments received on the Draft GMP/EIS and provides NPS responses. The Abbreviated Final GMP/EIS contains errata sheets that show factual corrections to the text of the Draft GMP/EIS or where the text has been revised to reflect minor additions or changes suggested by commenters.

As in the Draft GMP/EIS, the Abbreviated Final GMP/EIS identifies the NPS Preferred Alternative as the combination of Management Alternative 3 for Fire Island & Park-wide with Management Alternative B for the William Floyd Estate because together they best meet the Seashore's management goals and convey the greatest number of significant beneficial results, relative to their potential impacts, in comparison with the other alternatives. Management Alternative 3 in combination with Management Alternative B would do the most to ensure the cooperative stewardship of Fire Island National Seashore's dynamic coastal environment and its cultural and natural systems while recognizing its larger ecological, social, economic, and cultural context and meeting the specific needs and management goals of the William Floyd Estate.

Circulated with the Draft GMP/EIS for public review was the Draft Wilderness Stewardship Plan and Backcountry Camping Policy for the Otis Pike Fire Island High Dune Wilderness (WSP). The purpose of the WSP is to guide decisions regarding the future use and protection of the congressionally designated Otis Pike Fire Island High Dune Wilderness and adjacent areas that are designated backcountry camping areas. It identifies the core qualities of wilderness character and outlines the framework through which the wilderness can be preserved, consistent with law, policy, and the specific legislative history applicable to this wilderness. The Abbreviated Final GMP/EIS contains errata sheets that show changes and clarifications to the Draft WSP. Some of the changes are a result of public comments while others are editorial in nature. When finalized, the WSP will replace the 1983

Wilderness Management Plan and the 2011 Fire Island National Seashore Interim Backcountry Camping Policy.

Dated: October 11, 2016.

**Michael, A. Caldwell,**

*Regional Director, Northeast Region, National Park Service.*

[FR Doc. 2016–25176 Filed 10–17–16; 8:45 am]

BILLING CODE 4312–52–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–22083; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Stearns History Museum, Saint Cloud, MN

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Stearns History Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Stearns History Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Stearns History Museum at the address in this notice by November 17, 2016.

**ADDRESSES:** Adam Smith, Stearns History Museum, 235 South 33rd Avenue, Saint Cloud, MN 56301, telephone (320) 253–8424, email *asmith@stearns-museum.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Stearns History Museum, Saint Cloud, MN that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Items

On an unknown date in 1902, two cultural items were removed from the White Earth Band of the Minnesota Chippewa Tribe in Mahnomen, Clearwater and Becker Counties, MN. In 1902, William Wynkoop Smith collected the cultural items during his visit to the White Earth Band of the Minnesota Chippewa Tribe. The items remained in the Smith home in Saint Cloud, MN and later Cold Spring, MN. In 1982, Smith donated the items to the museum. The two sacred objects are ceremonial clubs. When the items were donated to the museum in 1982, the Curator identified them as Anishinaabe. Further research into beadwork and design confirm the items are of Anishinaabe origin.

At an unknown date between 1930 and 1982, three cultural items were removed from the White Earth Band of the Minnesota Chippewa Tribe in Mahnomen, Clearwater and Becker Counties, MN. The three sacred objects are one drum, one rattle and one headband. The drum was owned by Charlotte Fineday Broker, a member of the White Earth Band of the Minnesota Chippewa Tribe who lived with the White Earth Band of the Minnesota Chippewa Tribe her entire life. Broker died in 1951 and her daughter-in-law Martha Aspinwall Broker, also a member of the White Earth Band of the Minnesota Chippewa Tribe, acquired the item. Martha married Charlotte's son Robert in 1918, moved to Royalton, MN by 1930 and St. Cloud, MN by 1943. It is unclear when, between 1930 and 1982, the three sacred objects left the White Earth Band of the Minnesota Chippewa Tribe. In 1982, Martha Broker donated all three items to the museum.

#### Determinations Made by the Stearns History Museum

Officials of the Stearns History Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 5 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and White Earth Band of the Minnesota Chippewa Tribe.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Adam Smith, Stearns History Museum, 235 South 33rd Avenue, Saint Cloud, MN 56301, telephone (320) 253–8424, email *asmith@stearns-museum.org,* by November 17, 2016. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to White Earth Band of the Minnesota Chippewa Tribe may proceed.

The Stearns History Museum is responsible for notifying the White Earth Band of the Minnesota Chippewa Tribe that this notice has been published.

Dated: October 6, 2016.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2016–25127 Filed 10–17–16; 8:45 am]

BILLING CODE 4310–52–P

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–16–034]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** October 26, 2016 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1082 and 1083 (Second Review) (Chlorinated Isocyanurates from China and Spain). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 16, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 13, 2016.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2016–25261 Filed 10–14–16; 11:15 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1024]**

## Certain Integrated Circuits With Voltage Regulators and Products Containing Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 12, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of R2 Semiconductor, Inc. of Sunnyvale, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits with voltage regulators and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,233,250 (''the '250 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

*Scope of Investigation*: Having considered the complaint, the U.S. International Trade Commission, on October 11, 2016, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits with voltage regulators and products containing the same by reason of infringement of one or more of claims 1–4, 7–17, 20–26, 28–29, and 31 of the '250 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: R2 Semiconductor, Inc., 1196 Borregas Ave., Suite 201, Sunnyvale, CA 94089.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Intel Corporation, 2200 Mission College Blvd., Santa Clara, CA 95054

Intel Ireland Ltd., Collinstown Industrial Park, Leixlip, County Kildare, Ireland

Intel Products Vietnam Co., Ltd., Lot 12, Street D1, Saigon Hi-Tech Park, District 9, Ho Chi Minh City, Vietnam

Intel Israel 74 Ltd., Matam Bldg 6, P.O. Box 1659, Matam Industrial Park, Haifa, 31015, Israel

Intel Malaysia Sdn. Berhad, Bayan Lepas Free Industrial Zone Phase 3, Penang, 11900, Malaysia

Intel China, Ltd., 6th Floor North Office Tower, 06–01 Beijing Kerry Centre, 1 Guang Hua Road, Chao Yang District, Beijing, 100020, China

Dell, Inc., One Dell Way, Round Rock, TX 78682

Dell Technologies Inc., One Dell Way, Round Rock, TX 78682

HP Inc., 1501 Page Mill Road, Palo Alto, CA 94304

Hewlett Packard Enterprise Co., 3000 Hanover St., Palo Alto, CA 94304

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 12, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–25095 Filed 10–17–16; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–975]**

### Certain Computer Cables, Chargers, Adapters, Peripheral Devices and Packaging Containing the Same; Issuance of a Limited Exclusion Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order denying entry of certain computer cables, chargers, adapters, peripheral devices and packaging containing the same. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://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 December 17, 2015, based on a complaint filed on behalf of Belkin International, Inc. of Playa Vista, California (''Complainant''). 80 FR 78763–64 (December 17, 2015). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain computer cables, chargers, adapters, peripheral devices and packaging containing the same by reason of infringement of one or more of U.S. Trademark Registration No. 2,339,459; U.S. Trademark Registration No. 2,339,460; U.S. Trademark Registration No. 4,168,379; and U.S. Trademark Registration No. 4,538,212. The Commission's notice of investigation named the following respondents: Dongguan Pinte Electronic Co., Ltd., of Dongguan City, China; and Dongguan Shijie Fresh Electronic Products Factory, of Dongguan City, China (collectively ''Respondents''). The Office of Unfair Import Investigations (''OUII'') was named as a party.

On August 8, 2016, the Commission determined not to review an initial determination finding the Respondents in default and requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. 81 FR 53505–06 (Aug. 12, 2016).

Complainant filed a submission requesting a limited exclusion order (''LEO'') against the Respondents, arguing that none of the public interest factors weigh against granting an LEO. Complainant asserts that there are several competitors in the market and complainant can fulfill any increased demand. No public interest submissions were filed by the public. Complainant requested that Respondents either should not be afforded the opportunity to import during the period of Presidential review, or in the alternative, that the bond be set at 100 percent of entered value in accordance with the Commission practice for defaulting respondents. OUII supported the Complainant's requested relief, including imposition of 100 percent bond.

The Commission finds that the statutory requirements for relief under section 337(g)(1), (19 U.S.C. 1337(g)(1)) are met with respect to the Respondents. In addition, the Commission finds that the public interest factors enumerated in section 337(g)(1) do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is an LEO prohibiting the unlicensed entry of certain computer cables, chargers, adapters, peripheral devices and packaging containing the same that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents that infringe one or more of U.S. Trademark Registration Nos. 2,339,459; 2,339,460; 4,168,379; and 4,538,212.

Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the LEO. The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

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: October 13, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–25196 Filed 10–17–16; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–987]**

### Certain Hospital Beds, and Components Thereof; Commission's Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the 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. 10) terminating the investigation on the basis of settlement. The Commission has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://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 March 4, 2016, based on a complaint and supplements filed on behalf of

Stryker Corporation (''complainant'') of Kalamazoo, Michigan. 81 *FR* 11590 (March 4, 2016). The complaint as supplemented alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain hospital beds, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,082,630; U.S. Patent No. 7,690,059 (''the '059 patent''); U.S. Patent No. 7,784,125; and U.S. Patent No. 8,701,229 (''the '229 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint names Umano Medical Inc. of Quebec, Canada and Umano Medical World Inc. of Quebec, Canada as respondents. The Office of Unfair Import Investigations is not a party in the investigation.

On September 2, 2016, the parties filed a joint motion to terminate the investigation based on settlement. The parties provided confidential and non-confidential versions of the settlement agreement and represented that there are no other agreements, written or oral, express or implied, between the Settling Parties concerning the subject matter of this Investigation.

On September 13, 2016, the ALJ granted the joint motion. Order No. 10. The ALJ found that all of the requirements of Commission Rule 210.21(a)–(b), 19 CFR 210.21(a)–(b), had been met and that there were no public interest concerns that would weigh against termination. No petitions for review were filed.

The Commission has determined not to review the subject 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: October 12, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–25094 Filed 10–17–16; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Anderson Brecon, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before November 17, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before November 17, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 10, 2016, Anderson Brecon, Inc., DBA PCI of Illinois, 4545 Assembly Drive, Rockford, Illinois 61109 applied to be registered as an importer of oxycodone (9143), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substances in bulk over-encapsulated tablets for clinical trial only. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: October 11, 2016.

**Louis J. Milione,**

*Assistant Administrator, Diversion Control Division.*

[FR Doc. 2016–25131 Filed 10–17–16; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Johnson Matthey Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before November 17, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before November 17, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to

exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Office of Diversion Control (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 5, 2016, Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Coca Leaves | 9040 | II |
| Thebaine | 9333 | II |
| Opium, raw | 9600 | II |
| Noroxymorphone | 9668 | II |
| Poppy Straw Concentrate. | 9670 | II |
| Fentanyl | 9801 | II |

The company plans to import Thebaine derivatives and Fentanyl as reference standards. The company plans to import the remaining listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers.

Dated: October 11, 2016.

**Louis J. Milione,**

*Assistant Administrator.*

[FR Doc. 2016–25126 Filed 10–17–16; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before December 19, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Office of Diversion Control (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 5, 2016, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742 applied to be registered as a bulk manufacturer the following basic classes of controlled substances:

| Controlled Substance | Drug code | Schedule |
|---|---|---|
| Gamma Hydroxybutyric Acid. | 2010 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| Dihydromorphine | 9145 | I |
| Difenoxin | 9168 | I |
| Propiram | 9649 | I |
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| Lisdexamfetamine | 1205 | II |
| Methylphenidate | 1724 | II |
| Nabilone | 7379 | II |
| Cocaine | 9041 | II |
| Codeine | 9050 | II |
| Dihydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Diphenoxylate | 9170 | II |
| Ecgonine | 9180 | II |
| Hydrocodone | 9193 | II |
| Meperidine | 9230 | II |
| Methadone | 9250 | II |
| Methadone intermediate | 9254 | II |
| Morphine | 9300 | II |
| Thebaine | 9333 | II |
| Oxymorphone | 9652 | II |
| Noroxymorphone | 9668 | II |
| Alfentanil | 9737 | II |
| Remifentanil | 9739 | II |
| Sufentanil | 9740 | II |
| Tapentadol | 9780 | II |
| Fentanyl | 9801 | II |

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Dated: October 11, 2016.

**Louis J. Milione,**

*Assistant Administrator.*

[FR Doc. 2016–25133 Filed 10–17–16; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF LABOR

### Wage and Hour Division

### Agency Information Collection Activities; Comment Request; Information Collections: Report of Construction Contractor's Wage Rates

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, ''Report of Construction Contractor's Wage Rates.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 19, 2016.

**ADDRESSES:** You may submit comments identified by Control Number 1235–0015, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one

method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

*I. Background:* The Davis-Bacon Act (40 U.S.C. 3141, *et seq.*) provides, in part, that every contract in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair, which requires or involves the employment of mechanics and/or laborers, shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics that were determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State where the work is to be performed. The Administrator of the Wage and Hour Division, through a delegation of authority, is responsible for issuing these wage determinations (WDs). Section 1.3 of Regulations 29 CFR part 1, Procedures for Predetermination of Wage Rates, provides, in part, that for the purpose of making WDs, the Administrator will conduct a continuing program for obtaining and compiling wage rate information. Form WD–10 is used to determine locally prevailing wages under the Davis-Bacon and Related Acts. The wage data collection is a primary source of information and is essential to the determination of prevailing wages. This information collection is currently approved for use through April, 2017.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

*III. Current Actions:* The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the government contract programs.

*Type of Review:* Extension.

*Agency:* Wage and Hour Division.

*Title:* Report of Construction Contractor's Wage Rates.

*OMB Number:* 1235–0015.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, Farms, State, Local, or Tribal Government.

*Total Respondents:* 24,000.

*Total Annual Responses:* 36,000.

*Estimated Total Burden Hours:* 12,000.

*Estimated Time per Response:* 20 minutes.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operation/maintenance):* $0.

Dated: October 12, 2016.

**Melissa Smith,**

*Director, Division of Regulations, Legislation and Interpretation.*

[FR Doc. 2016–25079 Filed 10–17–16; 8:45 am]

**BILLING CODE 4510–27–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Membership of the National Endowment for the Arts Senior Executive Service Performance Review Board

**ACTION:** Notice.

**SUMMARY:** This notice announces the membership of the National Endowment for the Arts (NEA) Senior Executive Service (SES) Performance Review Board (PRB).

**DATES:** *Effective Date:* October 13, 2016.

**ADDRESSES:** Send comments concerning this notice to: National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Craig McCord Sr. by telephone at (202) 682–5473 or by email at *mccordc@arts.gov.*

**SUPPLEMENTARY INFORMATION:** Sections 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts (NEA):

Winona Varnon—Deputy Chairman for Management and Budget
Michael Griffin—Chief of Staff
Sunil Iyengar—Director, Research & Analysis
Ronald Luczak—Director, Office of Security, U.S. Department of Education

Dated: October 13, 2016.

**Kathy N Daum,**

*Director, Office of Administrative Services.*

[FR Doc. 2016–25111 Filed 10–17–16; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Membership of the National Science Board's Senior Executive Service Performance Review Board

**AGENCY:** National Science Foundation.

**ACTION:** Announcement of membership of the National Science Foundation's

Performance Review Board for the Office of Inspector General and the National Science Board Office Senior Executive Service positions.

**SUMMARY:** This announcement of the membership of the National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

**ADDRESSES:** Comments should be addressed to Division Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dianne Campbell Krieger at the above address or (703) 292–5194.

**SUPPLEMENTARY INFORMATION:** The membership of the National Science Board's Senior Executive Service Performance Review Board is as follows:

Diane L. Souvaine, Vice Chair, National Science Board

Dianne Campbell Krieger, Division Director, Division of Human Resource Management

Plus three members to be selected from the IG community.

Dated: October 3, 2016.

**Dianne Campbell Krieger,**

*Division Director, Division of Human Resource Management.*

[FR Doc. 2016–24961 Filed 10–17–16; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–409; NRC–2015–0279]**

## LaCrosseSolutions, LLC; La Crosse Boiling Water Reactor Partial Site Release

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comment.

**SUMMARY:** On June 27, 2016, the U.S. Nuclear Regulatory Commission (NRC) received from LaCrosse*Solutions,* LLC (LS) a request for approval to remove portions of the site from the operating license for the La Crosse Boiling Water Reactor. Specifically, LS intends to remove and release five radiologically non-impacted portions of the site from its license. The partial site release request was submitted concurrently with the La Crosse License Termination Plan and supports ongoing decommissioning activities at the site. The NRC is requesting public comments on LS's partial site release request and the La Crosse License Termination Plan.

**DATES:** Submit comments by November 17, 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–2015–0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual 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:** Marlayna Vaaler, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: *Marlayna.Vaaler@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2015–0279 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–2015–0279.
- *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–2015–0279 in in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

The La Crosse Boiling Water Reactor (LACBWR) was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first went critical in 1967, commenced commercial operation in November 1969, and was capable of producing 50 megawatts electric. The reactor is located on the east bank of the Mississippi River in Vernon County, Wisconsin. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the Dairyland Power Cooperative (DPC) and granted it Provisional Operating License No. DPR–45 on August 28, 1973.

The reactor permanently ceased operations on April 30, 1987, and reactor defueling was completed on June 11, 1987. In a letter dated August 4, 1987, the NRC terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR–

45, and granted the licensee a possess-but-not-operate status. By letter dated August 18, 1988, the NRC amended DPC's Provisional Operating License No. DPR–45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at LACBWR. Therefore, pursuant to the provisions of §§ 50.82(a)(1)(iii) and 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), DPC's part 50 license does not authorize operation of LACBWR or emplacement or retention of fuel into the reactor vessel.

The NRC issued an order to authorize decommissioning of LACBWR and approve the licensee's proposed Decommissioning Plan (DP) on August 7, 1991. Because the NRC approved DPC's DP before August 28, 1996, pursuant to 10 CFR 50.82, the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the ''LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report'' (D-Plan/PSDAR).

The DPC developed an on-site independent spent fuel storage installation (ISFSI) and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012 (ADAMS Accession No. ML12290A027). The remaining associated buildings and structures are ready for dismantlement and decommissioning activities.

By Order dated May 20, 2016 (ADAMS Accession No. ML16123A073), the NRC approved the direct transfer of Possession Only License No. DPR–45 for LACBWR from DPC to LaCrosse*Solutions,* LLC (LS), a wholly-owned subsidiary of Energy*Solutions,* LLC, and approved a conforming license amendment, pursuant to 10 CFR 50.80 and 50.90, to reflect the change. The Order was published in the **Federal Register** on June 2, 2016 (81 FR 35383). The transfer assigns DPC's licensed possession, maintenance, and decommissioning authorities for LACBWR to LS in order to implement expedited decommissioning at the LACBWR site. Decommissioning of LACBWR is scheduled to be completed in 2018.

By letter dated June 27, 2016 (ADAMS Accession No. ML16200A095), LS submitted the License Termination Plan (LTP) for LACBWR in accordance with 10 CFR 50.82(a)(9). The LTP includes a site characterization to ensure that final radiation surveys (FRS) cover all areas where contamination existed, remains, or has the potential to exist or remain; identification of remaining dismantlement activities; plans for site remediation; a description of the FRS plan to confirm that LACBWR will meet the release criteria in 10 CFR part 20, subpart E; dose-modeling scenarios that ensure compliance with the radiological criteria for license termination; an estimate of the remaining site-specific decommissioning costs; and a supplement to the Environmental Report describing any new information or significant environmental changes associated with proposed license termination activities. The LACBWR LTP is currently being reviewed by the NRC.

By letter dated June 27, 2016 (ADAMS Accession No. ML16181A068), LS submitted a request for approval to remove portions of the site from the part 50 License, No. DPR–45. Specifically, LS intends to remove and release five radiologically non-impacted portions of the site from its part 50 license in accordance with 10 CFR 50.83(b), ''Release of part of a power reactor facility or site for unrestricted use.'' This request is the subject of this notice.

Dated at Rockville, Maryland this 12th day of October 2016.

For The Nuclear Regulatory Commission.

**Ted Carter,**

*Acting Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2016–25124 Filed 10–17–16; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee On Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee On Economic Simplified Boiling Water Reactors (ESBWR); Notice of Meeting

The ACRS Subcommittee on ESBWR will hold a meeting on October 20, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, October 20, 2016—8:30 a.m. until 5:00 p.m.*

The Subcommittee will review the North Anna Unit 3 Combined License Application (COLA). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Dominion, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: October 12, 2016.

**Michael Snodderly,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2016–25134 Filed 10–17–16; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79085; File No. SR–NYSE–2016–44]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendments No. 1 and 2, Allowing the Exchange To Trade Pursuant to Unlisted Trading Privileges Any NMS Stock Listed on Another National Securities Exchange; Establishing Listing and Trading Requirements for Exchange Traded Products; and Adopting New Equity Trading Rules Relating to Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

October 12, 2016.

On June 30, 2016, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) allow the Exchange to trade pursuant to unlisted trading privileges (''UTP'') any NMS Stock listed on another national securities exchange; (2) establish listing and trading requirements for exchange-traded products (''ETPs'' or ''Exchange Traded Products''); and (3) adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on the Exchange's Pillar trading platform. The proposed rule change was published for comment in the **Federal Register** on July 14, 2016.[3]

On July 26, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On August 23, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On August 26, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] The Commission has received no comments on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendments No. 1 and 2.

### I. Summary of the Proposed Rule Change [9]

The Exchange states that it does not currently trade any securities on a UTP basis. The Exchange proposes new rules to trade all Tape B and Tape C symbols, on a UTP basis, on its new trading platform, Pillar.[10] In addition, the Exchange proposes to adopt rules for the listing and trading of the following types of Exchange Traded Products: [11] Equity Linked Notes; Investment Company Units; Index-Linked Exchangeable Notes; Equity Gold Shares; Equity Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed-Income Index-Linked Securities; Futures-Linked Securities; Multifactor-Index-Linked Securities; Trust Certificates; Currency and Index Warrants; Portfolio Depositary Receipts; Trust Issued Receipts; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Paired Trust Shares; Trust Units; Managed Fund Shares; and Managed Trust Securities.[12]

The Exchange represents that the proposed rules for these ETPs are substantially identical (other than with respect to certain non-substantive and technical amendments) to the rules of the NYSE Arca Equities exchange for the qualification, listing, and trading of these ETPs.[13]

According to the Exchange, it will trade securities pursuant to UTP only on its Pillar platform, not on its current trading platform. Further, at this time, the Exchange states that it does not intend to list ETPs pursuant to the proposed rules. The Exchange does not proposing to change any of the current rules of the Exchange pertaining to the listing and trading of ETPs in the NYSE Listed Company Manual or in its other rules.

### II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2016–44 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [14] to determine whether the proposed rule change, as modified by Amendments No. 1 and 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78263 (Jul. 8, 2016), 81 FR 45580 (''Notice'').

[4] In Amendment No. 1, the Exchange: (1) Added a bullet point stating that ''[b]ecause the Exchange's rules regarding the production of books and records are described in Rule 440, the Exchange is proposing to refer to Rule 440 in its proposed rules wherever NYSE Arca Equities Rule 4.4 is referenced in the rules of NYSE Arca Equities proposed in this filing;'' (2) deleted the sentence stating, ''If an exchange has approved trading rules, procedures and listing standards in place that have been approved by the Commission for the product class that would include a new derivative securities product, the listing and trading of such 'new derivative securities product,' does not require a proposed rule change under Section 19b–4 of the Act'' and made conforming changes to the rest of that paragraph; (3) deleted the bullet point that stated, ''Correction of a typographical error in NYSE Arca Equities Rule 8.400(a) so that proposed Rule 8.400(a) reads 'as such terms are used in Rule 5.1(b)' in the last sentence, rather than 'as such terms are used in the Rule 5.1(b)' as is currently drafted in NYSE Arca Equities Rule 8.400(a)''; (4) noted that ''for new ETPs to be traded pursuant to UTP, which are listed and traded on another exchange pursuant to Rule 19b–4(e), the Exchange would be required to file Form 19b–4(e) with the Commission in accordance with the requirements therein.'' Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nyse-2016-44/nyse201644-1.pdf.* Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78641, 81 FR 59259 (Aug. 29, 2016). The Commission designated October 12, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] In Amendment No. 2, the Exchange: (1) Added the clause ''pursuant to UTP'' at the end of the sentence that states, ''The Exchange would have to file a Form 19b–4(e) with the Commission to trade these ETPs;'' (2) in the first footnote that follows that sentence, deleted the clause ''pursuant to Rule 19b–4(e);'' and (3) at the end of that same footnote, added the reference, ''*See* proposed Rule 5.1(a)(2); supra note 19 and accompanying text.'' Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-nyse-2016-44/nyse201644-2.pdf.* Because Amendment No. 2 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] The Commission notes that additional statements and information describing the specific proposed changes to the Exchange's rules, among other things, can be found in the Notice and Amendments No. 1 and 2 to the proposed rule change. *See* Notice and Amendments No. 1 and 2 to the proposed rule change, *supra* notes 3, 4, and 7, respectively.

[10] According to the Exchange, on January 29, 2015, the Exchange announced the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC. *See* Trader Update dated January 29, 2015, *available at: http://www1.nyse.com/pdfs/Pillar_Trader_Update_Jan_2015.pdf.*

[11] The Exchange is proposing to define the term ''Exchange Traded Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Exchange Act. This proposed definition is identical to the definition of ''Derivatives Securities Product'' in NYSE Arca Equities Rule 1.1(bbb).

[12] *See* Notice, *supra* note 3.

[13] *See* Notice, *supra* note 3, at 45580–45581, n.7 (*citing* NYSE Equities Rules 5 (Listings) and 8 (Trading of Certain Equities Derivatives)).

[14] 15 U.S.C. 78s(b)(2)(B).

legal and policy issues raised by the proposed rule change, as modified by Amendments No. 1 and 2. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendments No. 1 and 2.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [16]

## III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[17]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 8, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 22, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[18] in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendments No. 1 and 2.[19]

In particular, the Commission seeks comment on whether the proposed rules regarding ETPs, which would not expressly apply on a continuing basis, are consistent with the Act.[20] The Commission notes that, while the Exchange represents that it ''does not intend to list ETPs on its Pillar platform,'' [21] the proposed rule text contains no such limitation, and the Exchange's Form 19b–4 filing also describes the standards being proposed as governing the ''*listing* and trading'' of ETPs.[22]

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–44 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 Numbers SR–NYSE–2016–44. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–44 and should be submitted on or before November 8, 2016. Rebuttal comments should be submitted by November 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25083 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[18] *See* Notice, *supra* note 3.

[19] *See* Amendments No. 1 and 2 to the proposed rule change, *supra* notes 4 and 7, respectively.

[20] The Commission's orders approving the generic listing and trading of actively managed ETFs relied upon the listing exchange's representation that the listing criteria would apply on a continuing basis. *See, e.g.,* Securities Exchange Act Releases No. 78396 (July 22, 2016), 81 FR 49698, 49701 (July 28, 2016) (File No. SR–BATS–2015–100); No. 78397 (July 22, 2016), 81 FR 49320, 49324 (July 27, 2016) (File No. SR–NYSEArca–2015–110); and No. 78918 (Sept. 23, 2016), 81 FR 67033, 67035 (Sept. 29, 2016) (File No. SR–NASDAQ–2016–104). Recent Commission orders approving the listing and trading of individual ETPs have similarly relied upon representations by the listing exchange that all statements and representations made regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of exchange rules and surveillance procedures shall constitute continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77920 (May 25, 2016), 81 FR 35086, 35090 (June 1, 2016) (SR–NYSEArca–2016–46; approving listing and trading of shares of the AdvisorShares Cornerstone Small Cap ETF); No. 78847 (Sept. 15, 2016), 81 FR 64560, 64562 (Sept. 20, 2016) (File No. SR–BATS–2016–34; approving listing and trading of shares of the ProShares Crude Oil Strategy ETF).

[21] *See* Notice, *supra* note 3, at 45581.

[22] *See, e.g.,* Notice, *supra* note 3, at 45580, 45583 (emphasis added).

[23] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79086; File No. SR–CBOE–2016–072]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

October 12, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

September 30, 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 proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective October 3, 2016. Specifically, the Exchange proposes to increase the transaction fee for Professional Customers and Voluntary Professionals (''W'' origin code) (''Professionals'') for all manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A [3]), ETF and ETN option classes from $0.00 per contract to $0.12 per contract. The Exchange recently reduced this fee from $0.25 per contract to $0.00 per contract, which amount was comparable to the amount assessed to similar transactions for Professionals at another exchange.[4] Upon further review of manual transaction fees, the Exchange proposes to increase the fee to restore a more competitive balance among Professionals and broker-dealers (which pay manual transaction fees in varying amounts [5]) with respect to manual transactions on the Exchange's trading floor. The Exchange notes the proposed $0.12 fee is lower than the $0.25 fee assessed to Professionals for manual transactions prior to September 1, 2016. Additionally, the proposed change is consistent with the approximate average transaction fee amount assessed to market-makers for manual transactions.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes it is reasonable to increase the transaction fee for Professionals for manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN options classes to $0.12 per contract because it is lower than the $0.25 fee assessed to Professionals for manual transactions prior to September 1, 2016. Additionally, the proposed fee is consistent with the approximate average transaction fee amount assessed to market-makers for manual transactions. The Exchange believes it is equitable and not unfairly discriminatory to propose to increase the manual transaction fee only for Professionals because it is designed to create a more competitive balance between Professionals (who have trading characteristics akin to broker-dealers) and broker-dealers for open outcry trades. With respect to manual transactions, Professionals often participate on trades in a similar manner as broker-dealers, and therefore the Exchange believes it is reasonable for Professionals to pay a transaction fee for those trades so they can compete on more equal footing for participation on those trades.[10] Additionally, because the proposed fee is lower than the $0.25 fee Professionals were assessed for manual transactions prior to September 1, 2016, the Exchange believes the proposed fee change will continue to attract a greater number of Professional orders for those classes, which may create greater trading opportunities that benefit all market participants. The Exchange lastly notes assessing a different fee amount for manual executions than for electronic executions is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and recoups the costs of such expenditures through electronic transaction fees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because, while increasing the transaction rate to $0.12 for manual executions in penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN option classes only applies to Professionals, broker-dealers currently pay transaction fees when trading as parties to those executions. The proposed change is designed to create a more competitive balance between Professionals and broker-dealers for open outcry trading. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or

[3] *See* CBOE Fees Schedule, Footnote 34.

[4] *See* Securities Exchange Act Release No. 34–78786 (September 8, 2016), 81 FR 63242 (September 14, 2016) (SR–CBOE–2016–066).

[5] *See* CBOE Fees Schedule, Equity, ETF and ETN, and Index Options Rate Tables.

[6] *See* CBOE Fees Schedule, Liquidity Provider Sliding Scale for the transaction fees for market-makers based on volume thresholds.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* CBOE Rule 1.1(fff) and (ggg) (including Interpretation and Policy .01 to paragraph (ggg)) for the definition of Professionals.

appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–072 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–2016–072. 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–CBOE–2016–072 and should be submitted on or before November 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25085 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79088; File No. SR–DTC–2016–009]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify Certain Rules Provisions Relating to Pledges

October 12, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4,[2] notice is hereby given that on October 3, 2016, The Depository Trust Company (''DTC'') 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of modifications to the DTC Rules, By-laws and Organization Certificate (''Rules'') [5] in order to clarify certain provisions relating to DTC's Pledge services, as described in greater detail below.[6]

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Delivery or Pledge of Securities at DTC

DTC holds Eligible Securities on behalf of its Participants and reflects the transfer of interests in those securities by computerized book entry. There are two fundamental types of book-entry transfer under the Rules: Delivery and Pledge. A Delivery or a Pledge may be made (i) free of payment, where no funds are transferred through DTC, or (ii) versus payment through DTC net funds settlement in the ordinary course of business. The clarifying amendments in the proposed rule change relate to Pledges.

A Participant may instruct DTC to Deliver Securities from its Account to the Account of another Participant, in which case ownership of the Securities is transferred to the Receiver. Alternatively, a Participant (in this context, a Pledgor) that is granting a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[6] Capitalized terms not defined herein are defined in the Rules, *supra* note 5.

security interest in the Securities may instruct DTC to Pledge those Securities to the Pledgee Account of its counterparty (the Pledgee), in which case a security interest may be transferred.[7] The Pledgor continues to own the Securities, subject to the Pledge, and the Pledgee may Release the Pledged Securities to the Pledgor. The Rules further provide that the Pledgee may exercise control of the Pledged Securities by instructing DTC to transfer the Pledged Securities to its Participant Account (if it is a Participant) or to the Account of another Participant, in either case, without the further consent of the Pledgor.[8]

As noted above, the characterization of any Pledge depends on agreements between the Pledgor and the Pledgee made outside of DTC. DTC does not inquire into the terms and conditions of those agreements but affords its Participants the means to Pledge the Securities by book-entry and, thereby, to perfect any properly created security interest with Control.[9]

The Rules around Pledges were originally drafted primarily for bank loan transactions, where the Pledgee at DTC was typically a bank, lending to the counterparty Participant/Pledgor against inventory of the Participant held at DTC. If the Pledgee was also a Participant, it might receive the Pledge Versus Payment and fund the loan through DTC net funds settlement. This is rare, however, and most Pledges are made free of payment, against funding outside of DTC.

However, the Rules were not intended to be limited to this scenario; for instance, the definition of Pledgee prior to this proposed rule change allows for Pledgees that are not only banks.[10] DTC also offers Pledge services for transactions that are not bank loans, to Pledgees that are not banks. For example, Participants writing an option to buy or sell securities on an options exchange may pledge securities to the Options Clearing Corporation (''OCC'')[11] to collateralize that option. For this purpose, Participants may pledge the underlying securities to the Pledgee Account of OCC at DTC.[12]

In recognition of the various types of financing or collateral transactions for which a Pledge may be used, this proposed rule change would delete specific references to banks or loans, clarify that other types of financial institutions may be Pledgees, and make conforming changes to selected provisions relating to these matters.[13]

Proposed Rule Changes

The proposed rule change would modify Rule 1 (Definitions) and Rule 2 (Participants and Pledgees) to clarify that the Rules do not require (i) an entity to be a bank or to have engaged in a loan transaction with a Participant in order to qualify as a Pledgee, nor do the Rules require (ii) that Securities underlying a Pledge need to be pledged in connection with a loan. In addition, the definition of Pledgee would be updated to expressly include broker-dealers. Although the definition already allows types of entities other than banks to be Pledgees, the change should eliminate any ambiguity for this group of financial institutions that are already a permitted type of Participant pursuant to Rule 3 (Participants Qualifications).

In addition, pursuant to the proposed rule change, the Rules would be revised for other technical and clarifying changes to:

(i) Clarify in Rule 1 that the terms Collateral and Collateral Monitor are used in the context of the obligations of Participants and that the underlying computations and recording of Collateral and Collateral Monitor relate to the applicable Business Day on which they occur;

(ii) Clarify in Rule 1 that the term Collateral Value is used with respect to the Collateral of a Participant and that computations of Collateral Value relate to the applicable Business Day on which they occur;

(iii) Clarify in Rule 1 that an instruction from a Participant or Pledgee to the Corporation with respect to a Release of a Security credited to a Securities Account constitutes an Entitlement Order (in addition to a Delivery, Pledge or Withdrawal constituting Entitlement Orders as is already stated therein);

(iv) Delete a reference in the Rule 1 definition of Free Delivery that a Free Delivery is made as provided in Rule 9(A) (Transactions in Securities and Money Payments) because Free Deliveries by their nature do not involve money payments through DTC's system;

(v) Clarify in the Rule 1 definition of Free Pledge that a Free Pledge is made as provided in Rule 9(B) (in addition to Section 3 of Rule 2 and as specified in the Procedures) since Rule 9(B) applies to instructions to DTC to effect a Delivery, Pledge, Release or Withdrawal of Securities;

(vi) Specify in the Rule 1 definition of Free Release the section number (*i.e.,* Section 3) of Rule 2 (in addition to Rule 9(B) and the Procedures as already referenced therein) under which the definition of Free Release is provided for rather than stating a general reference to Rule 2 in this regard;

(vii) Clarify the definition of Lender in Rule 1 consistent with the Rules generally to include that other lenders in addition to banks may extend credit to DTC for purposes authorized by the Rules;

(viii) Clarify clause (2) of the definition of Pledge in Rule 1 to eliminate any ambiguity as to the scope of clause (2) by adding the words ''including for purposes of Rule 4(A)'' and the words ''or providing for'' a security interest, so that there can be no doubt that clause (2) also applies to Rule 4(A) of the DTC Rules and that a ''Pledge'' on the books of DTC is not limited to the creation of a security interest but may also provide for a security interest consistent with applicable law;

(ix) Clarify the text of the definition of Pledged Security in Rule 1 to (a) simply state that the term Pledged Security means a Deposited Security which is the subject of a Pledge, rather than stating that the term means a Deposited Security which is the subject of a Free Pledge or Pledge Versus Payment, and (b) delete descriptive language relating to Pledges that is redundant to the meaning of the term Pledge as set forth in Rule 1;

(x) Add language to the definition of Limited Participant in Rule 1 in order to eliminate a potential ambiguity and

[7] The interest transferred is, however, only a security interest if the Pledgor and Pledgee have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied. *See, e.g.,* N.Y. U.C.C. Law § 9–203.

[8] By giving such an instruction to the Corporation, the Pledgee represents that it is acting in accordance with applicable law and agreements. Rule 9(B), Section 1, *supra* note 5. Typically, a Pledgee would take this step only in the event of a default of its Pledgor under the outside agreements governing the Pledge.

[9] *See, e.g.,* N.Y. U.C.C. Law § 8–106 and § 9–106.

[10] Pursuant to Rule 1 and Rule 2, Section 3, *supra* note 5, a Pledgee may be a bank, trust company or other person approved by DTC that enters into an agreement with DTC that is satisfactory to DTC.

[11] OCC is the sole clearing organization for all securities options exchanges, also servicing certain futures markets in the U.S., and is registered as a clearing agency with the Commission and as a derivatives clearing organization with the Commodity Futures Trading Commission. *See* The Options Clearing Corporation Disclosure Framework for Financial Market Infrastructures (January 31, 2016) *available at http://www.optionsclearing.com/components/docs/risk-management/pfmi-disclosures.pdf,* at 6.

[12] *See* DTC Settlement Service Guide (''Guide'') *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.,* at 9.

[13] Note that a Pledgee may but need not be a Participant, if it satisfies the further conditions of the Rules, *supra* note 10. A Pledgee that is not a Participant may not receive a Pledge Versus Payment. Rule 2, Section 3, *supra* note 5.

state that the term Limited Participant does not include a Pledgee; [14]

(xi) Clarify in Section 2 of Rule 2 that a Pledgee (in addition to a Participant) that utilizes the services of DTC for another Person does so as principal so far as the rights of DTC, and other Participants and Pledgees are concerned;

(xii) Clarify text in Section 3 of Rule 2 that a Pledge relates to Deposited Securities rather than Securities in general; and

(xiii) Conform text in Rule 1 and Rule 2 for readability, grammar and usage.

Implementation

The proposed rule change would become effective upon filing with the Commission.

2. Statutory Basis

Section 17A(b)(3)(F) [15] of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes the proposed rule change is consistent with this provision because the proposed rule change consists of technical changes to the texts of the Rules as described above that would provide enhanced clarity with respect to the Participants that may use, and transactions that may be submitted through, DTC Pledge services. Therefore, by clarifying for Participants the types of transactions they may submit for processing through DTC Pledge services, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

*(B) Clearing Agency's Statement on Burden on Competition*

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition because it merely makes technical and clarifying changes to the Rules that do not impact the rights or obligations of Participants.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

[14] Although a Pledgee must sign an agreement with DTC and is bound by the Rules, a Pledgee need not be a Participant (although a Participant may also be a Pledgee), *supra* note 13.

[15] 15 U.S.C. 78q–1(b)(3)(F).

**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) [16] of the Act and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2016–009 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–009. 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–009 and should be submitted on or before November 8, 2016.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25087 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79087; File No. SR-Phlx-2016–86]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Delete or Amend Rule Language Relating to Specialists and Registered Options Traders

October 12, 2016.

On August 12, 2016, NASDAQ PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''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 delete or amend rule language relating to specialists and Registered Options Traders (''ROTs''). The proposed rule change was published for comment in the **Federal Register** on August 31, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78680 (August 25, 2016), 80 FR 60110.

[4] 15 U.S.C. 78s(b)(2).

the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 29, 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 Number SR–Phlx–2016–86).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25086 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Rule 0–4 SEC File No. 270–569, OMB Control No. 3235–0633.

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 (the ''Commission'') has submitted to the Office of Management and Budget a request for approval of the collection of information discussed below.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 (''Act'' or ''Advisers Act'') (15 U.S.C. 80b–1 *et seq.*) entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives up to 3 applications per year submitted under rule 0–4 of the Act seeking relief from various provisions of the Advisers Act and, in addition, up to 9 applications per year submitted under Advisers Act rule 206(4)–5, which addresses certain ''pay to play'' practices and also provides the Commission the authority to grant applications seeking relief from certain of the rule's restrictions. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, the cost for applications ranges from approximately $12,800 for preparing a well-precedented, routine (or otherwise less involved) application to approximately $200,000 to prepare a complex or novel application. We estimate that the Commission receives 1 of the most time-consuming applications annually, 2 applications of medium difficulty, and 9 of the least difficult applications subject to rule 0–4.[1] This distribution gives a total estimated annual cost burden to applicants of filing all applications of $402,200 [(1 × $200,000) + (2 × $43,500) + (9 × $12,800)]. The estimate of annual cost burden is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. 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.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, 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.* Comments must be submitted to OMB within 30 days of this notice.

[1] The estimated 9 least difficult applications include the estimated 9 applications per year submitted under Advisers Act rule 206(4)–5.

Dated: October 11, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25088 Filed 10–17–16; 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:

Rule 6a–4, Form 1–N; SEC File No. 270–496, OMB Control No. 3235–0554.

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 provided for in Rule 6a–4 and Form 1–N, summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.6a–4 and 17 CFR 249.10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'').

Section 6 of the Act [1] sets out a framework for the registration and regulation of national securities exchanges. Under the Commodity Futures Modernization Act of 2000, a futures market may trade security futures products by registering as a national securities exchange. Rule 6a–4 [2] sets forth these registration procedures and directs futures markets to submit a notice registration on Form 1–N.[3] Form 1–N calls for information regarding how the futures market operates, its rules and procedures, corporate governance, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) Amendments to Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the futures market's members; and (4) a monthly report summarizing the futures market's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are futures markets.

The Commission estimates that the total annual burden for all respondents to provide ad hoc amendments [4] to keep the Form 1–N accurate and up to date as required under Rule 6a–4 would be 60 hours (15 hours/respondent per year × 4 respondents [5]) and $400 of miscellaneous clerical expenses. The Commission estimates that the total annual burden for all respondents to provide annual and three-year amendments [6] under Rule 6a–4 would be 88 hours (22 hours/respondent per year × 4 respondents) and $576 ($144 per year × 4 respondents [7]). The Commission estimates that the total annual burden for the filing of the supplemental information [8] and the monthly reports required under Rule 6a–4 would be 24 hours (6 hours/respondent per year × 4 respondents [9]) and $240 of miscellaneous clerical expenses. Thus, the Commission estimates the total annual burden for complying with Rule 6a–4 is 172 hours and $1216 in miscellaneous clerical expenses.

Compliance with Rule 6a–4 is mandatory. Information received in response to Rule 6a–4 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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; 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 under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments 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: October 12, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25089 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78f.

[2] 17 CFR 240.6a–4.

[3] 17 CFR 249.10.

[4] 17 CFR 240.6a–4(b)(1).

[5] The Commission estimates that four exchanges will file amendments with the Commission in order to keep their Form 1–N current.

[6] 17 CFR 240.6a–4(b)(3) and (4).

[7] The Commission notes that while there are currently five Security Futures Product Exchanges, one of those exchanges, NQLX, is dormant.

[8] 17 CFR 240.6a–4(c).

[9] *See supra* footnote 7.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79084; File No. SR–BatsBZX–2016–30]**

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Winklevoss Bitcoin Shares Issued by the Winklevoss Bitcoin Trust

October 12, 2016.

On June 30, 2016, Bats BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Winklevoss Bitcoin Shares (''Shares'') issued by the Winklevoss Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4). The proposed rule change was published for comment in the **Federal Register** on July 14, 2016.[3]

The Commission has received six comment letters on the proposed rule change.[4] On August 23, 2016, pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78262 (Jul. 8, 2016), 81 FR 45554 (''Notice'').

[4] *See* Letters from Robert D. Miller, VP Technical Services, RKL eSolutions (July 11, 2016) (''Miller Letter''); Jorge Stolfi, Full Professor, Institute of Computing UNICAMP (July 13, 2016) (''Stolfi Letter''); Guillaume Lethuillier (July 26, 2016) (''Lethuillier Letter''); Michael B. Casey (July 31, 2016) (''Casey Letter''); Erik A. Aronesty, Sr. Software Engineer, Bloomberg LP (Aug. 2, 2016)

to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

## I. Summary of the Proposal [8]

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] The Shares, which will be registered with the Commission by means of the Trust's Registration Statement,[10] represent units of fractional undivided beneficial interest in and ownership of the Trust. Digital Asset Services, LLC will be the sponsor of the Trust (''Sponsor''). Gemini Trust Company, LLC, the custodian of the Trust (''Custodian''), will hold the deposited bitcoins on behalf of the Trust in a segregated custody account. The Exchange has represented that the Custodian will use its proprietary and patent-pending offline (*i.e.,* air-gapped) cold-storage system to store the Trust's bitcoins.[11]

According to the Exchange, the Trust will hold only bitcoins as an asset.[12] The investment objective of the Trust is for the Shares to track the price of bitcoins, as measured by the spot price at 4:00 p.m. Eastern time on the Gemini Exchange [13] each day the Exchange is open for trading, minus the Trust's liabilities (which include accrued but unpaid fees and expenses). On each business day, the Trust's administrator will use the Gemini Exchange spot price as measured at 4:00 p.m. Eastern time to calculate the Trust's net asset value (''NAV''). The Trust will issue and redeem the Shares in ''Baskets'' only to certain Authorized Participants on an ongoing basis.[14] Creation Baskets will be distributed to the Authorized Participants by the Trust in exchange for the delivery to the Trust of the appropriate number of bitcoins (*i.e.,* bitcoins equal in value to the value of the Shares being purchased). On a redemption, the Trust will distribute bitcoins equal in value to the value of the Shares being redeemed to the redeeming Authorized Participant in exchange for the delivery to the Trust of one or more Baskets. On each business day, the value of a Basket for a creation transaction and the value of a Basket for a redemption transaction will be equal to one another (*i.e.,* each Basket will consist of 50,000 Shares, and the value of the Basket will be equal to the value of 50,000 Shares at the NAV per Share on that day).

## II. Summary of Comment Letters

The Commission has received six comment letters on the proposed rule change.[15] The following is a summary of those letters.

### *A. Timing of the Proposal and Investor Access to Bitcoin*

One commenter states that the proposal is a timely opportunity for the Exchange and investors, and that the proposal will allow investors to invest in the technology without having to deal with the complexity of holding bitcoins directly.[16] Another commenter states that it supports the goals of the Trust and finds the proposal to be appropriate and timely, noting that Bitcoin is in a pivotal year and is maturing, and noting that the average number of daily Bitcoin transactions is currently 200,000, that more than 350,000 unique addresses are being used to hold bitcoins,[17] and that the Bitcoin miners (who validate transaction blocks through computational hashes) conduct more than a billion hashes per second.[18] In addition, the commenter states that, in practice, while using Bitcoin may appear complex and forbidding, based on fear of theft and concerns about legal and tax issues, among other things, the Trust can help a whole category of people to gain access, albeit indirectly, to Bitcoin.[19]

### *B. Need for Additional Control and Security Measures*

With respect to security measures to be implemented by the Trust, one commenter recommends that additional steps mandating ''proof of control'' audits be employed to protect the consumers of this ETP.[20] Specifically, the commenter recommends a monthly ''proof of control'' audit of all of the Trust's bitcoins to be performed by the Custodian and provided to the Sponsor, who should display the signed messages on its Web site to publicly demonstrate proof of control over the bitcoins held by the Trust.[21] According to this commenter, the message to be signed can be the mined hash of a

(''Aronesty Letter''); and Dan Anderson (Aug. 27, 2016) (''Anderson Letter''). All comments on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-30/batsbzx201630.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78653, 81 FR 59256 (Aug. 29, 2016). The Commission designated October 12, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Commission notes that additional information regarding the Trust and the Shares, including investment objectives, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, as well as additional background information about bitcoins and the Bitcoin network, including information relating to Bitcoin network operations, bitcoin transfers and transactions, cryptographic security used in the Bitcoin network, Bitcoin mining and creation of new bitcoins, the mathematically controlled supply of bitcoins, modifications to the Bitcoin protocol, among other things, can be found in the Notice (*see supra* note 3) and the registration statement filed with the Commission on Form S–1 (File No. 333–189752) under the Securities Act of 1933 (''Registration Statement''), as applicable.

[9] *See* BZX Rule 14.11(e)(4)(C) (permitting the listing and trading of ''Commodity-Based Trust Shares,'' defined as a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity).

[10] *See* Registration Statement, *supra* note 8. The Exchange states that the most recent amendment to the Registration Statement was filed on June 29, 2016, and that the Registration Statement will be effective as of the date of any offer and sale pursuant to the Registration Statement.

[11] According to the Exchange, the Custodian is an affiliate of the Sponsor and a New York State-chartered limited liability trust company that operates under the direct supervision and regulatory authority of the New York State Department of Financial Services. The Trust's public Bitcoin addresses are established by the Custodian using its proprietary hardware and software security technology. The Trust will employ security procedures, described in greater detail in the Notice and the Registration Statement, to safeguard the bitcoin assets of the Trust. *See* Notice and Registation Statement, *supra* notes 3 and 8, respectively.

[12] As described in greater detail in the Notice and the Registration Statement, a bitcoin (with a lower case ''b'') is a digital asset that is based on the decentralized, open-source protocol of the peer-to-peer Bitcoin computer network. The Bitcoin network (with a capital ''B'') hosts the decentralized public transaction ledger, known as the ''Blockchain,'' on which all bitcoins are recorded. *See* Notice and Registation Statement, *supra* notes 3 and 8, respectively.

[13] The Gemini Exchange is a digital-asset exchange owned and operated by the Custodian and is an affiliate of the Sponsor.

[14] Each Basket will consist of 50,000 Shares, and the value of the Basket will be equal to the value of 50,000 Shares at their NAV per Share on that day.

[15] *See supra* note 4 and accompanying text.

[16] *See* Miller Letter, *supra* note 4.

[17] Additional information about Bitcoin addresses and storage, mining, bitcoin transfers, and the Blockchain, among other things, can be found in the Notice. *See* Notice, 81 FR at 45556–45561, *supra* note 3.

[18] *See* Lethuillier Letter at 1–2, *supra* note 4.

[19] *See id.* at 2.

[20] *See* Casey Letter, *supra* note 4.

[21] *See id.* at 2.

predetermined block height, which is guaranteed to be both easily verifiable and unknown in advance,[22] and the signatures can be created with the private keys still in cold storage and air-gapped.[23] This commenter notes that publicly identifying the addresses holding the bitcoins adds no risk to them being stolen due to the nature of Bitcoin.[24] According to the commenter, the bitcoins remain secure from even quantum attack as the public key is never revealed, no additional risk is incurred by publishing the proof-of-control audit, and opening control to public audit vastly increases confidence in possession and control of the underlying asset.[25] In addition, the commenter notes that publishing the proof-of-control audit on a monthly basis would not place an undue burden on either the Sponsor or Custodian, as less-regular audits are scheduled in any event.[26]

Another commenter addressed proof-of-control audits, adding that, unlike with non-digital assets, an ''audit'' of assets in bitcoins can be low cost, public, and automated, and that there is no legitimate reason to maintain secrecy of the holdings involved in a trust or exchange.[27] This commenter notes that a well-managed trust should be able to trivially update its proof of assets at least once every day, if not more often (every time a bitcoin is moved or acquired).[28] This commenter proposes that the Commission require that any trust holding bitcoins either (i) maintain insurance on its assets, or (ii) allow for public, daily audit of funds. Without one of those two measures, the commenter states, investors in a bitcoin trust cannot be reasonably assured that their investment is being soundly custodied.[29] The commenter concludes by stating that, given the nature of bitcoins as electronic assets, a public and daily proof, rather than the stated provisions for private audits, should also be considered.[30]

Another commenter states that, according to the proposed rule change, the Custodian's Cold Storage System utilizes multiple-signature (''Multisig'') technology with an ''M-of-N'' signing design that requires a signature from more than one (1) Signer (but fewer than the full complement of potential Signers) in order to move the Trust's bitcoins.[31] The commenter recommends amending the proposal in order to unambiguously specify the M-of-N signing design used to secure the Custodian's Cold Storage System and to require the Trust to notify interested third parties, such as the Commission or, as the case may be, the Trust's insurer, of any modification of the Multisig characteristics in the future.[32] Specifically, this commenter notes that the proposed rule change fails to provide a meaningful description of the security level of the storage system Multisig.[33] The proposal, the commenter asserts, ''merely defines what a [M]ultisig is, in general, while only excluding the extreme cases $M = 1$, insecure, and $M = N$, unpractical.''[34] The commenter states that the present signing design is complicated by the fact that the Signers, which are hardware devices, are activated by Signatories, which are human beings.[35] The commenter states that, as result, the given definition is overly abstract and incomplete. Because the signing design is critical to the safety of the funds, the commenter asserts, ''the Trust should communicate the following elements to the interested third parties such as the Commission or, as the case should be, the Trust's insurer: (i) Exact number of required Signers; (ii) Exact number of potential Signers; (iii) detailed explanation of why the chosen *M-of-N* configuration is adequate; (iv) complete list of the Signatories and what Signer(s) they can activate; and (v) useful information related to the Signatories' keys. . . . ''[36] The commenter adds that the Trust should notify the relevant persons without delay of any modification of any of the above elements: (i) Through (iii) should be publicly announced, and, for security reasons, (iv) and (v) should be notified to the interested third parties only.[37]

### *C. Need for Insurance on the Fund's Holdings*

A commenter notes that ''[b]ecause safety measures cannot prevent thefts from the outside or the inside, [and] because human rationality is inherently bounded,'' he does not support the fact that the Trust's bitcoins are not insured.[38] This commenter further asserts that the Gemini Exchange was able to discover on its own a failure to secure the secret keys that would maintain the safe custody of bitcoins.[39]

### *D. Need for Regulation of the Bitcoin ETP Industry*

One commenter states that, despite the advances in Bitcoin development, owning and controlling bitcoins remains a highly specialized task, which includes secure management of private keys and ''fairly advanced technological know-how.''[40] Because of the difficulty and specialized knowledge required to manage bitcoins, many investors rely on exchanges to act as custodians of their value. As a result, the commenter believes that a Bitcoin ETP is a major milestone and improvement and that it is crucial that the Commission regulate this industry.[41] The commenter concludes by noting that the concerns regarding bitcoin security would be greatly diminished were it possible to trade an ETP backed by bitcoins, rather than the bitcoins themselves.[42]

### *E. Speculative Nature of Bitcoin as an Underlying Digital Asset*

One commenter disagreed with the notion that bitcoins are commodities; rather, the commenter likened bitcoins to be more like ''penny stock'' or shares of a ponzi scheme.[43] The commenter notes that the market price of a bitcoin, like that of a penny stock or ponzi fund, is ''entirely speculative, based on expectations of traders about future prices, which will be based on expectations of future expectations.''[44] The commenter asserts that Bitcoin has the essential characteristics of a penny stock or a pyramid scheme: The profit of early investors comes entirely from the investment of later ones.[45] In the commenter's view, because bitcoins are primarily used for investment, bitcoins should be regulated like a security, in which case they should be regulated the same way a penny stock or ponzi fund would be.[46] The commenter concludes that the proposed ETF does not add any productive mechanism to the underlying bitcoins, but rather makes bitcoins accessible to investments funds, such as retirement funds.[47]

[22] *See id.*
[23] *See id.*
[24] *See id.*
[25] *See id.*
[26] *See id.*
[27] *See* Aronesty Letter, *supra* note 4.
[28] *See id.*
[29] *See id.*
[30] *See id.*
[31] Additional information about the ''M-of-N'' signing design can be found in the Notice. *See* Notice, 81 FR at 45566–45567, *supra* note 3.
[32] *See* Lethuillier Letter at 3, *supra* note 4.
[33] *See id.*
[34] *See id.*
[35] *See id.*
[36] *See id.*
[37] *See id.*
[38] *See* Lethuillier Letter at 2–3, *supra* note 4.
[39] *See id.*
[40] *See* Anderson Letter, *supra* note 4.
[41] *See id.*
[42] *See id.*
[43] *See* Stolfi Letter, *supra* note 4.
[44] *See id.*
[45] *See id.*
[46] *See id.*
[47] *See id.*

*F. Concerns Regarding the Gemini Exchange and the Gemini Exchange Spot Price*

One commenter expresses concerns regarding the Gemini Exchange Spot Price.[48] Specifically, the commenter states, the nominal price of the shares under the proposal is supposed to be tied to the market price of bitcoins at the Gemini Exchange, which is closely tied to the ETP proponents.[49] In addition, the commenter states, the Gemini Exchange has relatively low liquidity and trade volume in bitcoins.[50] The commenter asserts that there is a significant risk that the nominal ETP share price ''will be manipulated, by relatively small trades that manipulate the bitcoin price at that exchange.'' [51]

## III. Proceedings To Determine Whether To Approve or Disapprove SR–BatsBZX–2016–30 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [52] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[53] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [54]

## IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[55]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 8, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 22, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[56] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. The proposed fund, if approved, would be the first exchange-traded product available on U.S. markets to hold a digital asset such as bitcoins, which have neither a physical form (unlike commodities) nor an issuer that is currently registered with any regulatory body (unlike securities, futures, or derivatives), and whose fundamental properties and ownership can, by coordination among a majority of its network processing power, be changed (unlike any of the above). Moreover, as the Exchange acknowledges in its proposal, less than three years ago, the bitcoin exchange then responsible for nearly three-quarters of worldwide bitcoin trading lost a substantial amount of its bitcoin holdings through computer hacking or fraud and failed.[57] What are commenters' views about the current stability, resilience, fairness, and efficiency of the markets on which bitcoina are traded? What are commenters' views on whether an asset with the novel and unique properties of a bitcoin is an appropriate underlying asset for a product that will be traded on a national securities exchange? What are commenters' views on the risk of loss via computer hacking posed by such an asset? What are commenters' views on whether an ETP based on such an asset would be susceptible to manipulation?

2. According to the Exchange, the Gemini Exchange Spot Price is representative of the accurate price of a bitcoin because of the positive price-discovery attributes of the Gemini Exchange marketplace. What are commenters' views on the manner in which the Trust proposes to value its holdings?

3. According to the Exchange, the Gemini Exchange is a Digital Asset exchange owned and operated by the Custodian and is an affiliate of the Sponsor. What are commenters' views regarding whether any potential conflict of interest or other issue might arise due to the relationship between entities such as the Sponsor, the Custodian, and the Gemini Exchange?

4. According to several commenters, there is a need for the Exchange to provide additional information regarding ''proof of control'' auditing, multisig protocols, and insurance with respect to the bitcoins held in custody on behalf of the Trust, in the interest of adequate security and investor confidence in bitcoin control. What are commenters' views on these recommendations regarding additional security, control, and insurance measures?

5. A commenter notes that the Gemini Exchange has relatively low liquidity and trading volume in bitcoins and that there is a significant risk that the nominal ETP share price ''will be manipulated, by relatively small trades that manipulate the bitcoin price at that exchange.'' [58] What are commenters' views on the concerns expressed by this commenter? What are commenters' views regarding the susceptibility of the price of the Shares to manipulation, considering that the NAV would be based on the spot price of a single bitcoin exchange? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin market, and thus the suitability of bitcoins as an underlying asset for an ETP?

6. The Exchange asserts that the widespread availability of information

[48] *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] 15 U.S.C. 78s(b)(2)(B).

[53] *Id.*

[54] 15 U.S.C. 78f(b)(5).

[55] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[56] *See supra* note 3.

[57] *See* Notice, *supra* note 3, at 25 n.19.

[58] *See* Stolfi Letter, *supra* note 4.

regarding Bitcoin, the Trust, and the Shares, combined with the ability of Authorized Participants to create and redeem Baskets each Business Day, thereby utilizing the arbitrage mechanism, will be sufficient for market participants to value and trade the Shares in a manner that will not lead to significant deviations between intraday Best Bid/Best Ask and the Intraday Indicative Value or between the Best Bid/Best Ask and the NAV. In addition, the Exchange asserts that the numerous options for buying and selling bitcoins will both provide Authorized Participants with many options for hedging their positions and provide market participants generally with potential arbitrage opportunities, further strengthening the arbitrage mechanism as it relates to the Shares. What are commenters' views regarding these statements? Do commenters' agree or disagree with the assertion that Authorized Participants and other market makers will be able to make efficient and liquid markets in the Shares at prices generally in line with the NAV? What are commenters' views on whether the relationship between the Gemini Exchange and the Trust's Sponsor and Custodian might affect the arbitrage mechanism?

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–2016–30 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 Numbers SR–BatsBZX–2016–30. 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 these filings 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–BatsBZX–2016–30 and should be submitted on or before November 8, 2016. Rebuttal comments should be submitted by November 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–25082 Filed 10–17–16; 8:45 am]

**BILLING CODE 8011–01–P**

[59] 17 CFR 200.30–3(a)(57).

## SMALL BUSINESS ADMINISTRATION

**[License No. 05/05–0315]**

### Northcreek Mezzanine Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Northcreek Mezzanine Fund II, L.P., 312 Walnut Street, Suite 2310 Cincinnati, OH 45202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Northcreek Mezzanine Fund I, L.P. and Northcreek Mezzanine Fund II, L.P. propose to provide debt and equity financing to FBM Holdings LLC, 100 Winners Circle, Brentwood, TN 37027.

The financing is brought within the purview of § 107.730(a)(2) of the Regulations because Northcreek Mezzanine Fund I, L.P. is currently invested in FBM Holdings, LLC and because of its level of ownership, FBM Holdings LLC is an Associate. Northcreek Mezzanine Fund I, L.P. and Northcreek Mezzanine Fund II, L.P. are also Associates and are seeking to co-invest in FBM Holdings, LLC. Therefore this transaction is considered financing an Associate, requiring prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: September 28, 2016.

**Mark L. Walsh,**

*Associate Administrator for Office of Investment and Innovation.*

[FR Doc. 2016–25078 Filed 10–17–16; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #14907 and #14908]**

### IOWA Disaster #IA–00067

**AGENCY:** U.S. Small Business Administration

**ACTION:** Notice

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of IOWA dated 10/11/2016.

*Incident:* Severe Weather and Flooding

*Incident Period:* 09/21/2016 through 10/03/2016

**EFFECTIVE DATE:** 10/11/2016

*Physical Loan Application Deadline Date:* 12/12/2016.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/11/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Butler.

Contiguous Counties: Iowa.

Black Hawk, Bremer, Cerro Gordo, Chickasaw, Floyd, Franklin, Grundy, Hardin.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.125 |
| Homeowners without Credit Available Elsewhere | 1.563 |
| Businesses with Credit Available Elsewhere | 6.250 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.625 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.625 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.625 |

The number assigned to this disaster for physical damage is 14907 B and for economic injury is 14908 0.

The State which received an EIDL Declaration # is IOWA.

(Catalog of Federal Domestic Assistance Number 59008)

**Maria Contreras-Sweet,**

*Administrator.*

[FR Doc. 2016–25081 Filed 10–17–16; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #14911 and #14912]**

### North Carolina Disaster #NC–00081

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4285–DR), dated 10/10/2016.

*Incident:* Hurricane Matthew

*Incident Period:* 10/04/2016 and continuing.

*Effective Date:* 10/10/2016.

*Physical Loan Application Deadline Date:* 12/09/2016.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/10/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/10/2016, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Beaufort, Bladen, Columbus, Cumberland, Edgecombe, Hoke, Lenoir, Nash, Pitt, Robeson.

Contiguous Counties (Economic Injury Loans Only):

North Carolina: Brunswick, Craven, Duplin, Franklin, Greene, Halifax, Harnett, Hyde, Johnston, Jones, Martin, Moore, Pamlico, Pender, Richmond, Sampson, Scotland, Wake, Warren, Washington, Wayne, Wilson.

South Carolina: Dillon, Horry, Marlboro.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.125 |
| Homeowners Without Credit Available Elsewhere | 1.563 |
| Businesses With Credit Available Elsewhere | 6.250 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.625 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.625 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.625 |

The number assigned to this disaster for physical damage is 149118 and for economic injury is 149120.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2016–25091 Filed 10–17–16; 8:45 am]

**BILLING CODE 8025–01–P**

## Small Business Administration

**[Disaster Declaration #14909 and #14910]**

### HAWAII Disaster #HI–00040

**AGENCY:** U.S. Small Business Administration

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–4282–DR), dated 10/06/2016.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 09/11/2016 through 09/14/2016.

*Effective Date:* 10/06/2016.

*Physical Loan Application Deadline Date:* 12/05/2016.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/06/2017.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/06/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Maui.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations With Credit Available Elsewhere | 2.625 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.625 |
| *For Economic Injury:* | |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.625 |

The number assigned to this disaster for physical damage is 14909B and for economic injury is 14910B.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2016–25077 Filed 10–17–16; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 9756]**

### Regional Meeting of the Binational Bridges and Border Crossings Group in San Diego, California

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Delegates from the United States and Mexican governments, the states of California and Arizona, and the Mexican states of Baja California and Sonora will participate in a regional meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on Wednesday, October 19, 2016 in San Diego, California. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure, and to exchange views on policy as well as technical information. This meeting will include a public session on Wednesday, October 19, 2016, from 8:45 a.m. until 10:45 a.m. This session will allow proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

**FOR FURTHER INFORMATION CONTACT:** For further information on the meeting and to attend the public session, please contact the Mexico Desk's Border Affairs Unit, via email at *WHABorderAffairs@state.gov,* by phone at 202–647–9894, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

Dated: October 12, 2016.

**Colleen A. Hoey,**

*Office of Mexican Affairs, Department of State.*

[FR Doc. 2016–25170 Filed 10–17–16; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2016–103]**

### Petition for Exemption; Summary of Petition Received; Air Tractor Inc.

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before November 7, 2016.

**ADDRESSES:** Send comments identified by docket number {FAA–2016–8929} using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

**FOR FURTHER INFORMATION CONTACT:** Alphonso Pendergrass (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 7, 2016.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2016–8929.

*Petitioner:* Air Tractor Inc.

*Section(s) of 14 CFR Affected:* § 21.17(c) and (d).

*Description of Relief Sought:* Air Tractor requests that it be exempt from the normal 3-year duration for an application for type certification per 14 CFR 21.17(c) for its AT–1002, Type certificate project. Air Tractor also requests to be exempt from 14 CFR 21.17(d) to keep the projects originally established airworthiness requirements for no less than 4 years from the date of extension.

[FR Doc. 2016–25096 Filed 10–17–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA–2016–0028]**

### Buy America Nationwide Waiver Notification for Commercially Available Off-the-Shelf (COTS) Products With Steel or Iron Components and for Steel Tie Wire Permanently Incorporated in Precast Concrete Products

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FHWA is proposing two nationwide waivers from the Buy America requirements for COTS products with steel or iron components and steel tie wire permanently incorporated into precast concrete products.

Specialty steel or iron items, or any steel or iron item that is built to contract specification for a Federal-aid project, would remain subject to FHWA's Buy America requirements. The FHWA is requesting comments on these two proposed nationwide waivers, including the impact this proposal would have on State and local agencies administering Federal-aid projects; contractors; materials suppliers; railroads and utilities performing work related to a Federal-aid highway construction contract; and manufacturers.

**DATES:** Comments must be received on or before December 2, 2016.

**ADDRESSES:** Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will

be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, 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.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, *Gerald.Yakowenko@dot.gov,* or Mr. William Winne, FHWA Office of the Chief Counsel, (202) 366–1397, *William.Winne@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

## Background

The FHWA's Buy America regulation at 23 CFR 635.410 requires a domestic manufacturing process for steel or iron materials that are permanently incorporated into a Federal-aid construction project. The FHWA interprets domestic manufacturing process to include steel manufacturing processes such as melting, rolling, cutting, welding, fabrication, and the process of applying a coating. The regulation is based on the statutory mandate in 23 U.S.C. 313(a).

The statute requires the application of the FHWA Buy America requirements to any project receiving Federal assistance under Title 23; however, the statute provides exceptions if the Secretary finds: (1) The application of the requirement would be inconsistent with the public interest; (2) where materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. See 23 U.S.C. 313(b).

A request for a waiver may be made for specific projects, for certain materials or products in specific geographic areas, or waivers regarding nationwide public interest or availability issues. See 23 U.S.C. 313(c). Not less than 15 days before waiving any Buy America requirement for Federal-aid highways projects, FHWA is required to notify the public on its intent to issue such a waiver.[1] The FHWA's implementing regulations also allow the Agency to publish its decisions on nationwide waivers in the **Federal Register** for public comment. 23 CFR 635.410(c)(6). Based on the Secretary's authority to grant waivers from Buy America, FHWA has issued three nationwide waivers: for manufactured products other than steel and iron manufactured products (1983), for certain ferry boat equipment (1994), and for pig iron and processed, pelletized, and reduced iron ores (1995).

The FHWA Buy America regulations also contain a regulatory exception for minimal use of foreign iron and steel. See 23 CFR 635.410(b)(4). This exception allows for a small use of foreign iron and steel materials if ''the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater.'' The FHWA expects that the contracting agency will maintain a running list of foreign steel or iron material as a project proceeds to be able to confirm compliance with this provision. The intent of this provision was to ''eliminate an administrative burden placed on the States for truly minor items.'' 48 FR 1946, 1947 (Jan. 17, 1983); 48 FR 53099, 53103 (Nov. 25, 1983).

## Manufactured Products Waiver of 1983

In its final rule issued on November 25, 1983, FHWA also discussed a nationwide waiver for manufactured products other than steel and cement manufactured products. 48 FR 53099, 53102 (Nov. 25, 1983). In the final rule, FHWA stated that materials and products other than steel, cement, asphalt, and natural materials comprised a small percent of the highway construction program, and it was very difficult to identify the various materials and trace their origin. *Id.* The FHWA found that it was ''in the public interest to waive the application of Buy America to manufactured products other than steel and cement[2] manufactured products.''

As a result of the heightened awareness on projects funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), project inspectors and auditors spent significant resources examining compliance with FHWA's Buy America requirements for all steel or iron products in highway projects and noted compliance issues with Buy America certifications. In working to address these findings, FHWA realized that there was confusion regarding the application of Buy America requirements to COTS products with steel or iron components, such as sinks, toilets, faucets, traffic controller cabinets, and circuit breaker panels. Some FHWA Divisions were requiring Buy America compliance for steel and iron components and subcomponents of manufactured products. Other Divisions were treating these steel or iron components of manufactured products as excluded from Buy America requirements through the manufactured products waiver. On December 21, 2012, FHWA issued a memorandum intended

[1] Section 122, Division L, of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) provides: ''Not less than 15 days prior to waiving, under his or her statutory authority, any Buy America requirement for Federal-aid highways projects, the Secretary of Transportation shall make an informal public notice and comment opportunity on the intent to issue such waiver and the reasons therefor.'' This provision has been included in each Appropriations Act since 2008. In addition, Section 117(a) of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244) requires that

(1) If the Secretary of Transportation makes a finding under section 313(b) of Title 23, United States Code, with respect to a project, the Secretary shall:

(A) publish in the **Federal Register**, before the date on which such finding takes effect, a detailed written justification as to the reasons that such finding is needed; and

(B) provide notice of such finding and an opportunity for public comment on such finding for a period of not to exceed 60 days.

(2) Nothing in paragraph (1) shall be construed to require the effective date of a finding referred to a in paragraph (1) to be delayed until after the close of the public comment period referred to in paragraph (1)(B).

The FHWA interprets both of these provisions to apply to project-specific waiver requests, not to nationwide waivers, but the Agency is choosing to follow a similar process for nationwide waivers. For nationwide waivers, the Agency will publish a **Federal Register** Notice on the intent to issue the waiver with an opportunity for public review and comment, followed by a **Federal Register** Notice on the final decision of the waiver after consideration of comments. The Agency believes that the waiver should not take effect before this process is complete. This process is consistent with 23 CFR 635.410(c)(6) and the nationwide waivers issued in the past.

[2] Congress modified the 1983 Buy America statute to repeal the statute's coverage of cement (Pub. L. 98–229, Section 10 (1984) and to add coverage for iron (Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102–240, Section 1048(a) (1991)).

to clarify the scope and meaning of the manufactured products waiver and indicated that the waiver was intended to encompass miscellaneous steel or iron components and subcomponents that are commonly available as off-the-shelf products.[3]

**December 2015 District Court Decision**

On October 12, 2014, the United Steelworkers Union and a group of eight manufacturing corporations filed a lawsuit challenging FHWA's December 21, 2012, Buy America memorandum, claiming that it was a substantive rule that required notice and comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553.[4]

On December 22, 2015, the U.S. District Court for the District of Columbia rendered its decision in the United Steelworkers Union case. The Court found against FHWA and vacated the December 21, 2012, memorandum. The Court also found that the COTS exception was a separate waiver from the manufactured products waiver in the November 25, 1983, rule. *Id.* at 26. The court concluded, as a result, that FHWA had to provide notice and an opportunity for comment in accordance with *SAFETEA–LU Technical Correction Act* of 2008 and the *Consolidated and Further Continuing Appropriations Act,* 2012 before the Agency could implement that exception.[5]

The decision returned matters to pre-2012 memorandum conditions, when there was ambiguity and uncertainty on whether the FHWA Buy America requirements applied to COTS products with steel or iron components. As before December 21, 2012, FHWA Divisions and State DOTs are currently left to interpret the applicability of Buy America in this gray area, creating potential inconsistency in the application of Buy America. In response, FHWA evaluated options to achieve greater nationwide uniformity in the application of its Buy America requirements in a manner consistent with the Court's ruling. The FHWA has also received a number of requests to take action in this regard.[6]

**Covered Materials**

In keeping with the statutory text and the purpose of the Buy America requirements, the following covered materials, among others, have been and continue to be subject to Buy America requirements:

(1) Structural steel (any structural steel shapes used as load-bearing members);

(2) reinforcing steel used in cast-in-place, precast, pre-stressed or post-tensioned concrete products (including reinforcing steel couplers, connectors, wire mesh, steel fibers, pre-stressing or post-tensioning strand, wire rope or cable);

(3) steel or iron materials used in pavements, bridges, tunnels, or other structures: High strength bolts/nuts (any threaded fastening element with a nominal diameter greater than ¾ inch inclusive and any matching components to it such as nuts and washers), anchor bolts, anchor rods, dowel bars, bridge bearings, and cable wire/strand;

(4) motor/machinery brakes and other equipment for moveable structures;

(5) guardrail, guardrail posts, offset blocks, guardrail related hardware, transitions, end sections, end treatments, terminals, cable barriers;

(6) steel fencing or steel fabric material, fence posts, fence rails;

(7) steel or iron pipe, casing, conduit, ducting, fire hydrants, manhole covers, rims, risers, drop inlet grates;

(8) mast arms, poles, cross arms, standards, trusses, or supporting structural members for signs, luminaires, or traffic control systems;

(9) incidental steel or iron items that are not explicitly defined in the contract documents but are permanently incorporated. This includes items that are impractical to remove due to design, construction, staging, or other functional requirements. If a steel or iron item is necessary for construction and it is impossible or impractical to remove, then Buy America requirements apply. This category includes, but is not limited to: Corrugated steel stay-in-place forms, sheet piling, steel casing for micropile construction, tie wire, filler metal/green rod for welding operations, etc.;[7]

(10) steel or iron materials that are specified and manufactured for a specific Federal-aid project (for example, a lifting cable that is designed and manufactured for a specific project, or ductile iron pipe fittings built to contractor specifications); and

(11) rails for railroad or transit infrastructure funded under Title 23.

Pursuant to 23 U.S.C. 313(b), however, FHWA finds that the application of the Buy America requirements in certain limited circumstances is inconsistent with the public interest. Accordingly, FHWA is proposing two new nationwide waivers.

**Proposed Nationwide Waivers**

The FHWA continues to carry out and require compliance with the Buy America requirements, but it is also cognizant of the practical and administrative issues associated with its implementation. Contracting agencies must document and trace the origin of all steel components for products not waived under the 1983 regulations that are permanently incorporated in a Federal-aid project. If they are not able to document the domestic manufacturing processes for steel components (melted and manufactured in the United States), they must assume the steel is non-domestic and track each component to ensure compliance with the minimal use provisions of 23 CFR 635.410(b)(4) or request a waiver for each product under 23 CFR 635.410(c)(1).

From a practical viewpoint, manufacturers of electrical and mechanical products rely on multiple suppliers, both domestic and foreign, to source steel components for their products. Some steel components may be comprised of subcomponents that originate from different global suppliers with separate manufacturing processes. For many electrical and mechanical products, the Federal-aid highway program represents only a small fraction of the market for that product. For a contracting agency to comply with the Buy America requirements, it would need manufacturers to source and track components separately from its suppliers and provide certifications for all steel components. Only upon issuance of such certifications by manufacturers would contracting agencies be able to properly certify compliance with Buy America requirements. Thus, manufacturers would need to implement new sourcing, inventory, and tracking processes for contracting agencies to fully comply with the Buy America requirements.

Several State DOTs recently informed FHWA that manufacturer's certifications documenting compliance with the Buy America requirements are not available, and as a result, the State DOT must assume that all of the steel components are non-domestic and request a waiver.

[3] *Memorandum from John Baxter to the Divisions—Clarification of Manufactured Products under Buy America* (Dec. 21, 2012), *http://www.fhwa.dot.gov/construction/contracts/121221.cfm.*

[4] *United Steelworkers Union, et al.* v. *FHWA,* No. 13–1301 (D.D.C. Dec. 22, 2015).

[5] See footnote 1.

[6] These requests have been placed in the docket for this notice at *www.regulations.gov* using the docket number identified in the heading of this notice.

[7] An interpretation of the applicability of Buy America requirements to items that are used or permanently incorporated is addressed in an agency policy memo dated June 13, 2011 (see: *http://www.fhwa.dot.gov/construction/contracts/110613.cfm*).

Oregon DOT's January 15, 2016, waiver request for the steel components of more than 50 manufactured products illustrates the challenges and administrative burdens faced by contracting agencies.

The FHWA recognizes that verifying compliance with the Buy America requirements may be burdensome for some materials. For others, it is virtually impossible to trace the processes from the melting of the steel through the manufacturing and coating of the steel or iron materials. The FHWA believes that requiring contracting agencies to document the origin of every amount of steel or iron subcomponent of commercially available off-the-shelf products places an unreasonable burden on recipients and increases their administrative costs without significantly furthering the objectives and policies of Buy America. Therefore, FHWA seeks comments about the administrative costs of documenting the origin of steel or iron used in subcomponents of COTS products.

*Proposed Nationwide Waiver for Commercially Available Off-the-Shelf Products With Steel or Iron Components*

The first proposed nationwide waiver is for COTS incorporating steel or iron components. The term COTS means any manufactured product incorporating steel or iron components (excluding the covered materials discussed above, vehicles, or tie wire permanently incorporated in precast concrete) that:

(1) Is available and sold to the public in the retail and wholesale market;

(2) is offered to a contracting agency, under a contract or subcontract at any tier, without modification, and in the same form in which it is sold in the retail or wholesale market; and

(3) is broadly used in the construction industry.

The COTS products are limited to manufactured products with steel or iron components, such as sinks, faucets, toilets, door hinges, electrical products, and ITS hardware that are not made specifically for highway projects but are incidental to such projects. By contrast, products produced of steel or iron that are permanent features of a highway project that are specifically manufactured or modified for construction of such projects are excluded from COTS items and must comply with FHWA's Buy America requirements.

The FHWA believes that tracking the country of origin of steel or iron components of COTS places an unreasonable administrative burden on Federal-aid recipients, distributors, and contractors, including small businesses. These entities would likely have to establish costly material inventory tracking systems to ensure that all steel or iron components meet the Buy America requirements. The FHWA believes that manufacturers, distributors, contractors, and Federal-aid recipients would incur significant and unreasonable costs to document and track information regarding manufacturing operations. The FHWA also believes that steel or iron components of COTS constitute a relatively small percentage of the overall steel and iron materials used on Federal-aid projects, and the administrative costs associated with ensuring compliance would be disproportional to the value of the material. The FHWA believes that it may be in the public's interest that related administrative costs are better allocated to other oversight actions that reduce costs or accelerate project delivery. Accordingly, and pursuant to the exception provided under 23 U.S.C. 313(b) when application of the Buy America requirements is inconsistent with the public interest, FHWA proposes to issue this nationwide waiver for COTS with steel or iron components.

*Proposed Temporary Nationwide Waiver for Steel Tie Wire Permanently Incorporated in Precast Concrete Products*

The second proposed nationwide waiver is for steel tie wire that is permanently incorporated into precast concrete products. Steel tie wire may be shown or referenced in standard plans, specifications, special provisions, or are standard industry practice. Even when tie wire is permanently incorporated in a precast concrete product, it is considered incidental to the design and construction of the product. Steel tie wire facilitates or allows the final product to be constructed but does not provide a structural function in the final product.

Manufacturers in the precast concrete industry rely extensively on rebar tying guns to tie reinforcing steel. The benefits of using rebar tying guns include the reduction of repetitive stress workplace injuries, such as carpal tunnel syndrome, and an increase in production. These rebar tying guns use tie wire supplied on spools. Although tie wire is domestically produced, patent requirements for the tying guns that are widely used by the precast concrete industry limit the use of tie wire to non-domestic sources. The patented design of these guns requires the use of specific tie wire spools, which are not compatible with the tie wire that is currently produced in the United States. Although there may be companies interested and able to supply Buy America-compliant tie wire, the supply of this product may be limited to specific applications due to its lack of compatibility with the rebar tying guns. The FHWA does not want to discourage innovation or create artificial barriers to continued process improvements in the construction industry. However, the Agency recognizes that more time may be needed to accommodate the demand for Buy America-compliant tie wire (supplied on spools for the proprietary tie wire guns commonly used in the industry) because it may not be domestically produced in sufficient and reasonably available quantities at this time.

The FHWA recognizes the impacts to the precast concrete industry related to the Court's decision to vacate FHWA's December 21, 2012, memorandum, and believes that it is appropriate to issue a 1-year temporary waiver of the Buy America requirements to allow suppliers in the precast industry to provide Buy America compliant tie wire. Accordingly, and pursuant to the exception provided under 23 U.S.C. 313(b) when materials and products are not produced in the United States in sufficient and reasonably available quantities, FHWA proposes to temporarily waive Buy America requirements for tie wire permanently incorporated into precast concrete products for a 1-year period from the date of issuance of the waiver. At the end of the 1-year period, FHWA will assess whether to continue the waiver or apply Buy America requirements to tie wire permanently incorporated into precast concrete products. The FHWA also seeks comments about the domestic availability of tie wire and lifting devices.

**Other Steel and Iron Products Permanently Incorporated in Precast Concrete Products**

The FHWA is considering whether to issue a nationwide waiver for specialized lifting devices incorporated in precast concrete products. Over the years, suppliers in the precast industry have developed many types of specialized steel lifting devices that are designed and used to lift and move different precast concrete products used in highway and infrastructure projects. Many in the precast concrete industry may have come to rely on non-domestic lifting devices. The Court's decision to vacate FHWA's December 21, 2012, memorandum may result in an increase in demand for Buy America compliant

lifting devices. It is uncertain whether the current supply of Buy America compliant lifting devices would be sufficient to meet such an increase in demand. The Agency recognizes that more time may be needed to accommodate an increase in demand for Buy America compliant lifting devices. The FHWA seeks comments and additional information about the supply and availability of Buy America compliant lifting devices that are permanently incorporated into precast concrete products.

**Invitation for Public Comment**

The FHWA requests public comment and input on this proposal for two nationwide waivers for manufactured items. Specifically, FHWA invites public comment on the following issues:

*Proposed Nationwide Waiver for Commercially Available Off-the-Shelf Products With Steel or Iron Components*

1. Does the COTS definition provide a reasonable description of commercially available off-the-shelf steel or iron items?
2. Are there COTS products that should be on the covered steel or iron materials list? If so, why?
3. Should there be a per-item cost cap for COTS items? If so, what should the cap be?
4. What is the burden, time, and cost associated with enforcing or complying with Buy America requirements for COTS items?
5. Are certifications and/or other documents available to allow owner agencies to trace and verify domestic melting and manufacturing processes for steel or iron products?
6. Does your agency or company track costs associated with the administrative or compliance efforts associated with the Buy America requirements?

*Proposed Temporary Nationwide Waiver for Steel Tie Wire Permanently Incorporated in Precast Concrete Products*

7. Is the temporary waiver for tie wire permanently incorporated into precast concrete necessary and appropriate, and if yes, is 1 year the appropriate length?

*Additional Question Regarding Other Steel and Iron Products Permanently Incorporated in Precast Concrete Products*

8. Is domestically produced supply sufficient to meet demand for Buy America compliant lifting devices permanently incorporated into precast concrete?
9. Does your agency or company have concerns regarding the administrative burden, time, and cost associated with enforcing or complying with Buy America requirements on steel or iron products permanently incorporated into precast concrete products?
10. Does your agency or company have concerns regarding the availability of materials and products that comply with Buy America requirements on steel or iron products permanently incorporated into precast concrete products?
11. Does your State DOT have data that document the relative use of steel or iron products incorporated into precast products in comparison with all steel/iron materials used in your highway program?

(Authority: 23 U.S.C. 313; 23 CFR 635.410)

Dated: October 11, 2016.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2016–25116 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Transfer of Federally Assisted Facility

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of intent to transfer Federally assisted facility.

**SUMMARY:** Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Louisiana Department of Transportation and Development (LaDOTD) intends to transfer property located at 415 Jackson Avenue, New Orleans, Louisiana, to the Port of New Orleans, a political subdivision of the State of Louisiana. LaDOTD used the property, building, and improvements for a ferry terminal until September 2009. The property is no longer being used to support ferry service.

The Port of New Orleans (Port) intends to use the property for administrative purposes to support its activities. The transfer will provide benefits to the Port by providing space for Port personnel to carry out administrative functions. The transfer will support efforts by the Port to expand container terminal capacity to address and capitalize projected growth in container traffic. In addition, Port ownership of the property and building will maintain a position of security in location and afford continuous visibility of the river from Port property. The Port plans to use the property and building for a minimum of 5 years.

**DATES:** *Effective Date:* Any Federal agency interested in acquiring the property and building must notify the FTA Region VI office of its interest no later than November 17, 2016.

**ADDRESSES:** Interested parties should notify the Regional Office by writing to Robert C. Patrick, Regional Administrator, Federal Transit Administration, 819 Taylor Street, Room 14A02, Fort Worth, TX 76102.

**FOR FURTHER INFORMATION CONTACT:** Eldridge Onco, Regional Counsel, (817) 978–0557.

**SUPPLEMENTARY INFORMATION:**

**Background**

49 U.S.C. 5334(h) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(1).

**Determinations**

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

**Federal Interest in Acquiring Land or Facility**

This document implements the requirements of 49 U.S.C. 5334(h)(1)(D)

of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA. If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

**Additional Description of Land or Facility**

The total property consists of a mostly rectangular shaped 15,029 square foot area parcel, which is currently paved and improved with a one and one-half story concrete ferry terminal building, along with a portion of a pedestrian bridge. The property is located along the west bank of the Mississippi River along Tchoupitoulas Street and Jackson Street Avenue. The property is located in an area surrounded by wharf facilities operated by the Port of New Orleans. The interior and exterior of the building is in need of significant repair. The property is no longer being used to support ferry service.

If no Federal agency is interested in acquiring the property, building, and improvements, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

**Robert C. Patrick,**

*Regional Administrator, Federal Transit Administration Region VI.*

[FR Doc. 2016–25121 Filed 10–17–16; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 8, 2016 (81 FR 12196). The agency received one comment. This comment was supportive of the proposed survey and did not provide any suggestions for the survey's implementation or design.

**DATES:** Comments must be submitted on or before November 17, 2016.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Alan Block, Office of Behavioral Safety Research (NPD–310), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–499, Washington, DC 20590. Mr. Block's phone number is 202–366–6401 and his email address is *Alan.Block@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Awareness & Availability of Child Passenger Safety Information Resources (AACPSIR).

*Type of Request:* New information collection requirement.

*Abstract:* NHTSA's Fatality Analysis Reporting System shows that in 2014 an average of 3 children under the age of 15 were killed and an estimated 458 children were injured each day in traffic crashes. Child restraint systems (CRSs) are effective at reducing the risk of injury during motor vehicle crashes. Child safety seats have been shown to reduce fatal injury by 71 percent for infants (under 1 year old) and by 54 percent for toddlers (1 to 4 years old) in passenger cars. For infants and toddlers in light trucks, the corresponding reductions are 58 percent and 59 percent, respectively. However, a 2002 NHTSA study estimated a misuse rate of 73 percent. If booster seats for older children were removed, the misuse figure exceeded 80 percent. The LATCH (Lower Anchors and Tethers for Children) child restraint technology was new at the time of the 2002 study, and few of the observed restraints were LATCH systems. While the purpose of LATCH is to make it easier for parents to correctly install child restraints, a 2006 NHTSA study still found loose or twisted straps/tethers and incorrect attachments when using LATCH. Subsequent research has found that incorrect use of a CRS places the child at an increased risk of both fatal and non-fatal injuries

Incorrect selection of a CRS appropriate for the child's height and weight, and premature promotion, are additional factors that increase the risk of injury to a child in the event of a crash. While infants should always ride in rear-facing car seats, NHTSA's 2013 National Survey of the Use of Booster Seats (NSUBS) observed 10 percent of children under age 1 were not in rear-facing car seats; most of these infants were prematurely graduated to forward-facing car seats. Children 1 to 3 years old should ride either in rear-facing or front-facing car seats, but NSUBS found that 9 percent of children 1 to 3 years old were prematurely graduated to booster seats and 3 percent to seat belts. Children ages 4 to 7 should either ride in forward-facing car seats or booster seats. However, 24 percent were observed in seat belts, and 9 percent were unrestrained.

Many information resources are available to aid parents and caregivers with proper CRS selection, installation, and use, including hands-on instruction. Research has shown that hands-on instruction on CRS installation, such as that provided by NHTSA and Safe Kids Worldwide at Child Car Seat Inspection Stations nationwide, is effective in reducing misuse. Unfortunately, this resource seems to be underutilized. Only about one out of ten drivers interviewed for NHTSA's National Child Restraint Use Special Study reported having their CRS inspected at an inspection station. At present, it is unclear what deters and what encourages use of CRS inspection stations and Child Passenger Safety Technicians.

To help increase correct use of CRS and utilization of inspection stations, approval is requested to conduct a national web-based survey to estimate parent and caregiver general knowledge of child passenger safety (CPS) information resources, awareness and use of CRS inspection stations, and barriers to CRS inspection station use. The survey will also examine the relationship between parent and caregiver confidence in installing CRSs, risk perception, and intent to visit an inspection station. The proposed survey is titled, ''Awareness & Availability of Child Passenger Safety Information Resources'' (AACPSIR).

*Affected Public:* The potential respondents would be people aged 18 years or older who regularly transport children between the ages of 0 and 9 in their personal vehicles. NHTSA would send survey requests to a sufficient number of households to obtain 1,400 completed web-based interviews. The requests would be sent via postal mail. The screener would ask the member of the household who most frequently drives children to complete the survey. NHTSA considers this to be the person

in the household most likely to seek CPS information and pursue hands-on instruction on CRS use at an inspection station, and therefore the most appropriate respondent for this survey. Each respondent would complete a single survey; there will be no request for additional follow-up information or response.

*Estimated Total Annual Burden:* The total respondent burden for this data collection would be 990 hours. NHTSA will contact a maximum of 32,000 households via an invitation letter to obtain 1,400 completed interviews. Of the 32,000 households contacted, NHTSA estimates that 7,680 potential respondents would log onto the Web site and take a 5 minute eligibility screener for an estimated burden of 640 hours. Of those who take the eligibility screener, NHTSA estimates that 1,400 would complete the full survey, which would average 15 minutes in length, for an estimated burden of 350 hours.

*Comments are invited on the following:*

- 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;
- The accuracy of the agency's estimate of the burden of the proposed information collection;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued on: October 13, 2016.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2016–25122 Filed 10–17–16; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2016–0114; Notice No. 2016–19]**

### Hazardous Materials: International Standards on the Transport of Dangerous Goods

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to inform interested persons that PHMSA will conduct a public meeting on Tuesday, November 15, 2016, in preparation for the 50th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held in Geneva, Switzerland from November 28 to December 6, 2016. During this public meeting, PHMSA will be requesting comments relative to potential new work items that may be considered for inclusion in the international agenda.

**DATES:** Tuesday, November 15, 2016; from 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** DOT Headquarters, West Building, Oklahoma City Conference Room, 1200 New Jersey Avenue SE., Washington, DC 20590.

*Advanced Meeting Registration:* DOT requests that attendees pre-register for this meeting by completing the form at *https://www.surveymonkey.com/r/CRPK2YY*. Failure to pre-register may delay your access into the DOT Headquarters building. Additionally, if you are attending in person, arrive early to allow time for security checks necessary to access the building.

Conference call-in and ''Skype meeting'' capability will be provided. Specific information on such access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international* under ''Upcoming Events.''

**FOR FURTHER INFORMATION CONTACT:** Steven Webb or Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590, telephone 202–366–8553.

**SUPPLEMENTARY INFORMATION:** The primary purpose of this meeting is to prepare for the 50th session of the UNSCOE TDG. This session represents the final meeting scheduled for the 2015–2016 biennium. UNSCOE will consider proposals for the 20th Revised Edition of the *United Nations Recommendations on the Transport of Dangerous Goods Model Regulations* (Model Regulations), which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html*.

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters;
- Listing, classification, and packing;
- Electric storage systems;
- Transport of gases;
- Global harmonization of transport of dangerous goods regulations with the Model Regulations;
- Guiding principles for the Model Regulations;
- Cooperation with the International Atomic Energy Agency (IAEA);
- New proposals for amendments to the Model Regulations;
- Issues relating to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS); and
- Miscellaneous pending issues.

Following the 50th session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html*. PHMSA's Web site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCOE TDG and related matters.

Signed in Washington, DC, on October 13, 2016.

**Rachel Meidl,**

*Deputy Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2016–25181 Filed 10–17–16; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket ID OCC–2016–0027]**

### Mutual Savings Association Advisory Committee

**AGENCY:** Department of the Treasury, Office of the Comptroller of the Currency (OCC).

**ACTION:** Notice.

**SUMMARY:** The OCC has determined that the renewal of the charter of the OCC Mutual Savings Association Advisory Committee (MSAAC) is necessary and in the public interest. The OCC hereby gives notice of the renewal of the charter.

**DATES:** The charter of the OCC MSAAC has been renewed for a two-year period that began on September 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Brickman, Designated Federal Officer, 202–649–5420, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Notice of the renewal of the MSAAC charter is hereby given, with the approval of the

Secretary of the Treasury, pursuant to section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Comptroller of the Currency has determined that the renewal of the MSAAC charter is necessary and in the public interest in order to provide advice and information concerning the condition of mutual savings associations, the regulatory changes or other steps the OCC may be able to take to ensure the health and viability of mutual savings associations, and other issues of concern to mutual savings associations, all in accordance with the goals of Section 5(a) of the Home Owners' Loan Act, 12 U.S.C. 1464.

Dated: October 11, 2016.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2016–25073 Filed 10–17–16; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Engraving and Printing

### Senior Executive Service; Combined Performance Review Board (PRB)

**AGENCY:** Bureau of Engraving and Printing (BEP), Treasury Department.

**ACTION:** Notice of members of Combined Performance Review Board (PRB).

**SUMMARY:** This notice announces the appointment of the members of the Combined Performance Review Board (PRB) for the Bureau of Fiscal Service, the Bureau of Engraving and Printing (BEP), the United States Mint, the Alcohol and Tobacco Tax and Trade Bureau (TTB), and the Financial Crimes Enforcement Network (FinCEN). The Combined PRB reviews the performance appraisals of career senior executives who are below the level of bureau head and principal deputy in the bureaus, except for executives below the Assistant Commissioner/Executive Director level in the Bureau of Fiscal Service. The Combined PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

**DATES:** The membership of the Combined PRB as described in the Notice is effective on October 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Tanya Everett, Human Resources Officer/Office Chief, 14th and C Street SW., Washington, DC 20228, Office: (202) 874–3573.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of the following primary and alternate members to the Combined PRB:

**Primary Members**

David Motl, Acting Deputy Director for Management, United States Mint
Kimberly A. McCoy, Deputy Commissioner, Fiscal Accounting and Shared Services
Amy Taylor, Associate Director, Financial Crimes Enforcement Network
Debra Richardson, Associate Director, Chief Financial Officer, Bureau of Engraving and Printing
Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade

**Alternate Members**

Elisa Basnight, Chief of Staff, United States Mint
Stephen L. Manning, Deputy Commissioner, Fiscal Accounting and Shared Services
Jamal El-Hindi, Deputy Director, Financial Crimes Enforcement Network
Thomas Crone, Assistant Administrator, Alcohol and Tobacco Tax and Trade

Bureau of Engraving and Printing elected to not have an alternate.

**Leonard R. Olijar,**

*Director, the Bureau of Engraving and Printing.*

[FR Doc. 2016–25084 Filed 10–17–16; 8:45 am]

**BILLING CODE 4840–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 13, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 17, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

**Financial Crimes Enforcement Network (FinCEN)**

*OMB Control Number:* 1506–0045.

*Type of Review:* Extension of a previously approved collection.

*Title:* Imposition of Special Measure against Banco Delta Asia.

*Abstract:* FinCEN, of the U.S. Department of the Treasury, issued a final rule under the authority of section 5318A of Title 31, United States Code, to impose a special measure against Banco Delta Asia, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited. FinCEN has determined that Banco Delta Asia is a financial institution of primary money laundering concern, and that the imposition of the special measure selected—prohibiting domestic financial institutions from maintaining foreign correspondent accounts with Banco Delta Asia—is a necessary step to ensure the Bank is not able to access the U.S. financial system for terrorist financing or money laundering, or for any other criminal purpose. The collection of information in the rule relates to both disclosure and recordkeeping by and for domestic financial institutions.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 5,000.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016–25109 Filed 10–17–16; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 13, 2016.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 17, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov*.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov*.

**SUPPLEMENTARY INFORMATION:**

### Internal Revenue Service (IRS)

*OMB Control Number:* 1545–0735.

*Type of Review:* Extension of a currently approved collection.

*Title:* Final Amortization of Reforestation Expenditures (TD 7927).

*Abstract:* A taxpayer elects to claim a section 194 deduction by entering the deduction of reforestation expenditures on the taxpayer's income tax return (Form 1040 for individuals and Form 1120 for corporations) or, for a taxpayer engaged in the trade or business of timber production, by claiming the deduction on the Form T. A taxpayer must attach a statement with the information required in section 1.194–4(a) of the regulations to support the determination that expenditures qualify under section 194.

*Affected Public:* Individuals or households.

*Estimated Total Annual Burden Hours:* 6,001.

*OMB Control Number:* 1545–1480.

*Type of Review:* Reinstatement of a previously approved collection.

*Title:* TD 8985—Hedging Transactions.

*Abstract:* The information collection is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 171,050.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2016–25184 Filed 10–17–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Request for Citizens Coinage Advisory Committee Membership Applications; Correction

**ACTION:** Notice; correction.

**SUMMARY:** The United States Mint published a notice titled ''Request for Citizens Coinage Advisory Committee Membership Applications'' in the **Federal Register** on October 12, 2016. The notice contained an error. This document corrects the error.

### Correction

In the **Federal Register** of October 12, 2016, in FR Doc. 2016–24635, on page 70488, the notice incorrectly stated the due date for applications. The correct date is Friday, October 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Betty Birdsong, Acting United States Mint Liaison to the CCAC; 801 Ninth Street NW., Washington, DC 20220; or call 202–354–7770.

Dated: October 12, 2016.

**Richard A. Peterson,**

*Deputy Director for Manufacturing and Quality, United States Mint.*

[FR Doc. 2016–25097 Filed 10–17–16; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 81 Tuesday,

No. 201 October 18, 2016


Part II

## Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for General Service Lamps; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 430**

**[Docket Number EERE–2013–BT–STD–0051]**

**RIN 1904–AD09**

## Energy Conservation Program: Energy Conservation Standards for General Service Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed definition and data availability.

**SUMMARY:** On March 17, 2016, DOE published a notice of proposed rulemaking (NOPR) proposing standards for general service lamps (GSLs) pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), as amended. During the subsequent public meeting and in written comments, stakeholders provided additional data and raised concerns regarding the expansion of scope in the proposed GSL definition and DOE's approach to analyzing the 22 general service incandescent lamp exemptions. In response to several of those comments, DOE collected additional data and is publishing this document to propose a revised definition of GSL; announce the availability of National Electrical Manufacturers Association (NEMA) data and supplemental data collected by DOE; request public comment on proposed definitions and compiled data; and request any additional data that stakeholders may have in support of this evaluation.

**DATES:** *Comments:* DOE will accept comments, data, and information regarding this notice of proposed definition and data availability submitted no later than November 8, 2016. See section VI, ''Public Participation,'' of this document for details.

*Meeting:* DOE will hold a public meeting on October 21, 2016, from 9:30 a.m. to 4:00 p.m., in Washington, DC The meeting will also be broadcast as a webinar. See section VI, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting *regina.washington@ee.doe.gov* to initiate the necessary procedures. Please also note that any person wishing to bring a laptop into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar.

*Instructions:* Any comments submitted must identify the notice of proposed definition and data availability for GSLs, and provide docket number EE–2013–BT–STD–0051 and/or regulatory information number (RIN) 1904–AD09. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: GSL2013STD0051@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Appliance and Equipment Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. 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 *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VI, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *gsl@ee.doe.gov*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *celia.sher@hq.doe.gov*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program Staff at (202) 586–6636 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE intends to incorporate by reference the following industry standards into 10 CFR part 430:

(1) American National Standards Institute C81.61–2016 (''ANSI C81.61–2016''), Electric Lamp Bases—Specifications for Bases (Caps) for Electric Lamps, dated April 20, 2016.

A copy of ANSI C81.61–2016 can be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://webstore.ansi.org.*

(2) International Electrotechnical Commission 60061–1:2005 (''IEC 60061–1:2005''), Lamp caps and holders together with gauges for the control of interchangeability and safety—Part 1: Lamp caps, Amendment 35, Edition 3, dated January 27, 2005.

A copy of IEC 60061–1:2005 can be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://webstore.ansi.org.*

(3) Underwriter Laboratories 1598C–2014 (''UL 1598C–2014''), Standard for Light-Emitting Diode Retrofit Luminaire Conversion Kits, First Edition, dated January 16, 2014.

A copy of UL 1598C–2014 can be obtained from Comm 2000, 151 Eastern

Avenue, Bensenville, IL 60106, 1–888–853–3503, or go to *http://ulstandards.ul.com/standards-catalog/.*

For a further discussion of these standards, see section V.M.

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## I. Introduction

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as ''covered products'').[1] Subsequent amendments expanded Title III of EPCA to include additional consumer products, including general service lamps (GSLs)—the products that are the focus of this notice of proposed definition and data availability (NOPDDA).

In particular, amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007) directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)–(B)) For the first rulemaking cycle, EPCA, as amended by EISA 2007, directs DOE to initiate a rulemaking no later than January 1, 2014, to evaluate standards for GSLs and determine whether exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)(i)) The scope of the rulemaking is not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(A)(ii)) Further, for this first cycle of rulemaking, the EISA 2007 amendments provide that DOE must consider a minimum standard of 45 lumens per watt (lm/W). (42 U.S.C. 6295(i)(6)(A)(ii)) If DOE fails to meet the requirements of 42 U.S.C. 6295(i)(6)(A)(i)–(iv) or the final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop requirement'' under which GSLs would be subject to a minimum 45 lm/W standard beginning on January 1, 2020. (42 U.S.C. 6295(i)(6)(A)(v))

In March 2016, DOE published a notice of proposed rulemaking (NOPR) that proposed a revised definition of GSL and energy conservation standards for certain GSLs (hereafter the ''March 2016 GSL ECS NOPR''). 81 FR 14528 (March 17, 2016). In conjunction with the NOPR, DOE also published on its Web site the complete technical support document (TSD) for the proposed rule, which described the analyses DOE conducted and included technical documentation for each analysis. The TSD also included the life cycle cost (LCC) spreadsheet, the national impact analysis spreadsheet, and the manufacturer impact analysis (MIA) spreadsheet.[2]

DOE held a public meeting on April 20, 2016, to hear oral comments on and solicit information relevant to the proposed rule. At this meeting, DOE heard concerns from stakeholders regarding the expansion of scope in the proposed GSL definition and DOE's approach to analyzing the 22 exemptions. In addition, DOE received written comments that reiterated these concerns and also provided additional data for DOE's consideration. Specifically, the National Electrical Manufacturers Association (NEMA) provided new data and information on the 22 exempted lamp types to inform DOE's evaluation of whether the exemptions should be maintained or discontinued as required by 42 U.S.C. 6295(i)(6)(A)(i)(II).

Since the publication of the NOPR, DOE has analyzed the data submitted by NEMA and collected additional data where available. DOE is publishing this NOPDDA to: (1) Propose a revised definition of GSL; (2) announce the availability of the NEMA data and supplemental data collected by DOE; (3) request public comment on proposed definitions and compiled data; and (4) request any additional data that stakeholders may have in support of this evaluation. The following sections describe the revised definition and additional data in more detail. After considering the comments received, DOE will publish a final rule.

## II. Proposed Definition of General Service Lamp

### *A. General Service Lamp Definition*

The term general service lamp (GSL) includes general service incandescent lamps (GSILs), compact fluorescent lamps (CFLs), general service light-emitting diode (LED) and organic light-emitting diode (OLED) lamps, and any other lamps that DOE determines are used to satisfy lighting applications traditionally served by GSILs; however, GSLs do not include any lighting application or bulb shape excluded from the ''general service incandescent lamp'' definition, or any general service fluorescent lamp or incandescent reflector lamp. (42 U.S.C. 6291(30)(BB))

DOE has the authority to consider additional lamps that it determines are used to satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB)(i)(IV)) In the March 2016

[1] Part B was re-designated Part A on codification in the U.S. Code for editorial reasons.

[2] The spreadsheets developed for this rulemaking proceeding are available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4.*

GSL ECS NOPR, DOE proposed to define a general service lamp as any lamp intended to serve in general lighting applications and that has the following basic characteristics: (1) An ANSI base (with the exclusion of light fixtures); (2) a lumen output of 310 lumens or greater; (3) an ability to operate at any voltage; (4) is not or could not be the subject of other rulemakings; and (5) no designation or label for use in certain non-general applications (see section II.A.4 for more information). ''General lighting application'' is currently defined at 10 CFR 430.2 as lighting that provides an interior or exterior area with overall illumination.

More specifically, DOE proposed the following definition for GSL in the March 2016 GSL ECS NOPR:

*General service lamp* means a lamp that has an ANSI base, operates at any voltage, has an initial lumen output of 310 lumens or greater (or 232 lumens or greater for modified spectrum general service incandescent lamps), is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications. General service lamps include, but are not limited to, general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, and general service organic light-emitting diode lamps, but do not include general service fluorescent lamps; incandescent reflector lamps; mercury vapor lamps; appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; marine signal lamps; mine service lamps; plant light lamps; sign service lamps; traffic signal lamps; and medium screw base incandescent lamps that are left-hand thread lamps, marine lamps, reflector lamps, rough service lamps, shatter-resistant lamps (including a shatter-proof lamp and a shatter-protected lamp), silver bowl lamps, showcase lamps, 3-way incandescent lamps, vibration service lamps, G shape lamps as defined in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1–2002 (incorporated by reference; see § 430.3) with a diameter of 5 inches or more, T shape lamps as defined in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1–2002 (incorporated by reference; see § 430.3) and that use not more than 40 watts or have a length of more than 10 inches, and B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamps as defined in ANSI C79.1–2002 (incorporated by reference; see § 430.3) and ANSI C78.20 (incorporated by reference; see § 430.3) of 40 watts or less.

DOE received some general comments on the proposed definition. General Electric Lighting (GE) asserted that Congress did not give DOE authority to expand the definition of GSL to include all lamps that have any ANSI base, operate at any voltage, and produce general illumination, and that the expanded definition in conjunction with the backstop will eliminate specialty and niche products with no possible substitutes. (GE, No. 70 at pp. 7–8) The International Association of Lighting Designers (IALD) stated that the broadened scope of GSLs was going beyond readily available technology. (IALD, No. 62 at p. 3) Philips Lighting (Philips) also stated it did not support the broadened definition of GSL and referred to detailed comments from NEMA on the matter. (Philips, No. 71 at p. 3) Earthjustice stated that the proposed definition makes it clear what lamp types are covered. (Earthjustice, Public Meeting Transcript, No. 54 at p. 24) However, DOE also received several comments expressing concern that the definition did not clearly specify the scope of lamps that are GSLs.

The California Energy Commission (CEC) stated that many lamp types are not intended for general service applications and should not be included in the GSL definition, but could appear to be under the proposed definition, leading to uncertainty and differences in interpretation between manufacturers. (CEC, No. 69 at p. 18) CEC specifically identified directional lamps less than 2.25 inches in diameter and MR16 lamps as examples in which the coverage of the GSL definition is uncertain. CEC recommended that DOE either state the GSL scope of coverage explicitly by listing specific voltages, wattages, lumen outputs, or similar attributes, or define ''general service application'' to clarify what applications are general service in nature. (CEC, No. 69 at pp. 18–19) Westinghouse agreed, noting this ambiguity could introduce compliance issues for manufacturers. (Westinghouse, Public Meeting Transcript, No. 54 at p. 39)

GE recommended that DOE define GSLs to be clear in not including specialty incandescent or specialty halogen lamps with specialty bases that operate at other than 120 volts (or MR lamps that operate on a 120 V/12 V transformer) and lamps that have a lumen output of greater than 2,600 lumens. GE also recommended defining specialty base and specialty lamp in a separate definition in order to limit the definition length and improve readability. (GE, No. 70 at p. 10) Further, GE suggested DOE clearly state that products designed or labeled for use in non-general applications should not be included in the definition. (GE, Public Meeting Transcript, No. 54 at pp. 36–37) In contrast, Westinghouse and ASAP voiced concern for the potential loophole that could exist if products could be excluded from scope by simply indicating on their label that they are intended for non-general applications. (Westinghouse, Public Meeting Transcript, No. 54 at p. 39; ASAP, Public Meeting Transcript, No. 54 at p. 43)

NEMA suggested an alternative definition of general service lamp that would modify the proposed definition in the March 2016 GSL ECS NOPR by stating that a general service lamp is used to satisfy a majority of lighting applications and is not a specialty base lamp nor a specialty lamp. Further, NEMA suggested that the definition should specify that general service lamps operate at a rated voltage from 110 to 130 V or 11 to 13 V; have an initial lumen output of 232 lumens or greater for modified spectrum general service incandescent lamps; and have an initial lumen output of 2,600 lumens or less. Additionally, NEMA recommended a definition for ''specialty lamp'' and ''specialty base lamp.'' (NEMA, No. 66 at pp. 43–44) NEMA commented that DOE should follow the Federal Trade Commission's (FTC's) approach to labeling specialty lamps. NEMA explained that instead of amending the definition of general service lamp, FTC incrementally categorized certain specialty lamps as ''specialty consumer lamps.'' (NEMA, No. 66 at p. 19)

The California Investor Owned Utilities (CA IOUs) agreed that a more explicit list of covered lamp types would be helpful but only for informational purposes and not for inclusion in the regulatory text. (CA IOUs, Public Meeting Transcript, No. 54 at pp. 50–51) The Energy Efficiency Advocates (EEAs) [3] recommended that, after publication of the final rule, DOE host an informational webinar on the lamp types that are GSLs and how standards apply to them. (EEAs, No. 64 at p. 2) The Northeast Energy Efficiency Partnerships (NEEP) suggested DOE include a table in the final rule that summarizes the scope of coverage by lamp types. (NEEP, No. 67 at p. 4)

As discussed previously in this section, in the March 2016 GSL ECS NOPR DOE interpreted general service

[3] The Appliance Standards Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, American Council for an Energy Efficient Economy, Consumer Federation of America, Consumers Union, National Consumer Law Center, Northeast Energy Efficiency Partnerships, and Northwest Energy Efficiency Alliance.

lamps as lamps intended to serve in general lighting applications and that have the following basic characteristics: (1) An ANSI base (with the exclusion of light fixtures); (2) a lumen output of 310 lumens or greater; (3) an ability to operate at any voltage; (4) are not or could not be the subject of other rulemakings; and (5) no designation or label for use in certain non-general applications. DOE is generally maintaining this interpretation of GSL when considering whether additional lamps are used to satisfy lighting applications traditionally served by GSILs (see section II.A.4 for modifications to lumen output and other rulemaking criteria). To delineate the lamp types considered to be GSLs, DOE is continuing to propose a revised definition of ''general service lamp'' in § 430.2 to capture these criteria and the exemptions. DOE has revisited the proposed definition of GSL, including the exemptions contained in the GSIL and GSL definitions, for this notice. DOE discusses key aspects of the proposed definition of GSL and additional comments from stakeholders in the following sections.

1. GSILs

As stated previously, GSLs include GSILs. (42 U.S.C. 6291(30)(BB)(i)(I)) The definition of ''general service incandescent lamp'' is as follows:

General service incandescent lamp means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition does not apply to the following incandescent lamps—

(1) An appliance lamp;
(2) A black light lamp;
(3) A bug lamp;
(4) A colored lamp;
(5) An infrared lamp;
(6) A left-hand thread lamp;
(7) A marine lamp;
(8) A marine signal service lamp;
(9) A mine service lamp;
(10) A plant light lamp;
(11) A reflector lamp;
(12) A rough service lamp;
(13) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);
(14) A sign service lamp;
(15) A silver bowl lamp;
(16) A showcase lamp;
(17) A 3-way incandescent lamp;
(18) A traffic signal lamp;
(19) A vibration service lamp;
(20) A G shape lamp (as defined in ANSI C78.20 and ANSI C79.1–2002) with a diameter of 5 inches or more;
(21) A T shape lamp (as defined in ANSI C78.20 and ANSI C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; and
(22) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20) of 40 watts or less.

10 CFR 430.2

In the March 2016 GSL ECS NOPR, DOE declined to make a determination about discontinuing the 22 exemptions from the GSIL definition. In the NOPR, DOE initially concluded that, because the Appropriations Rider [4] prohibits DOE from using appropriated funds to implement or enforce standards for GSILs, DOE could not re-evaluate the existing exemptions for GSILs in the GSL rulemaking. 81 FR 14540. Specifically, DOE stated that, by definition, GSL does not apply to any lighting application or bulb shape excluded from the ''general service incandescent lamp'' definition. (42 U.S.C. 6291(30)(BB)) Therefore, based on the GSL definition, the 22 incandescent lamps that are excluded in EPCA from the definition of GSIL would not be GSLs. Further, DOE stated that the formerly exempted lamp types would have to be considered GSILs in order for DOE to regulate the lamps under its authority to promulgate standards for GSLs. Since the Appropriations Rider prohibits the expenditure of funds to implement or enforce standards for GSILs, DOE reasoned that it would not be able to establish or amend energy conservation standards for any of these lamps. As a result, making a determination about discontinuing the exemption from the GSIL definition for any of the 22 medium screw base lamps would make no difference in the GSL rulemaking, and DOE declined to address the exemptions at that time. 81 FR 14541.

A number of commenters stated that EPCA requires DOE to determine whether the exemptions of incandescent lamps should be discontinued or maintained as required under 42 U.S.C. 6295(i)(6)(A)(i)(II). (ASAP, Public Meeting Transcript, No. 54 at p. 12; NRDC, Public Meeting Transcript, No. 54 at pp. 16–17; CEC, No. 69 at p. 20; Earthjustice, No. 61 at pp. 2–3; Philips, No. 71 p. 4) Earthjustice stated that the definition of GSL proposed in the March 2016 GSL ECS NOPR unlawfully maintained exemptions for certain incandescent lamps, including the 22 types of lamps excluded from EPCA's definition of ''general service incandescent lamp.'' (Earthjustice, No. 61 at p. 1) CEC commented that DOE should either correctly interpret the Appropriations Rider as allowing DOE to determine whether to discontinue the 22 lamp exemptions and examine them as technology neutral, or exempt all 22 lamp types regardless of technology and allow states to set appropriate standards. (CEC, No. 69 at pp. 20–21)

Several other commenters disagreed with DOE's approach in the proposed rule regarding the 22 exemptions for GSILs. NEMA asserted that DOE has impermissibly read EPCA's use of the terms ''exempted'' and ''excluded'' as the same term, and that 42 U.S.C. 6295(i)(6)(A)(i)(II) does not authorize DOE to discontinue the exemptions for the 22 lamps listed under the GSIL definition. (NEMA, No. 66 at pp. 17–18) DOE acknowledges that EPCA uses both the terms ''exclusion'' and ''exempted''; however, in the context of GSLs and GSILs, DOE understands the term ''exempted'' to reference lamps listed under the ''Exclusions'' heading in the GSIL definition. EPCA does not establish any ''exemptions'' for GSLs or GSILs using that term; so if ''exempted'' does not refer to ''exclusions'' or something comparable then the instruction in 42 U.S.C. 6295(i)(6)(A)(i)(II) has no application. The word that EPCA uses for the concept of ''exempting'' certain lamps from being GSILs or GSLs is ''excluding''; and DOE accordingly takes ''exempted'' to refer to those exclusions. Furthermore, DOE interprets Congress' intent to be for DOE to evaluate whether certain lamps that have been excluded from the GSIL definition should be subject to any future GSL standards. DOE concludes that to leave certain of the exemptions in place would diminish the energy savings that would otherwise be achieved because the excluded lamps would provide a less efficient option to meet the same general lighting application.

Upon consideration of the comments received on the March 2016 GSL ECS NOPR and further review of the relevant authorities, DOE has revisited its interpretation with respect to the proposed definition of GSL and application of the Appropriations Rider. In the March 2016 GSL ECS NOPR, DOE stated that it believed it is prohibited by the Appropriations Rider from modifying the existing exemptions for GSILs in this rulemaking. 81 FR 14540.

[4] The Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, Dec. 16, 2014).

However, the focus of the NOPR was to propose new energy conservation standards for GSLs; in that context, DOE did not propose to modify the GSIL exemptions and then impose new standards for GSILs. By contrast, this proposed rule neither implements nor seeks to enforce any standard. Rather, this proposed rule merely seeks to define what constitutes a GSIL and what constitutes a GSL. As noted above, the Appropriations Rider restricts DOE from ''implementing or enforcing'' the standards imposed on GSILs by 10 CFR 430.32(x). It does not preclude DOE from utilizing its authority under EPCA to alter the scope of GSIL and GSL. DOE believes this is a reasonable interpretation of the Appropriations Rider because, in evaluating the exemptions, DOE is following a directive related to a GSL rulemaking to define the scope of GSLs. DOE is not conducting any analysis in support of establishing energy conservation standards for GSILs. Although a collateral effect is to broaden the scope of the GSIL definition, DOE is simply defining what lamps constitute GSLs so that both manufacturers and DOE can understand how the regulations apply to the market. Without such a definition of GSLs, regulated entities would face uncertainty as to what is a GSL. Furthermore, as noted above, leaving certain exemptions in place would diminish the energy savings that would otherwise be achieved because the excluded lamps would provide a less efficient option to meet the same general service lighting application.

A lamp exempted from the GSIL definition is not a covered GSIL and is not subject to the regulations for GSILs. However, DOE is directed as part of the GSL rulemaking to determine whether certain of these exemptions should be maintained or discontinued based, in part, on exempted lamp sales collected from manufacturers. (42 U.S.C. 6295(i)(6)(A)(i)(II)). If DOE discontinues a given exemption, medium screw base incandescent lamps subject to that exemption will become GSILs and thus GSLs; CFLs and general service LED and OLED lamps of that lighting application or bulb shape will become GSLs; and other lamps of that lighting application or bulb shape will also become GSLs, to the extent DOE determines those lamps are used to satisfy lighting applications traditionally served by general service incandescent lamps.

In this proposed rule, DOE evaluates the 22 lighting applications or bulb shapes exempted under the GSIL definition to determine whether such exemptions should be maintained or discontinued.

As stated previously, the definition of GSIL lists 22 lamp types that are not included in the definition, and these lamps are described under the heading ''Exclusions.'' (42 U.S.C. 6291(30)(D)(ii)) Under the authority for the GSL rulemaking, EPCA directs DOE to consider whether to maintain the ''exemptions'' for certain incandescent lamps, based, in part, on exempted lamp sales data collected by DOE. (42 U.S.C. 6295(i)(6)(A)(i)(II)) For four of the lamps included in the list of 22 lamps (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, and shatter-resistant lamps), EPCA directs DOE to collect sales data and prescribe standards for these lamps when certain sales thresholds are met. (42 U.S.C. 6295(l)(4)) DOE understands the reference to ''data collected'' by DOE under the GSL rulemaking provision to mean the data collected as required for rough service lamps, vibration service lamps, 3-way incandescent lamps, and shatter-resistant lamps (*i.e.,* lamps listed under the ''Exclusion'' heading). Here, Congress appears to be using the term ''exempted'' to refer to lamps under the ''Exclusion'' heading. Moreover, Congress used ''exempted'' to refer to lamps identified under ''exclusions'' in prior amendments to the lamp provisions in EPCA. In section 321 of EISA, Congress provided that an individual could petition DOE to establish standards for lamps *excluded* from the definition of GSL, and that such petition must include evidence that the sales of *exempted* incandescent lamps have increased. Public Law 140–110; 121 Stat. 1492, 1528. Again, the use of ''excluded'' appears synonymous with ''exempted'' in the context of GSLs. As such, DOE understands the direction to determine whether to maintain the exemptions for certain incandescent lamps to include a determination of whether to include in the definition of GSL lamps meeting the description of the 22 lighting applications or bulb shapes.

NEMA also argued that because incandescent appliance lamps; T shape lamps, B, BA, CA, F, G16–1/2, G25, G30, S, or M14-shaped lamps; and vibration service incandescent lamps are subject to standards, there is no exemption from energy conservation standards to maintain or discontinue for these lamps under 42 U.S.C. 6295(i)(6)(a)(i)(II). NEMA stated that in defining these specialty lamps, Congress imposed a maximum quantity of energy use standard that had the actual effect of eliminating higher wattage versions of these lamps from the market and saving energy. Thus, these wattage caps are energy conservation standards. (NEMA, No. 66 at p. 18)

DOE disagrees with NEMA's interpretation of the definitions of the identified lamps. The ''standards'' to which NEMA refers for these lamps are the maximum wattage limits set under EPCA in defining the lamps for the purpose of excluding them from the definition of GSIL. The maximum wattage provides definitional boundaries, not standards. (42 U.S.C. 6291(30)(T), (D)(ii)(XXI) and (D)(ii)(XXII)) Appliance lamps and T, B, BA, CA, F, G16–1/2, G–25, G30, S, and M–14 shape incandescent lamps are expressly listed under the exclusion provision in the definition of GSIL. (42 U.S.C. 6291(30)(D)(ii)(I), (XXI), and (XXII))

DOE also received comments regarding subjecting specialty lamp types to the backstop. NEMA disagreed with DOE's position that the backstop will apply to specialty lamps typically used in niche applications. (NEMA, No. 66 at p. 84) NEMA and Osram Sylvania, Inc (OSI) noted that it is not necessary to establish standards for lamps used in unique applications and that do not consume significant amounts of energy. (NEMA, No. 66 at pp. 83–84; OSI, No. 73 at pp. 12–13) NEMA pointed out that one of the more popular exempt specialty lamps, globe shaped incandescent lamps, did not meet the annual energy use threshold to be considered for regulation under EPCA. NEMA also stated that the market will remove specialty CFLs without regulatory action and that standards on such products would impose an unnecessary additional regulatory burden. (NEMA, No. 66 at p. 48)

NEMA appears to be arguing that DOE lacks authority to establish an energy conservation standard for lamps that would otherwise be subject to the exemptions listed as part of the GSIL definition. DOE disagrees. As discussed previously, in a paragraph entitled ''Standards for general service lamps,'' EPCA directs DOE to consider whether to establish or maintain the exemptions for certain incandescent lamps as part of a rulemaking to establish energy conservation standards for GSLs. In doing so, EPCA gives DOE authority to evaluate the scope of lamps that are GSLs and to set standards for them.

Based on the comments received and further review of DOE's obligations, DOE is evaluating each of the 22 exemptions to see whether it should be maintained or discontinued, based in part on sales data. DOE proposes to make these decisions in light of the fact that GSLs will become subject to the 45 lm/W statutory standard in 2020. Lamps

for which DOE continues the exemptions will not be subject to the standard, so DOE proposes to discontinue a given exemption if the continuation of the exemption would undermine the 45 lm/W standard by providing a convenient unregulated alternative to GSLs. DOE understands the exclusions to exist, in part, as a reflection of past practice and, in part, because of uncertainty when the GSL standard was enacted about whether excluded lamps are only specialty products or are substitutable for broader-use lamps. The directive of Congress to reconsider the exclusions demonstrates its intent for DOE to take a fresh look at whether excluded lamps should continue to be treated as specialty products. DOE will use the information available, including sales data, to assess that question for each exemption. Thus, DOE proposes to discontinue an exemption if lamps within that exemption are capable of providing general illumination like other general service lamps (*e.g.,* GSILs, MBCFLs, general service LEDs) and if sales data suggest that substantial numbers of consumers are using those lamps for general illumination.

The following sections assess the exemptions and present DOE's preliminary determination of whether the exemption should be maintained or discontinued. DOE referenced a combination of sources for available information on lamp sales. Specifically, DOE considered the sales data submitted by NEMA as required by 42 U.S.C. 6295(l)(4)(B) for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps; [5] information submitted by NEMA in its public comment in support of the GSL rulemaking; extrapolation from DOE's product database based on an inventory of available products; and data available from rulemakings for other covered products. DOE believes these sources of data and information are sufficient representations of sales data as required, in part, by the statute and thus are an appropriate basis on which to make its preliminary determination.

In addition to considering sales data, DOE also considered whether an exempted lamp could be used as a replacement for a GSIL. This consideration of ''lamp switching'' is to minimize the potential for creating a loophole in any GSL standard(s). If DOE were to maintain an exemption for a lamp that has the same consumer utility as a lamp subject to a standard, the use of such lamps could increase in response to standards. This would result in less energy savings being realized as the market shifted to an increased use of the unregulated lamps.

Table II.1 summarizes the status of the exemptions, the sales data underlying DOE's decision, and the reasons supporting DOE's decision.

TABLE II.1—DETERMINATIONS REGARDING EXEMPTIONS

| GSIL exempted lamp category | Estimated sales data (units annual sales) | Additional factors DOE considered | DOE's preliminary determination on exemption status |
|---|---|---|---|
| Appliance Lamp | <3 million | | Maintain exemption. |
| Black Light Lamp | <1 million | | Maintain exemption. |
| Bug Lamp | <1 million | | Maintain exemption. |
| Colored Lamp | <2 million | | Maintain exemption. |
| Infrared Lamp | <1 million | | Maintain exemption. |
| Left-Hand Thread Lamp | <1 million | | Maintain exemption. |
| Marine Lamp | <1 million | | Maintain exemption. |
| Marine Signal Service Lamp | <1 million | | Maintain exemption. |
| Mine Service Lamp | <1 million | | Maintain exemption. |
| Plant Light Lamp | <1 million | | Maintain exemption. |
| Reflector Lamp | Approximately 300 million | Lamp switching risk | Discontinue exemption. |
| Rough Service Lamp* | 10,914,000 | | Discontinue exemption. |
| Shatter-Resistant Lamp | 689,000 | Lamp switching risk | Discontinue exemption. |
| Sign Service Lamp | Approximately 1 million | | Maintain exemption. |
| Silver Bowl Lamp | Approximately 1 million | | Maintain exemption. |
| Showcase Lamp | <1 million | | Maintain exemption. |
| 3-way Incandescent Lamp | 32,665,000 | Lamp switching risk | Discontinue exemption. |
| Traffic Signal Lamp | <1 million | | Maintain exemption. |
| Vibration Service Lamp | 7,071,000 | | Discontinue exemption. |
| G-shape Lamp with diameter of 5 inches or more. | Approximately 8 million | Lamp switching risk | Discontinue exemption. |
| T-shape lamp of 40 W or less or length of 10 inches or more. | Approximately 7 million | Lamp switching risk | Discontinue exemption. |
| B, BA, CA, F, G16–1/2, G25, G30, S, M–14 lamp of 40 W or less. | Approximately 42 million | Lamp switching risk | Discontinue exemption. |

* NEMA submitted revised data for rough service lamps following the publication of the notice of data availability for five lamp types. See 81 FR 20261 (April 7, 2016). The revised data showed sales of 10,914,000 rough service lamps in 2015, which results in a requirement for DOE to initiate an accelerated rulemaking to establish an energy conservation standard for rough service lamps. See ex parte memorandum published in the docket at: *https://www.regulations.gov/document?D=EERE-2011-BT-NOA-0013-0019*.

As shown in Table II.1, based on the compiled sales data and a consideration of additional, applicable factors, DOE has tentatively determined to discontinue eight GSIL exemptions. DOE is proposing to maintain 14 of the GSIL exemptions due to low sales and low potential for use in GSL applications. DOE discusses each of the exemptions in the sections that follow.

a. Exemptions Discontinued

As stated, DOE is proposing to discontinue eight exemptions from the definition of GSIL. DOE assessed data available for medium screw base

[5] See II.A.1 for revised data submitted by NEMA on rough service lamps.

reflector lamps that are incandescent and preliminarily concluded that these lamps have high annual sales. Specifically, DOE estimated that the sales of medium base reflector lamps that are incandescent are approximately 300 million units per year (about 270 million incandescent reflector lamps [IRLs] and about 30 million non-IRL reflector lamps). In addition, DOE believes medium screw base reflector lamps are capable of providing overall illumination and could be used as a replacement for a GSIL. Therefore, there is also high potential for ''lamp switching'' and subsequently creating a loophole. For these reasons, DOE is proposing to discontinue the exemption for reflector lamps in this document. Although IRLs are explicitly exempt from the definition of GSL, 42 U.S.C. 6295(i)(6)(A)(i)(II) directs DOE to consider whether to discontinue the exemptions for certain incandescent lamps. DOE interprets this direction as referring to all exempt incandescent lamps in 42 U.S.C. 6291(BB)(ii); that is, incandescent reflector lamps and the 22 types exempt from GSIL. Furthermore, DOE notes that discontinuing the exemption for reflector lamps from GSIL expressly includes incandescent reflector lamps as GSILs and therefore as GSLs.

While DOE is discontinuing the exemption for reflector lamps generally, R20 short lamps will continue to not be subject to standards. R20 short lamps are defined as R20 incandescent reflector lamps that have a rated wattage of 100 watts; have a maximum overall length of 3 and ⅝, or 3.625, inches; and are designed, labeled, and marketed specifically for pool and spa applications. In a final rule published on November 14, 2013, DOE determined that standards for these lamps would not result in significant energy savings because such lamps are designed for special applications or have special characteristics not available in reasonably substitutable lamp types. 78 FR 68331, 68340. Pursuant to 42 U.S.C. 6291(30)(E), these lamps are specifically not incandescent lamps and therefore do not become GSILs when the reflector lamp exemption is discontinued.

DOE also collected data for medium screw base incandescent lamps of the following specific shapes: B, BA, CA, F, G16–1/2, G25, G30, S, M–14 lamps (as defined in ANSI C78.20 and ANSI C79.1–2002) of 40 W or less; G-shape lamps (as defined in ANSI C78.20 and ANSI C79.1–2002) with a diameter of 5 inches or more; T-shape lamps (as defined in ANSI C78.20 and ANSI C79.1–2002) that use not more than 40 W or has a length of more than 10 inches. For B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps of 40 W or less, DOE estimated the annual sales as approximately 42 million. For G-shape lamps with a diameter of 5 inches or more, DOE estimated the annual sales as approximately 8 million units. In addition to the sizeable sales of larger globe shape lamps, DOE believes it is likely that larger globe shape lamps may be used as substitutes for the G16.5, G25, and G30 lamps if the exemption is not also discontinued. Regarding T-shape lamps that use not more than 40 W or have a length of more than 10 inches, DOE estimated the annual sales of these lamps as roughly 7 million units. Further, the lamps of the specific shapes discussed in this paragraph are frequently used in general lighting applications and thus DOE believes there is a significant risk for lamp switching. Therefore, due to high sales and high potential for lamp switching, DOE is proposing to discontinue the GSIL exemption for these specific shapes.

Pursuant to 42 U.S.C. 6295(l)(4), DOE is required to collect unit sales data for rough service, shatter-resistant, 3-way incandescent lamps, and vibration service lamps. Section 321(a)(3)(B) of EISA 2007 in part amends paragraph 325(l)(4) of EPCA by adding paragraphs (D) through (H), which direct DOE to take regulatory action if the actual annual unit sales of any of these lamp types are more than 200 percent of the predicted shipments (*i.e.,* more than double the benchmark unit sales estimate). (42 U.S.C. 6295(l)(4)(D)–(H)) DOE published a notice of data availability (NODA) in April 2016, which indicated that the shipments of vibration service lamps were over 7 million units in 2015, which equates to 272.5 percent of the benchmark estimate. 81 FR 20261, 20263 (April 7, 2016). Therefore, vibration service lamps exceeded the statutory threshold for the first time, thus triggering an accelerated rulemaking. Furthermore, NEMA submitted revised data for rough service lamps following the publication of the April 2016 NODA. See 81 FR 20261 (April 7, 2016). The revised data showed sales of 10,914,000 rough service lamps in 2015, which results in a requirement for DOE to initiate an accelerated rulemaking for rough service lamps.[6] See ex parte memorandum published in the docket at: *https://www.regulations.gov/document?D=EERE-2011-BT-NOA-0013-0019*. If the Secretary does not complete this accelerated rulemaking in the allotted time, the statute provides a ''backstop requirement'' that becomes the regulatory standard for rough service lamps. This backstop requirement would require rough service lamps to: (1) Have a shatter-proof coating or equivalent technology that complies with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp, (2) have a maximum 40-watt limitation, and (3) be sold at retail only in a package containing one lamp. Although the sales of shatter-resistant and 3-way incandescent lamps have not yet exceeded their estimated benchmarks, DOE expects these sales will likely increase since these lamps could be used as replacements for other regulated lamp types. In addition, the sales of these lamps are not negligible. Specifically, the NEMA-submitted data for 2015 indicated that almost 38 million 3-way incandescent lamps (67.2 percent of the benchmark estimate) and nearly 700,000 shatter-resistant lamps (41.1 percent of the benchmark estimate) were sold in the previous year. 81 FR at 20263–64 (April 7, 2016). Based on the high sales volume and probability of consumers switching to these lamp types, DOE is proposing to discontinue the exemptions of rough service, shatter-resistant, 3-way incandescent, and vibration service lamps from GSILs in this document.

As stated, DOE is required to prescribe standards for rough service incandescent lamps, vibration service incandescent lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps,[7] and shatter resistant incandescent lamps (hereafter ''five-exempted incandescent lamps'') if their respective lamp sales exceed a certain threshold. Further, if DOE fails to set a standard, the lamp becomes subject to a specific wattage limit. 42 U.S.C. 6295(l)(4). NEMA asserted that this differential treatment of the five-exempted incandescent lamps from the other 22 exempted

[6] Section 321(a)(3)(B) of EISA 2007 in part amends paragraph 325(l)(4) of EPCA by adding paragraphs (D) through (H), which direct DOE to take regulatory action if the actual annual unit sales of any of the five lamp types exceed the predicted shipments by at least 100 percent (*i.e.,* more than double the benchmark unit sales estimate). (42 U.S.C. 6295(l)(4)(D)–(H)) As the sales for rough service lamps are more than double the benchmark sales estimate for the 2015 calendar year, DOE must conduct an accelerated energy conservation standards rulemaking for rough service lamps to be completed no later than the end of the 2016 calendar year.

[7] 2,601–3,300 lumen lamps are not included in the 22 exemptions from GSIL. However, the definition of GSIL prescribes a lumen range of 310 to 2,600 lumens thereby excluding these lamps. See section II.A.4 for a discussion of lumen output range.

incandescent lamp types, and that their sales data threshold is not based on growth in market share, shows that Congress did not intend to treat these as GSLs when they exceed the specific sales limit. (NEMA, No. 66 at pp. 21–22) OSI and GE observed that DOE is already taking steps to evaluate these five kinds of lamps as required by legislation. (OSI, No. 73 at p. 6; GE, No. 70 at pp. 8–9)

In contrast, NRDC expressed concern that 3-way incandescent lamps, shatter-resistant incandescent lamps, and vibration service incandescent lamps may become loopholes if DOE does not establish standards for them. (NRDC, Public Meeting Transcript, No. 54 at pp. 16–17) EEAs commented that vibration service incandescent lamps, rough service incandescent lamps, shatter-resistant incandescent lamps, and 3-way incandescent lamps are loophole risks because they are capable of serving in general lighting applications; are available in shapes, sizes, and lumen packages that allow them to replace common GSILs; and are relatively inexpensive. (EEAs, No. 64 at pp. 6–7) EEAs stated DOE should review whether they should be included within the definition of GSL as part of the current rulemaking in the same way it is required to review the other 18 exempted lamp types. ASAP also commented that these lamps should be included in the definition of a GSL. (ASAP, Public Meeting Transcript, No. 54 at p. 53–54)

EEAs indicated that the shipment tracking approach is only effective if DOE receives comprehensive shipment data for the U.S. market, which is dependent upon comprehensive reporting by NEMA's manufacturer members. The actual shipments and sales of the exempted lamp types could be significantly higher than reported if non-NEMA members serve the market. (EEAs, No. 64 at p. 7) Further, EEAs noted that the wattage limit requirements for vibration service, rough service, and shatter-resistant lamps that would be triggered if DOE did not establish standards as required are less stringent than the GSL backstop and may be insufficient to stop these types of lamps from becoming loopholes. EEAs also stated that the backstop for 3-way incandescent lamps should apply to each filament in the lamp. (EEAs, No. 64 at pp. 6–7)

NEMA noted that sales of shatter-resistant incandescent lamps, 3-way incandescent lamps, and incandescent lamps from 2,601–3,300 lumens have declined substantially since the baseline period 1990–2006. NEMA commented that these three specialty incandescent lamps are costly to make and consequently have higher retail prices than incandescent, fluorescent, or LED lamps used in a majority of lighting applications. Based on these factors, NEMA asserted DOE should maintain these exemptions. (NEMA, No. 66 at p. 46)

EEAs noted that shipments of rough service lamps are significantly higher than DOE's model and that they expect to see further increases in the shipments of these lamps. (EEAs, No. 64 at pp. 6–7) NEMA acknowledged that the sales of rough service incandescent lamps have declined but not at a rate as fast as the modeled decline. Thus, NEMA suggested that DOE adopt the following standard for rough service incandescent lamps: a maximum wattage of 40 watts and sold at retail only in a package containing one lamp. (NEMA, No. 66 at p. 47) DOE notes that after providing these comments, NEMA submitted data indicating that the sales of rough service lamps had increased such that they were more than 200 percent of the predicted shipments in 2015 (*i.e.,* more than double the benchmark unit sales estimate). See ex parte memorandum published in the docket at: *https://www.regulations.gov/document?D=EERE-2011-BT-NOA-0013-0019.*

EEAs, GE, CEC, and NEMA noted that the shipments of vibration service lamps have exceeded the projected sales limit and now require regulation. (EEAs, No. 64 at pp. 6–7; GE, No. 70 at p. 12; CEC, No. 69 at p. 22; NEMA, No. 66 at p. 47) NEMA suggested DOE incorporate the accelerated rulemaking for vibration service incandescent lamps into this rulemaking and adopt the following standard: A maximum wattage of 40 watts and sold at retail only in a package containing one lamp. (NEMA, No. 66 at p. 47) GE concurred that DOE should address vibration service incandescent lamps in this rulemaking. (GE, No. 70 at p. 12) However, CEC recommended an accelerated rulemaking for vibration service lamps and urged DOE to adopt a technology neutral standard that aligns with standards adopted in this rulemaking. (CEC, No. 69 at p. 22)

As stated previously, the sales threshold has been triggered for vibration service lamps. Subsequent data submitted by NEMA indicates that the sales threshold has also been triggered for rough service lamps. Therefore, DOE agrees with the suggestion from several stakeholders to include vibration service and rough service incandescent lamps as GSLs and proposes to discontinue the exemptions from GSIL for vibration service and rough service lamps in this NOPDDA. In addition, as discussed previously, DOE is proposing to discontinue the exemptions for shatter-resistant and 3-way lamps from the definition of GSIL in this NOPDDA due to lamp sales and the likelihood of lamp switching and potential loopholes if these exemptions were to remain.

DOE requests comment on the eight GSIL exemptions that are proposed to be discontinued in this rule. In particular, DOE requests comment on the estimated annual unit sales, potential for lamp switching, and any other factors that DOE should consider.

b. Exemptions Maintained

As stated previously, DOE is proposing to maintain 14 exemptions from the definition of GSIL. DOE found that medium screw base incandescent lamps that are appliance; black light; bug; colored; infrared; left-hand thread; marine; marine signal service; mine service; plant light; sign service; silver bowl; showcase; and traffic signal lamps had low sales data thus indicating that these are low volume products. DOE estimates that 12 of the 14 exemptions have annual unit sales of 1 million units or less. The remaining two exemptions, appliance lamps and colored lamps, are estimated to have less than 3 million annual unit sales and less than 2 million annual unit sales, respectively. DOE has also tentatively concluded that several of these exempted lamp types are unable to serve in general lighting applications and cannot provide overall illumination. Specifically, black light; bug; colored; infrared; and plant light lamps produce radiant power in specific wavelengths of the electromagnetic spectrum that would prevent these lamps from serving in general lighting applications. Further, DOE believes that proposing definitions for these exempted lamp types will help to prevent them from becoming loopholes. (See section II.B for a discussion of the definitions proposed for exemptions.)

DOE requests comment on the 14 GSIL exemptions proposed to be maintained in this proposed rule. In particular, DOE requests comment on the estimated annual unit sales, potential for lamp switching, and any other factors that DOE should consider. DOE also requests any additional sales data from stakeholders that could be considered when determining whether to maintain or discontinue the GSIL exemptions.

c. Proposed Definition for GSIL

Based on these preliminary determinations, DOE is proposing to

include in the definition for GSIL the following:

General service incandescent lamp means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition does not apply to the following incandescent lamps—

(1) An appliance lamp;
(2) A black light lamp;
(3) A bug lamp;
(4) A colored lamp;
(5) An infrared lamp;
(6) A left-hand thread lamp;
(7) A marine lamp;
(8) A marine signal service lamp;
(9) A mine service lamp;
(10) A plant light lamp;
(11) An R20 short lamp;
(12) A sign service lamp;
(13) A silver bowl lamp;
(14) A showcase lamp; and
(15) A traffic signal lamp.

As noted previously, GSILs are included in the definition of GSL. (42 U.S.C. 6291(30)(BB)(i)(I)) Thus, any lamp that meets the proposed definition of a GSIL would consequently also be a GSL. DOE requests comment on the proposed definition for GSIL.

2. CFLs

CFLs are also included in the definition of GSL; however, the term ''compact fluorescent lamp'' was not previously defined. DOE determined the term ''compact fluorescent lamp'' applied to both integrated (*e.g.,* medium base CFLs) and non-integrated CFLs (*e.g.,* pin base CFLs) in the preliminary analysis of the general service fluorescent lamp (GSFL) and incandescent reflector lamp (IRL) energy conservation standards rulemaking.[8] Because the term ''compact fluorescent lamps'' was not previously defined, DOE adopted a definition for CFL in the August 2016 CFL test procedure final rule. 81 FR 59386, 59403 (August 29, 2016). DOE incorporated language from the industry standards published by the Illuminating Engineering Society of North America (IES) RP–16–10 and IES LM–66–14 to define CFL without inappropriately excluding or including lamps. The adopted definition for CFL is as follows:

*Compact fluorescent lamp (CFL)* means an integrated or non-integrated single-base, low pressure mercury, electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light; the term does not include circline or U-shaped lamps.

In response to the March 2016 GSL ECS NOPR, NEMA and OSI stated that non-integrated CFLs comprise a small portion of the GSL commercial market with declining sales. (NEMA, No. 66 at p. 5; OSI, No. 73 at p. 13) As such, NEMA recommended that non-integrated CFLs only be subject to the 45 lm/W backstop requirement. (NEMA, No. 66 at p. 5) As discussed previously, DOE determined that the term compact fluorescent includes both integrated and non-integrated CFLs, and therefore non-integrated CFLs meet the definition of GSL. Further, DOE found that the market share of non-integrated CFLs is not negligible given the vast number of product offerings and common use in commercial applications.

3. General Service LED Lamps and OLED Lamps

General service LED lamps are included in the definition of GSL under 42 U.S.C. 6291(30)(BB). DOE does not currently have a definition for ''general service LED lamp,'' however ''light-emitting diode or LED'' is defined at 10 CFR 430.2 as a p-n junction solid-state device of which the radiated output, either in the infrared region, the visible region, or the ultraviolet region, is a function of the physical construction, material used, and exciting current of the device. In addition, the July 2016 LED TP final rule adopted a definition for the term ''integrated LED lamp'' in order to define the scope of the test procedure. 81 FR 43404, 43426 (July 1, 2016). The term ''integrated LED lamp'' was defined using the industry standard ANSI/IES RP–16–2010 and was adopted as follows:

*Integrated light-emitting diode lamp* means an integrated LED lamp as defined in ANSI/IES RP–16 (incorporated by reference; see § 430.3).

However, because LED lamps can be integrated or non-integrated, DOE proposed a definition for the term ''general service LED lamp'' to include both integrated and non-integrated lamps in the March 2016 GSL ECS NOPR. DOE proposed the following definition for general service LED lamps:

*General service light-emitting diode (LED) lamp* means an integrated or non-integrated LED lamp designed for use in general lighting applications (as defined in 430.2) and that uses light-emitting diodes as the primary source of light.

Similarly, general service OLED lamps are also included in the definition of GSL. DOE does not currently have a definition for ''OLED lamp,'' however, ''OLED'' is defined at 10 CFR 430.2 as a thin-film light-emitting device that typically consists of a series of organic layers between two electrical contacts (electrodes). DOE proposed the following definition for OLED lamp in the March 2016 GSL ECS NOPR:

*Organic light-emitting diode or OLED lamp* means an integrated or non-integrated lamp designed for use in general lighting applications (as defined in 430.2) and that uses OLEDs as the primary source of light.

NEMA and OSI suggested modifications to the proposed definitions of ''general service light-emitting diode (LED) lamp'' and ''organic light-emitting diode or OLED lamp''—specifically to change the phrase ''for use in general lighting applications'' to either of the following phrases: ''for use in a majority of lighting applications'' or ''for use in general service applications.'' If DOE preferred the latter phrase, they recommended a definition for ''general service applications'' that specified majority of lighting installations and excluded minority of lighting applications. (NEMA, No. 66 at p. 73; OSI, No. 73 at p. 5)

DOE is proposing to maintain the use of the phrase ''general lighting applications'' in the definitions where it was previously proposed, including those for ''general service light-emitting diode (LED) lamp'' and ''organic light-emitting diode or OLED lamp.'' (See section II.A.4 for more information.) For consistency, DOE is proposing here to adopt the term ''general service organic lighting-emitting diode or OLED lamp'' rather than ''organic lighting-emitting diode or OLED lamp'' as originally proposed in the March 2016 GSL ECS NOPR.

NEMA also recommended DOE specify that general service LED lamps include lamps marketed as vibration service, vibration resistant, or rough service lamps. (NEMA, No. 66 at p. 105) DOE preliminarily determines that this inclusion is unnecessary and, furthermore, would be confusing unless every sub-lamp type within general service LED lamps were also specified.

Therefore, DOE proposes the following definitions for ''general service light-emitting diode (LED)

[8] The preliminary analysis technical support document for the GSFL and IRL Standards Rulemaking is available at *www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0006-0022.*

lamp'' and ''general service organic light-emitting diode (OLED) lamp'':

*General service light-emitting diode (LED) lamp* means an integrated or non-integrated LED lamp designed for use in general lighting applications and that uses light-emitting diodes as the primary source of light.

*General service organic light-emitting diode (OLED) lamp* means an integrated or non-integrated OLED lamp designed for use in general lighting applications and that uses OLEDs as the primary source of light.

4. Other Lamps

As stated previously, the definition of GSL includes any other lamps that DOE determines are used to satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB)(i)(IV)) In addition to GSILs, CFLs and general service LED and OLED lamps, DOE proposed in the March 2016 GSL ECS NOPR, a determination that any other lamps that are intended to serve in general lighting applications and have specific features would meet the statutory criterion of lamps used to satisfy lighting applications traditionally served by GSILs. To implement this determination, DOE proposed to define general service lamps as lamps intended to serve in general lighting applications and that have the following basic characteristics: (1) An ANSI base (with the exclusion of light fixtures); (2) a lumen output of 310 lumens or greater; (3) an ability to operate at any voltage; (4) are not or could not be the subject of other rulemakings; and (5) no designation or label for use in certain non-general applications. 81 FR 14628. ''General lighting application'' is currently defined at 10 CFR 430.2 as lighting that provides an interior or exterior area with overall illumination. The key aspects of the proposed definition of GSL and specific comments received regarding these features are discussed in the following sections.

a. General Lighting Applications

As stated previously, the term GSL includes any other lamps that DOE determines are used to satisfy lighting applications traditionally served by GSILs (''other lamps'' authority). (42 U.S.C. 6291(30)(BB)(i)(IV)) In response to the March 2016 GSL ECS NOPR, NEMA argued that DOE exceeded its statutory authority by proposing to define GSL to include lamps intended to serve in general lighting applications. (NEMA, No. 66 at p. 2) NEMA stated that the EISA 2007 amendment to EPCA did not include the phrases ''general lighting applications'' or ''provides . . . overall illumination'' in the definitions of ''general service incandescent lamp'' or ''general service lamp.'' Relying on the language of the GSIL definition established in the Energy Policy Act of 1992 (Pub. L. 102–486; October 24, 1992), NEMA stated that the definition of GSL should be limited to lamps that are used to satisfy the majority of lighting applications. (NEMA No. 66, pp. 24–25)

NEMA and OSI noted that the phrases ''general lighting application,'' and ''overall illumination'' were introduced to EPCA in EISA 2007 in the context of ''metal halide lamp fixtures'' and that DOE was improperly incorporating it into the definition of GSL. (NEMA, No. 66 at p. 8, OSI No. 73 at p. 5) NEMA further commented that the statutory list of lamps excluded from the definitions of both incandescent and fluorescent ''general service'' lamps in EPAct 1992 are specialty lamps that did not satisfy a majority of lighting applications; accordingly, they were and are not ''general service'' lamps. (NEMA, No. 66 at pp. 8, 25) NEMA added that several incandescent and fluorescent lamps on the EPAct 1992 list of excluded lamps are capable of providing ''an interior or exterior area with overall illumination,'' including ''shatter resistant,'' ''street lighting service,'' ''airway'' and ''airport'' service incandescent lamps, further evidencing that Congress never intended for ''overall illumination'' to be a consideration in the definition of a GSL. (NEMA, No. 66 at p. 8) By including lamps that provide ''overall illumination'' in the definition of GSL, NEMA argued, DOE would cover speciality lamps in the definition of GSL contrary to the intent of Congress. (NEMA, No. 66 at p. 8) NEMA asserted that if DOE were to consider establishing standards for CFL and LED lamps of the types exempted from the GSIL definition, DOE must determine that these speciality lamps are covered products according to 42 U.S.C. 6292(b), then initiate a rulemaking procedure under 42 U.S.C. 6295(l). (NEMA, No. 66 at p. 16)

GE and OSI added that, in order to be considered a GSL, a lamp must be designed to satisfy the majority of applications traditionally serviced by GSILs, and based on DOE's 2010 U.S. Lighting Market Characterization report, 98 percent of GSILs are used in residential homes, and therefore, a lamp must have a residential application to satisfy this requirement. GE stated that a majority of residential lighting applications include GSIL, reflector, candelabra base or intermediate base decorative, general service MR reflector, integrated CFL, integrated LED, and linear fluorescent lamps. However, niche incandescent or niche halogen lighting product with low and declining sales volumes, unique shapes, specialty bases, or operating on non-residential voltages should not be considered as satisfying a majority of lighting applications traditionally served by GSILs. (GE, No. 70 at p. 9; OSI, No. 73 at p. 6)

NEMA and OSI stated DOE should conform to the clear intent of Congress indicated by its reference to GSLs as lamps that are used in a majority of lighting applications and exclusion of those that are used in a minority of lighting applications. NEMA and OSI recommended DOE create a new definition for the term ''general service applications'' to mean the majority of lighting installations and not including specialty lamps designed for special purposes or special applications that represent a minority of lighting applications. (NEMA, No. 66 at p. 73; OSI, No. 73 at p. 5)

As stated previously, EISA 2007 added the definition of GSL to EPCA and defined the term, in part, to include GSILs, CFLs, general service LED and OLED lamps, and any other lamp that DOE determines is used to satisfy lighting applications traditionally served by GSILs. The term GSIL was originally added to EPCA by EPAct 1992, and defined, in part, to include any incandescent lamp that ''can be used to satisfy the majority of lighting applications.'' (EPAct 1992, section 123; 106 Stat 2776, 2817) The definition of GSIL was subsequently amended by EISA 2007, which removed the reference to lamps that ''can be used to satisfy the majority of lighting applications,'' and instead specified that a GSIL is a lamp intended for general service applications. (EISA 2007, sec. 321; 121 Stat. 1492, 1574) EISA did not define ''general service application'' but did provide DOE discretion to determine which lamps satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB)(i)(IV))

The definition of GSIL and the determination to be made under the definition of GSL are in the context of the capabilities of a lamp to serve a particular lighting application. DOE must look at the applications traditionally served by GSILs and then determine whether a lamp is used in those applications. EPCA directs DOE to consider how GSILs have traditionally been used—what applications GSILs served—not how a lamp under consideration for inclusion in the definition of GSL has traditionally been used. In looking at the application of a GSIL, DOE considered the lighting

characteristics of a GSIL, *i.e.,* DOE considered what lighting characteristics allow a GSIL to meet the needs of a general service application and what lighting characteristics would satisfy a lighting application traditionally served by a GSIL. DOE determined that any lamp that is capable of being used in an application traditionally served by a GSIL is likely to be used for that purpose. As GSILs have traditionally provided overall illumination, a lamp that would satisfy the same application as traditionally served by GSILs is one that would provide overall illumination.

The fact that some of the lamps listed under the exemptions provided in 42 U.S.C. 6391(30)(D)(ii) may provide overall illumination does not preclude the consideration of general illumination as an element to the underlying definition of GSL. DOE does not read the list of exemptions as necessitating a narrowed interpretation of the underlying definition. Instead, the exemptions list includes lamps that may be considered GSLs (*i.e.,* may provide overall illumination), but which Congress chose to exempt at the time from the GSIL definition. As explained in the March 2016 GSL ECS NOPR, DOE considers the term ''overall illumination'' to be similar in meaning to the term ''general lighting'' as defined in the industry standard ANSI/IES RP–16–10 (hereafter ''RP–16''). RP–16 states that ''general lighting'' means lighting designed to provide a substantially uniform level of illuminance throughout an area, exclusive of any provision for special local requirements. 81 FR 14542. This interpretation of ''overall illumination'' excludes from the GSL definition specialty lamps that could not provide overall illumination.

b. ANSI Bases

DOE's proposed definition of GSL in the March 2016 GSL ECS NOPR included the requirement for an ANSI base but excluded light fixtures. CEC supported DOE's proposal not to limit the GSL definition to medium screw base lamps. (CEC, No. 69 at p. 18) GE agreed that a GSL is not a light fixture or an LED downlight retrofit kit. (GE, No. 70 at p. 10) Similarly, Eaton, NEMA, Philips, and OSI agreed with excluding LED downlight retrofit kits from the definition of GSLs. (Eaton, Public Meeting Transcript, No. 54 at pp. 58–59; Philips, No. 71 at p. 4; OSI, No. 73 at p. 5; NEMA, No. 66 at p. 73) CA IOUs commented that the term, ''ANSI-based'' is not clearly defined, and it was not clear if it was based on a particular ANSI standard, such as ANSI C81.61, and how, for example, bases of linear LED lamps are classified. (CA IOUs, Public Meeting Transcript, No. 54 at pp. 51–52)

DOE considers an ANSI base to be a lamp base standardized by the American National Standards Institute. DOE clarifies that if a linear LED lamp utilizes a base defined and standardized by ANSI, the lamp would meet that requirement of the GSL definition. DOE continues to propose that a GSL must have an ANSI base, with the exclusion of light fixtures and LED downlight retrofit kits. To better clarify the term ANSI base, DOE proposes the following definition:

*ANSI base* means a base type specified in ANSI C81.61–2016 (incorporated by reference; see § 430.3) or IEC 60061–1:2005 (incorporated by reference; see § 430.3).

c. Lumen Range

In the March 2016 GSL ECS NOPR, DOE did not prescribe a maximum lumen output when defining GSL. GE stated that DOE should not define lamps with lumens higher than 2,600 as GSLs as these lamps are designed for commercial, industrial, or specialty applications, and are not used in the residential sector. GE stated that some lamps go up to 50,000 lumens, and consumers would never use them in a home due to the cost and unnecessarily high light output. GE added that such products also do not have direct CFL and LED substitutes. (GE, No. 70 at pp. 9–10; GE, Public Meeting Transcript, No. 54 at pp. 64–65) The Appliance Standards Awareness Project (ASAP), however, asserted that until a decade ago, the torchiere with a 500 W halogen lamp was one of the most popular consumer luminaires. (ASAP, Public Meeting Transcript, No. 54 at p. 65) GE stated that torchieres with 500 W quartz halogen lamps for residential use were briefly on the market but no longer are sold due to safety concerns. (GE, Public Meeting Transcript, No. 54 at pp. 64–65)

DOE continues to believe that lamps with lumen outputs greater than 2,600 can be used in overall illumination and therefore would meet the definition of GSL. However, DOE reviewed available product information and is now proposing a maximum lumen output in the definition of GSL. DOE notes that overall product offerings of general service lamps significantly decrease around 4,000 lumens. Using product offerings as a proxy for overall sales, DOE concludes that sales of lamps with lumen outputs greater than 4,000 lumens are also much lower than lamps with lumen outputs between 310 and 4,000 lumens. While sales are not necessarily an indication of use in general lighting applications, DOE has tentatively concluded that the limited and unique product offerings above 4,000 lumens indicate that these lamps may be used mainly in specialty applications rather than for purposes traditionally served by GSILs. EISA 2007 directs DOE to track sales of five exempt lamp types, including 2,601 to 3,300 lumen incandescent lamps. While DOE acknowledges that reported data show that sales of these incandescent lamps have been decreasing over the last several years, DOE notes that the majority of product offerings between 2,601 and 3,300 lumens are CFLs or LED lamps and thus are not captured in the sales data. For the reasons described in this paragraph, DOE is proposing that general service lamps must have lumen outputs greater than or equal to 310 lumens and less than or equal to 4,000 lumens. DOE will continue to monitor the market and may re-evaluate this lumen range in future rulemakings. DOE requests comment on the proposed GSL lumen range, and also on whether DOE should adopt different upper and lower bounds for the range or should have no upper or lower limit to the lumen capacity of GSLs.

d. Operating Voltage

In the March 2016 GSL ECS NOPR, DOE did not propose a voltage range when defining GSL. GE commented that any lamp designed to operate at a voltage outside of 12V or 120V should not be included in the definition of GSL. (GE, No. 70 at p. 10) DOE believes that lamps with operating voltage outside of 12 V or 120 V can be used in general lighting applications. Therefore, DOE is not proposing a specific voltage range for the GSL definition.

e. Exempted Lamps From GSL

By definition, GSL does not apply to any lighting application or bulb shape described in the exemptions under the ''general service incandescent lamp'' definition. (42 U.S.C. 6291(30)(BB))(ii)(I)) In the March 2016 GSL ECS NOPR, DOE initially applied the exemptions to the GSL definition identified under 42 U.S.C. 6291(30)(BB)(ii)(I) only to medium screw base incandescent lamps, as the referenced descriptions of the exempted lamps were from the GSIL definition. 81 FR at 14545 (March 17, 2016). Although DOE applied these exemptions only to medium screw base incandescent lamps, DOE evaluated whether the 22 exemptions should also apply to CFL and LED lamps. 81 FR at 14545 (March 17, 2016).

CA IOUs, NEEP, and ASAP cautioned DOE to prevent potential loopholes with lamps exempted from the GSL

definition. (CA IOUs, No. 65 at p. 18; NEEP, No. 67 at p. 3; ASAP, Public Meeting Transcript, No. 54 at p. 12) NEEP stated appliance lamps and traffic signal lamps could result in potential loopholes as they are offered in a similar form factor as other GSLs and could serve in general lighting applications. (NEEP, No. 67 at p. 3)

NEMA stated that exempted lamp type versions of CFLs or LED lamps should remain exempt if they are not on the market and may never be manufactured; are not likely to consume an average of more than 100 kWh per household per year; and/or are exclusively for commercial use. NEMA asserted that DOE could easily determine to maintain the exemption for a number of lamps that NEMA stated are commercial lamps, and lamps that NEMA stated could not produce an average annual household energy use in excess of 100 kWh per year, and therefore would not be covered products. (NEMA, No. 66 at p. 45) NEMA provided detailed information regarding its position on each of the exempted lamp types in Tables A, B, and C of their written comments. (NEMA, No. 66 at pp. 48–49, 75–81)

Moreover, NEMA disagreed with DOE's interpretation of the ''exclusions'' provision under the definition of GSL. NEMA argued that under the statutory definition of GSL, lamps that provide lighting applications, or are of the same bulb shape, as described in the list of GSIL exempted lamps, regardless of lamp technology, are ''excluded'' from the definition of GSL. (NEMA, No. 66 at pp. 82–83.) NEMA further argued that these specialty lamps do not become ''general service lamps'' until they cease becoming designed for and used in special applications that represent a minority of lighting applications. (*Id.*) NEMA asserted that if DOE were to consider establishing standards for CFL and LED lamps of the types exempted from the GSIL definition, DOE must determine that those lamps are covered products according to 42 U.S.C. 6292(b), then initiate a rulemaking procedure under 42 U.S.C. 6295(l). (NEMA, No. 66 at p. 16.)

Upon further consideration of the statutory language, DOE agrees with NEMA in that the language of the ''exclusions provision'' under 42 U.S.C. 6291(30)(BB)(ii)(I) is not limited to lamps that are medium screw base or lamps that use incandescent technology. The GSL definition excludes lamps that serve the lighting application or are of the same lamp shape described in the GSIL ''exclusions'' provision, and makes no express reference to lighting technology or base type. Consequently, DOE is changing its interpretation in the March 2016 GSL ECS NOPR; DOE considers the language of 42 U.S.C. 6291(30)(BB)(ii)(I) to exclude from GSLs any lamps—whether GSILs, CFLs, general service LED and OLED lamps and any ''other lamps'' DOE includes in the GSL definition—that serve the listed lighting application or are of the same lamp shape described in the GSIL ''exclusions'' provision. Nonetheless, although the language of 42 U.S.C. 6291(30)(BB)(ii)(I) is not specific to incandescent technology, some of the lamp applications and bulb shapes described under the exemptions to the GSIL definition may be specific to incandescent lamps.

In section II.A.1, DOE assessed each of the 22 lamp categories within the GSIL exemptions to determine whether the Secretary should discontinue or maintain these exemptions for purposes of the GSL definition. DOE has tentatively concluded in that section that 14 of the 22 GSIL exemptions for medium screw base incandescent lamps should be maintained, while eight of the GSIL exemptions should be discontinued and considered as GSLs. Consistent with that tentative determination, DOE is now assessing the remaining 14 lamp categories in the GSIL exemptions to determine whether the application or lamp shape described is specific to an incandescent technology in order to determine the applicability of each exemption to GSLs other than GSILs.

As discussed in section II.A.1, DOE maintained exemptions from the GSIL definition for the following lamp types: appliance; black light; bug; colored; infrared; left-hand thread; marine; marine signal service; mine service; plant light; sign service; silver bowl; showcase; and traffic signal lamps. DOE then considered whether each of these exemptions were specific to incandescent technology. If the exemption was determined to be specific to incandescent technology, then by its own terms it did not apply to other (*e.g.,* fluorescent and LED) technologies. However, if the exemption was not specific to incandescent technology, then CFLs, LED lamps, and incandescent lamps that are not medium screw base (*i.e.,* non-GSILs) that provide lighting for the same application or are of the same shape would be excluded from the definition of GSL in addition to the medium screw base incandescent lamps that are currently exempt. DOE has tentatively determined that appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; left-hand thread lamps; marine lamps; marine signal service lamps; mine service lamps; plant light lamps; sign service lamps; silver bowl lamps; showcase lamps; and traffic signal lamps are not specific to incandescent technology. Therefore, the exemptions for all 14 lamp categories extend to all GSLs. DOE requests comment on its preliminary determination that the 14 exemption types are not specific to incandescent technology.

DOE received comments regarding the discontinued exemption for reflector lamps. NEMA and OSI asserted that DOE does not have the authority to impose a 45 lm/W standard on halogen MR-shaped lamps, as it would be technologically infeasible and eliminate the lamp, and there are no adequate CFL or LED lamp substitutes. (NEMA, 66 at p. 56; OSI, No. 73 at p. 13) NEMA noted that the most common halogen MR16 lamps are available in wattages of 20 W, 35 W, 50W and 70/75 W at 12 V or 120 V. Instead of subjecting these lamps to the backstop, NEMA recommended DOE adopt a maximum 50W standard for MR11, MR14, MR16 and MR20 incandescent/halogen lamps. (NEMA, No. 66 at pp. 69–70, 82–83) Similarly, CEC argued that allowing the backstop to take effect instead of analyzing efficacy levels for small-diameter directional lamps, including MR16 lamps, could lead to a backsliding of energy savings in California, where standards for these lamp types are set at 80 lm/W, effective for lamps manufactured on or after January 1, 2018. (CEC, No. 69 at p. 19) CEC stated that the backstop would decrease the standard to 45 lm/W, effective for lamps sold on or after January 1, 2020, resulting in both a loss of energy savings and a potential gap in lamp availability for manufacturers who decline to make a California line of lamps during the two-year gap. (CEC, No. 69 at p. 19) CA IOUs agreed with CEC and stated that DOE is missing significant additional energy savings by not setting a standard higher than 45 lm/W for MR16 lamps and other small diameter directional lamps (SDDLs). They noted that CEC will require small diameter directional lamps to meet an efficacy range of 70–80 lm/W depending on CRI by 2018 and there are already ENERGY STAR-certified MR16 LED lamps meeting 85–90 lm/W. (CA IOUs, No. 65 at pp. 13–14)

NEMA, OSI, and GE expressed the view that, based on DOE's authority to include other lamps as GSLs, DOE can only include the MR lamp (with a pin base or medium screw base) operated at between 115 and 130 V, or at 12 V on a 120 V transformer. They stated that this lamp type is commonly used in a

large number of residential lighting applications, is not a currently exempted incandescent lamp, is not currently included in the definition of reflector lamp, and is not covered by another rulemaking. (NEMA, No. 66 at pp. 74; OSI, No. 73 at pp. 6–7; GE, No. 70 at p. 9)

As discussed in section II.A.1, DOE has proposed to discontinue the exemption for reflector lamps from the definition of GSIL.[9] If DOE discontinues the exemption from the GSIL definition, then the exemption also does not apply to the GSL definition; DOE is not required to reapply the exemption to other GSLs. Therefore, reflector lamps are not exempt from the definition of GSL, and MR lamps of any base type, voltage, and technology are included in the scope of the GSL definition.

GE and NEMA also commented that there are specialty MR-shaped lamps that should not be included in the GSL definition. (GE, No. 70 at p. 9; NEMA, No. 66 at p. 24) GE specified that there are several MR-shaped lamps with smaller diameters than the typical MR16 lamp, and they are often designed at odd voltages for use in specialty equipment and applications. GE also added that there are not currently LED versions of these specialty MR-shaped lamps on the market. (GE, No. 70 at p. 9) NEMA noted that these lamp types typically have uncommon base types and, because of low market share, do not contribute significantly to energy consumption. (NEMA, No. 66 at p. 24)

DOE surveyed the market for MR-shaped lamps with smaller diameters than the common MR16 lamps. DOE confirmed that these lamps are typically marketed for use in non-general lighting applications such as projectors, scientific illumination equipment, theater lighting, studio lighting, stage lighting, film lighting, medical equipment lighting, and emergency lighting. In addition, DOE found that these lamps are significantly more expensive and have shorter lifetimes than MR-shaped lamps designed for general lighting applications. Further, DOE is unsure whether higher efficacy replacements are technologically feasible for these lamps due to their specific optical working distances and smaller form factors. Due to their use in specialty applications and lack of more efficacious replacements, DOE proposes that MR-lamps with diameter less than 2 inches that are designed and marketed for use in projectors, scientific illumination equipment, theater lighting, studio lighting, stage lighting, film lighting, medical equipment lighting, and emergency lighting would not be included in the GSL definition. DOE is proposing a definition for ''specialty MR-lamp'' to clarify which MR lamps meet the definition of GSL. (See section II.B.9 for more information.) DOE requests comment on its preliminary determination that specialty MR-lamps should not be included in the GSL definition and the proposed definition for the term ''specialty MR-lamp.''

As noted in section II.A.1, DOE determined in a final rule published on November 14, 2013 that standards for R20 short lamps would not result in significant energy savings because such lamps are designed for special applications or have special characteristics not available in reasonably substitutable lamp types. 78 FR 68331, 68340. Therefore, DOE maintained the exemption for these lamps from GSIL and is exempting R20 short lamps from the definition of GSL.

f. Lamps Subject to Other Rulemakings

In the March 2016 GSL ECS NOPR, DOE proposed that a GSL cannot be a lamp that is the subject of other rulemakings. 81 FR 14543. Philips, OSI, and GE agreed that lamps subject to other rulemakings (*e.g.,* GSFLs, IRLs, mercury vapor lamps) should not be included in the scope of GSLs. (Philips, No. 71 at p. 4; GE, No. 70 at p. 9 -10; OSI, No. 73 at p. 6)

Earthjustice disagreed with DOE's position specifically concerning IRLs, stating that the fact that these lamps are addressed in a separate rulemaking should not prevent DOE from evaluating whether to maintain their exemption from GSLs. Earthjustice stated that DOE has engaged in several rulemakings that satisfy several statutory requirements in a single action (*e.g.,* residential boilers, residential furnaces). Further Earthjustice stated that standards adopted in the GSL rule would likely set new, more stringent efficacy standards than the ones to which IRLs are currently subject, which would not pose a conflict or be inconsistent. Additionally, Earthjustice asserted that the Appropriations Rider does not restrict DOE from discontinuing the IRL exemption from the scope of GSLs. (Earthjustice, No. 61 at p. 5) EEAs concurred with Earthjustice's reasoning on this matter and requested DOE define all reflector lamps, including IRLs, as GSLs. (EEAs, No. 64 at pp. 7–8) EEAs and ASAP stated that IRLs are commonly used for general illumination and noted that MBCFLs and GSILs are also currently subject to their own standards. (EEAs, No. 64 at pp. 7–8; ASAP, Public Meeting Transcript, No. 54 at pp. 12–13)

DOE notes that although MBCFLs and GSILs are currently subject to their own standards, these lamp types are included in the statutory definition of GSL and therefore expressly included in the scope of this rulemaking. When evaluating whether to include other lamp types as GSLs, DOE proposed the criteria that a GSL cannot be a lamp evaluated in other rulemakings that are or were ongoing at the time of the GSL rulemaking to limit the possibility that one lamp type might be subject to two different standards. Due to differences in scope and other factors, separate rulemakings for the same lamp type may result in two different efficacy requirements.

In this NOPDDA, DOE has revised this criteria regarding other rulemakings. DOE continues to exempt GSFLs from the definition of GSL. Because the definition of GSFL and the supporting definition of fluorescent lamp are structured in a certain way, DOE is adding some exemptions in this rule to exclude lamps that are specifically and currently excluded from the GSFL and fluorescent lamp definitions from the definition of GSL. However, DOE is not exempting other lamps that were the subject of other ongoing rulemakings. As described in section II.A.1, DOE has discontinued the exemption for reflector lamps and therefore discontinued the exemption for IRLs. DOE is also not specifically exempting high intensity discharge (HID) lamps that otherwise meet the GSL criteria.

5. Summary and Proposed Regulatory Text Definition

As in the March 2016 GSL ECS NOPR, DOE is proposing to define general service lamp as a lamp intended to serve in general lighting applications and that has the following basic characteristics: (1) An ANSI base (with the exclusion of light fixtures and LED downlight retrofit kits); (2) a lumen output of greater than or equal to 310 lumens and less than or equal to 4,000 lumens; (3) an ability to operate at any voltage; and (4) no designation or label for use in non-general applications.

DOE is proposing a definition of ''general service lamp'' in 430.2 to capture the criteria and the exemptions discussed in previous sections. DOE proposes to define GSL as follows:

*General service lamp* means a lamp that has an ANSI base, operates at any voltage, has an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and

[9] DOE is maintaining the exemption from GSIL for R20 short lamps.

less than or equal to 4,000 lumens, is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications. General service lamps include, but are not limited to, general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, and general service organic light-emitting diode lamps, but do not include general service fluorescent lamps; linear fluorescent lamps of lengths from one to eight feet; circline fluorescent lamps; fluorescent lamps specifically designed for cold temperature applications; impact-resistant fluorescent lamps; reflectorized or aperture fluorescent lamps; fluorescent lamps designed for use in reprographic equipment; fluorescent lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; fluorescent lamps with a color rendering index of 87 or greater; R20 short lamps; specialty MR lamps; appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; left-hand thread lamps, marine lamps, marine signal service lamps; mine service lamps; plant light lamps; sign service lamps; silver bowl lamps, showcase lamps, and traffic signal lamps.

DOE requests comment on its proposed definition of GSL.

*B. Supporting Definitions*

In the March 2016 GSL ECS NOPR, DOE proposed several definitions to support its proposed definition of ''general service lamp.'' Specifically, DOE proposed definitions for ''integrated lamp,'' ''non-integrated lamp,'' ''light fixture,'' ''pin base lamp,'' ''GU24 base,'' ''LED downlight retrofit kit,'' and several terms to better define the lamp types described in section II.A.4 that are exempt from the definition of general service lamp. EEAs expressed concern that certain proposed exempted lamp type definitions may allow exempted incandescent lamps to be converted for use in general lighting applications. (EEAs, No. 64 at p. 7) In this proposed rule, DOE re-evaluated its proposed definitions for exempted lamp types and determined that they provide sufficient detail to prevent possible loopholes. DOE also received several specific comments regarding the proposed definitions as discussed in the following sections.

1. LED Downlight Retrofit Kit

Eaton, NEMA, Philips, and OSI agreed with the proposed definition of the ''LED downlight retrofit kit.'' (Eaton, Public Meeting Transcript, No. 54 at pp. 58–59; Philips, No. 71 at p. 4; OSI, No. 73 at p. 5; NEMA, No. 66 at p. 73) DOE received no other comments on the proposed definition of ''LED downlight retrofit kit.'' DOE continues to propose a definition for ''LED downlight retrofit kit'' in this document. DOE has replaced the term ''intended'' with ''designed and marketed'' as the latter provides more clarity. The proposed definition reads as follows:

*LED Downlight Retrofit Kit* means a product designed and marketed to install into an existing downlight, replacing the existing light source and related electrical components, typically employing an ANSI standard lamp base, either integrated or connected to the downlight retrofit by wire leads, and is a retrofit kit classified or certified to UL 1598C–2014 (incorporated by reference; see § 430.3). LED downlight retrofit kit does not include integrated lamps or non-integrated lamps.

2. Reflector Lamp and Non-Reflector Lamp

NEMA agreed with the proposed definition of ''reflector lamp.'' (NEMA, No. 66 at p. 24) DOE received no other comments on the proposed definitions of ''reflector lamp'' or ''non-reflector'' lamp. As such, DOE continues to propose the following definitions for ''reflector lamp'' and ''non-reflector lamp'' in this document:

*Reflector lamp* means a lamp that has an R, PAR, BPAR, BR, ER, MR, or similar bulb shape as defined in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1 (incorporated by reference; see § 430.3) and is used to direct light.

*Non-reflector lamp* means a lamp that is not a reflector lamp.

3. Black Light Lamp, Colored Lamp, Plant Light Lamp, and Bug Lamp

Regarding the definitions of lamps that are colored (*i.e.,* ''black light lamp,'' ''bug lamp,'' ''colored lamp,'' and ''plant light lamp''), NEEP stated, with support from EEAs and ASAP, that DOE should require that the color-element must be inherent in the construction of the lamp, and cannot be a consumer removable film or cover. NEEP added there are colored lamps now at internet prices of $1. (NEEP, No. 67 at p. 4; NEEP, Public Meeting Transcript, No. 54 at pp. 59–60; ASAP, Public Meeting Transcript, No. 54 at p. 60; EEAs, No. 64 at p. 7) Philips, however, agreed with the proposed definitions for ''black light lamp,'' ''bug lamp,'' ''colored lamp,'' and ''plant light lamp.'' (Philips, No. 71 at p. 4)

DOE has preliminary determined that the technical criteria specified in these definitions would be sufficient to prevent possible loopholes. DOE notes that the stipulations in the definitions for ''black light lamp,'' ''bug lamp,'' and ''plant light lamp'' regarding the range of the electromagnetic spectrum within which each of these lamps' radiant power peaks must fall prevents such loopholes. A similar outcome occurs with the definition of ''colored lamp,'' as DOE proposed in this definition, two different criteria for CRI and correlated color temperature (CCT) that the lamp's light output must exhibit. Hence, DOE continues to propose these definitions as presented in the March 2016 GSL ECS NOPR and as follows:

*Black light lamp* means a lamp that is designed and marketed as a black light lamp and is an ultraviolet lamp with the highest radiant power peaks in the UV–A band (315 to 400 nm) of the electromagnetic spectrum.

*Bug lamp* means a lamp that is designed and marketed as a bug lamp, has radiant power peaks above 550 nm on the electromagnetic spectrum, and has a visible yellow coating.

*Colored lamp* means a colored fluorescent lamp, a colored incandescent lamp, or a lamp designed and marketed as a colored lamp and not designed and marketed for general lighting applications with either of the following characteristics (if multiple modes of operation are possible [such as variable CCT], either of the below characteristics must be maintained throughout all modes of operation):

(1) A CRI less than 40, as determined according to the method set forth in CIE Publication 13.3 (incorporated by reference; see § 430.3); or

(2) A correlated color temperature less than 2,500 K or greater than 7,000 K as determined according to the method set forth in IES LM–66 or IES LM–79 as appropriate (incorporated by reference; see § 430.3).

*Plant light lamp* means a lamp that is designed to promote plant growth by emitting its highest radiant power peaks in the regions of the electromagnetic spectrum that promote photosynthesis: blue (440 nm to 490 nm) and/or red (620 to 740 nm). Plant light lamps must be designed and marketed for plant growing applications.

4. Mine Service Lamp

Philips supported the proposed definition for ''mine service lamp.'' (Philips, No. 71 at p. 4) However, ASAP expressed concern that it was too broad. ASAP noted that the original reasoning for a separate definition for mine service lamp was due to concerns of CFLs being used in hazardous gas environments, a risk that is avoided with solid-state lighting technology, and asked if this remained the reasoning for this

definition. (ASAP, Public Meeting Transcript, No. 54 at p. 60) In this document, DOE is proposing to exempt ''mine service lamp'' from the GSL definition. To provide clarity regarding exempted lamp types, DOE proposes to define ''mine service lamp'' so that it is technology neutral and encompasses only lamps designed and marketed for mine service applications. Hence, the use of the lamp would be sufficiently clear, thus discouraging consumers from using mine service lamps in general lighting applications. DOE continues to propose the following definition for ''mine service lamp'' as proposed in the March 2016 GSL ECS NOPR:

*Mine service lamp* means a lamp that is designed and marketed for mine service applications.

5. Appliance Lamp

DOE received comments on its use of the statutory definition of ''appliance lamp,'' which is defined at 42 U.S.C. 6291(30)(T) as:

*Appliance lamp* means any lamp that—

(1) Is specifically designed to operate in a household appliance, has a maximum wattage of 40 watts, is sold at retail (including an oven lamp, refrigerator lamp, and vacuum cleaner lamp); and

(2) Is designated and marketed for the intended application, with

(i) The designation on the lamp packaging; and

(ii) Marketing materials that identify the lamp as being for appliance use.

NEEP recommended DOE revisit its definition of ''appliance lamp'' to prevent the exploitation of that lamp type as a loophole from standards. They requested DOE limit the definition to lamps that must operate at high temperatures in applications such as ovens and clothes dryers. (NEEP, No. 67 at pp. 3–4) Regarding a potential loophole with this lamp type, DOE is proposing a revised definition of ''designed and marketed'' to clarify that the term means that a lamp is exclusively designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed solely for that application, with the designation on the packaging and all publicly available documents (*e.g.,* product literature, catalogs, and packaging labels). (See section II.B.10 for further details.) DOE has initially determined that the specialty application of appliance lamps would be sufficiently clear, thus discouraging consumers from using appliance lamps in general lighting applications.

6. Marine Lamp and Marine Signal Service Lamp

NEEP requested DOE define ''marine lamps'' to avoid confusion with ''marine signal service lamps.'' (NEEP, No. 67 at p. 5) DOE initially determined in the March 2016 GSL ECS NOPR that marine lamps provide overall illumination and can serve in general lighting applications, therefore, DOE did not propose an exemption for marine lamps from the GSL definition. However, in this rule, DOE has revised its position and proposed to maintain the exemption for marine lamps. (See sections II.A.1 and II.A.4 for more information.) Therefore, to provide clarity regarding the exempted lamp type, DOE proposes to define ''marine lamp'' as follows:

*Marine lamp* means a lamp that is designed and marketed for use on boats.

With regard to marine signal service lamps, DOE's proposed definition states the lamp must be ''designed and marketed for marine signal service applications,'' which should prevent marine lamps from being used as a replacement lamp. Philips commented in support of the proposed definitions for ''marine signal service lamp.'' (Philips, No. 71 at p. 4) DOE continues to propose defining ''marine signal service lamp'' as follows:

*Marine signal service lamp* means a lamp that is designed and marketed for marine signal service applications.

7. Vibration Service Lamp and Rough Service Lamp

NEMA suggested DOE revise the definition of ''vibration service lamp'' to remove the wattage limit and number of packages sold in retail to prevent a conflict with its proposed standard for vibration service lamps. (NEMA, No. 66 at pp. 5, 107) NEEP noted that ''vibration service lamp'' and ''rough service lamp'' are nearly interchangeable and DOE should reconsider their definitions to avoid confusion particularly, after shipment data for vibration service lamps triggers their own rulemaking. (NEEP, No. 67 at p. 5)

DOE is proposing to discontinue the exemptions for vibration service lamps and rough service lamps in this rule, thus revised definitions are not necessary as these would be considered GSLs.

8. Scope of Coverage

NEMA recommended DOE modify the definition of ''covered product'' to include the several additional lamp types that describe GSLs. (NEMA, No. 66 at pp. 5, 71) OSI urged DOE to explicitly state within the definition of covered product which covered products are affected by preemption. (OSI, No. 73 at p. 3)

As mentioned, DOE is proposing a definition that specifies the lamps that are GSLs, (see section II.A for details on the definition of ''general service lamp'') which should explicitly address which lamps are subject to the GSL regulations.

9. MR Lamp

NEMA recommended a definition for ''MR lamp,'' describing it as ''a curved focusing reflectorized bulb which may have a multifaceted inner surface that is generally dichroic coated and referred to as a multifaceted reflector lamp with a GU10, GU11, GU5.3, GUX5.3, GU8, GU4, or E26 base'' and providing information regarding common light sources and diameters used in the lamp type. (NEMA, No. 66 at pp. 5, 106) As in the March 2016 GSL ECS NOPR, in this rule, DOE does not find that a general definition for MR-shaped lamps is necessary to clarify the scope of this rulemaking. However, DOE is proposing a definition for ''specialty MR lamp.'' As specified in II.A.4, DOE is proposing to exempt certain MR-shaped lamps that have smaller diameters than MR16 lamps, operate at odd voltages, and are marketed for use in specialty applications. In doing so, DOE finds it necessary to establish a definition for ''specialty MR lamp'' to describe the lamps used in these specialty applications. The details regarding the bulb shape provided in NEMA's definition are very similar to those in the ANSI standard that DOE references in its definition of ''specialty MR lamp.'' Specifically, DOE proposes the following definition for ''specialty MR lamp:''

*Specialty MR lamp* means a lamp that has an MR bulb shape as defined in ANSI C79.1 (incorporated by reference; see § 430.3) with a diameter less than 2 inches; operates at any voltage; and that is designed and marketed for use in projectors, scientific illumination equipment, theatre lighting, studio lighting, stage lighting, film lighting, medical equipment lighting, or emergency lighting.

10. Other Definitions

DOE also received comments from Philips supporting the proposed definitions for ''infrared lamp,'' ''sign service lamp,'' ''silver bowl lamp,'' ''showcase lamp,'' and ''traffic signal lamp.'' (Philips, No. 71 at p. 4) DOE received no other comments on these definitions. DOE continues to propose

definitions for each of these lamps as in the March 2016 GSL ECS NOPR:

*Infrared lamp* means a lamp that is designed and marketed as an infrared lamp, has its highest radiant power peaks in the infrared region of the electromagnetic spectrum (770 nm and 1 mm), and which has a primary purpose of providing heat.

*Sign service lamp* means a vacuum type or gas-filled lamp that has sufficiently low bulb temperature to permit exposed outdoor use on high-speed flashing circuits, is designed and marketed as a sign service lamp, and has a maximum rated wattage 15 watts.

*Silver bowl lamp* means a lamp that has a reflective coating applied directly to part of the bulb surface that reflects light toward the lamp base and that is designed and marketed as a silver bowl lamp.

*Showcase lamp* means a lamp that has a T-shape as specified in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1 (incorporated by reference; see § 430.3), is designed and marketed as a showcase lamp, and has a maximum rated wattage of 75 watts.

*Traffic signal lamp* means a lamp that is designed and marketed for traffic signal applications.

DOE received no comments on the proposed definitions or revisions to existing definitions for ''light fixture,'' ''integrated lamp,'' ''non-integrated lamp,'' ''pin base lamp,'' and ''GU24 base''; therefore DOE continues to propose definitions for these terms as in the March 2016 GSL ECS NOPR:

*Light fixture* means a complete lighting unit consisting of light source(s) and ballast(s) or drivers(s) (when applicable) together with the parts designed to distribute the light, to position and protect the light source, and to connect the light source(s) to the power supply.

*Integrated lamp* means a lamp that contains all components necessary for the starting and stable operation of the lamp, does not include any replaceable or interchangeable parts, and is connected directly to a branch circuit through an ANSI base and corresponding ANSI standard lamp-holder (socket).

*Non-integrated lamp* means a lamp that is not an integrated lamp.

*Pin base lamp* means a lamp that uses a base type designated as a single pin base or multiple pin base system in Table 1 of ANSI C81.61, Specifications for Electrics Bases (incorporated by reference; see § 430.3).

*GU24 base* means the GU24 base standardized in ANSI C81.61–2016 (incorporated by reference; see § 430.3).

DOE is proposing a new definition for the term ''left-hand thread lamp'' in this rule to better define the lamps that meet this definition and therefore are proposed to be exempt. The proposed definition is as follows:

*Left-hand thread lamp* means a lamp with direction of threads on the lamp base oriented in the left-hand direction.

Lastly, DOE is proposing slight modifications to the definition proposed for ''designed and marketed'' in the March 2016 GSL ECS NOPR to improve clarity. The proposed definition is as follows:

*Designed and marketed* means exclusively designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed solely for that application, with the designation on the packaging and all publicly available documents (*e.g.,* product literature, catalogs, and packaging labels). This definition is applicable to terms related to the following covered lighting products: Fluorescent lamp ballasts; fluorescent lamps; general service fluorescent lamps; general service incandescent lamps; general service lamps; incandescent lamps; incandescent reflector lamps; medium base compact fluorescent lamps; and specialty application mercury vapor lamp ballasts.

## III. Clarifications to Regulatory Text

DOE is proposing editorial modifications to regulatory text to align with the recently adopted test procedure for integrated LED lamps. Specifically, DOE is proposing changes to 10 CFR 429.56 regarding the certification and reporting requirements of integrated LED lamps. In the July 2016 LED test procedure (TP) final rule, DOE adopted the requirement that testing of integrated LED lamps be conducted by test laboratories accredited by an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). 81 FR 43404, 43419 (July 1, 2016). To align with this requirement, DOE is proposing in this NOPDDA to modify the certification report language in 429.56(b)(2) to specify that the testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body must be included in the certification report. In addition, DOE is proposing that manufacturers must also report color rendering index (CRI) in the certification report for integrated LED lamps. DOE requests comment on the proposed changes regarding the certification and reporting requirements of integrated LED lamps.

## IV. Effective Date

For the proposed changes described in the various definitions in this document, DOE is proposing a January 1, 2020 effective date. DOE understands that the proposed definitions, especially those proposed expirations within the GSIL definition, will require that certain exempted lamps comply with the current Federal energy conservation standards for GSILs upon the effective date of this rulemaking. By aligning the proposed effective date with the 45 lm/W statutory standard beginning on January 1, 2020, DOE believes this will allow reasonable time for manufacturers to transition, while reducing the number of redesigns needed.

## V. Procedural Issues and Regulatory Review

### *A. Review Under Executive Orders 12866 and 13563*

The Office of Management and Budget (OMB) has determined that this NOPDDA does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). This proposed rule neither implements nor seeks to enforce any standard. Rather, this proposed rule merely seeks to define what constitutes a GSIL and what constitutes a GSL. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed the definitions for GSL and related terms proposed in this

NOPDDA under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

For manufacturers of GSLs, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule See 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Manufacturing of GSLs is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small businesses that manufacture GSLs covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE's research involved information provided by trade associations (*e.g.,* NEMA [10]) and information from DOE's Compliance Certification Management System (CCMS) Database,[11] EPA's ENERGY STAR Certified Light Bulbs Database,[12] LED Lighting Facts Database,[13] previous rulemakings, individual company Web sites, SBA's database, and market research tools (*e.g.,* Hoover's reports [14]). DOE used information from these sources to create a list of companies that potentially manufacture or sell GSLs and would be impacted by this rulemaking. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are completely foreign owned and operated. DOE determined that nine companies are small businesses that maintain domestic production facilities for general service lamps.

DOE notes that this proposed rule merely seeks to define what constitutes a GSIL and what constitutes a GSL. General service lamps are required to use DOE's test procedures to make representations and certify compliance with standards, if required. The test procedure rulemakings for compact fluorescent lamps, integrated LED lamps, and other general service lamps [15] addressed impacts on small businesses due to test procedure requirements. 81 FR 59386 (August 29, 2016); 81 FR 43404 (July 1, 2016). DOE understands that the proposed definitions, especially those proposed expirations within the GSIL definition, will require that certain exempted lamps comply with the current Federal test procedures and Federal energy conservation standards for GSILs upon the effective date of this rulemaking. Because the proposed effective date is aligned with the 45 lm/W statutory standard beginning on January 1, 2020, DOE believes reasonable time is provided for manufacturers to transition, while reducing the number of redesigns needed. For these reasons, DOE tentatively concludes and certifies that the new proposed definitions would not have a significant economic impact on a substantial number of small entities, and the preparation of an IRFA is not warranted.

### *C. Review Under the Paperwork Reduction Act*

Manufacturers of GSLs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for GSLs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. DOE requested OMB approval of an extension of this information collection for three years, specifically including the collection of information proposed in the present rulemaking, and estimated that the annual number of burden hours under this extension is 30 hours per company. In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017. 80 FR 5099 (January 30, 2015).

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

### *D. Review Under the National Environmental Policy Act of 1969*

In this proposed rule, DOE proposes definitions for and related to GSLs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule proposes a definition for general service lamp and related terms but does not affect the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of

[10] National Electric Manufacturers Association | Member Products | Lighting Systems | Related Manufacturers, *http://www.nema.org/Products/Pages/Lighting-Systems.aspx* (last accessed October 6, 2016).

[11] DOE's Compliance Certification Database | Lamps—Bare or Covered (No Reflector) Medium Base Compact Fluorescent, *http://www.regulations.doe.gov/certification-data* (last accessed October 6, 2016).

[12] ENERGY STAR Qualified Lamps Product List, *http://downloads.energystar.gov/bi/qplist/Lamps_Qualified_Product_List.xls?dee3-e997* (last accessed October 6, 2016).

[13] LED Lighting Facts Database, *http://www.lightingfacts.com/products* (last accessed October 6, 2016).

[14] Hoovers | Company Information √ Industry Information √ Lists, *http://www.hoovers.com* (last accessed October 6, 2016).

[15] The pre-publication of the general service lamps test procedure final rule was issued on September 30, 2016 and is available at: *http://energy.gov/sites/prod/files/2016/09/f33/General%20Service%20Lamps%20TP%20Final%20Rule.pdf.*

such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to assess the effects of federal regulatory actions on state, local, and tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPDDA under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to propose definitions for GSL and related terms is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR

2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at FR 2667.

The proposed definitions incorporate information contained in certain sections of the following commercial standards:

(1) ANSI C81.61–2016, ''American National Standard for Electrical Lamp Bases—Specifications for Bases (Caps) for Electric Lamps,'' 2016;

(2) IEC Standard 60061, ''Lamp caps and holders together with gauges for the control of interchangeability and safety, Amendment 35, Edition 3,'' 2005–01;

(3) UL 1598C–2014, ''Standard for Light-Emitting Diode (LED) Retrofit Luminaire Conversion Kits, First Edition,'' 2014;

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to adopting a final rule.

*M. Description of Materials Incorporated by Reference*

In this NOPDDA, DOE proposes to incorporate by reference the standard published by ANSI, titled ''Electric Lamp Bases—Specifications for Bases (Caps) for Electric Lamps,'' ANSI C81.61–2016. ANSI C81.61–2016 is an industry accepted standard that describes the specifications for bases (caps) used on electric lamps. This NOPDDA references ANSI C81.61–2016 for the definition of the term ''ANSI base.'' ANSI C81.61–2016 is readily available on *http://webstore.ansi.org/.*

DOE also incorporates by reference the standard published by IEC, titled ''Lamp caps and holders together with gauges for the control of interchangeability and safety—Part 1: Lamp caps,'' IEC 60061–1:2005. IEC 60061–1:2005 is an industry accepted standard that describes the specifications for lamp caps. This NOPDDA references IEC 60061–1:2005 for the definition of the term ''ANSI base.'' IEC 60061–1:2005 is readily available on *https://webstore.iec.ch/home.*

DOE also incorporates by reference the standard published by UL, titled ''Standard for Light-Emitting Diode Retrofit Luminaire Conversion Kits,'' First Edition, dated January 16, 2014, UL 1598C–2014. UL 1598C–2014 is an industry accepted standard that describes the requirements for LED retrofit luminaire conversion kits intended to replace existing incandescent, fluorescent, induction, and HID systems that comply with existing requirements for luminaires. This NOPDDA references UL 1598C–2014 for the definition of the term ''LED Downlight Retrofit Kit.'' UL 1598C–2014 is readily available on *http://ulstandards.ul.com/standards-catalog/.*

## VI. Public Participation

*A. Attendance at the Public Meeting*

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPDDA. If you plan to attend the public meeting, please notify Appliance and Equipment Standards Program Staff at (202) 586–6636 or *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter federal buildings from specific states and U.S. territories. As a result, driver's licenses from several states or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other federal-government-issued photo ID-card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4.* Participants are responsible for ensuring their systems are compatible with the webinar software.

*B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

*C. Conduct of the Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be

present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the NOPDDA, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this NOPDDA. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this NOPDDA. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and information regarding this NOPDDA before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as confidential business information or CBI). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or mail.* Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and

(7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

*E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on the eight GSIL exemptions that are proposed to be discontinued in this notice. In particular, DOE requests comment on the estimated annual unit sales, potential for lamp switching, and any other factors that should be considered.

(2) DOE requests comment on the 14 GSIL exemptions that are proposed to be maintained in this notice. In particular, DOE requests comment on the estimated annual unit sales, potential for lamp switching, and any other factors that should be considered.

(3) DOE requests any additional sales data from stakeholders that could be considered when determining whether to maintain or discontinue the GSIL exemptions.

(4) DOE requests comment on the proposed definition for GSIL.

(5) DOE requests comment on its preliminary determination that the following exemption types are not specific to incandescent technology: Appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; left-hand thread lamps; marine lamps; marine signal service lamps; mine service lamps; plant light lamps; sign service lamps; silver bowl lamps; showcase lamps; and traffic signal lamps.

(6) DOE requests comment on the proposed GSL lumen range of greater than or equal to 310 lumens and less than or equal to 4,000 lumens.

(7) DOE requests comment on its preliminary determination that specialty MR-lamps warrant an exemption and the proposed definition for the term ''specialty MR-lamp.''

(8) DOE requests comment on its proposed definition of GSL.

(9) DOE requests comment on the various definitions proposed to better delineate the GSL definition.

(10) DOE requests comment on the proposed changes regarding the certification and reporting requirements of integrated LED lamps.

## VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed definition and data availability.

**List of Subjects**

*10 CFR Part 429*

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

*10 CFR Part 430*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on October 7, 2016.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.56 is amended by revising paragraph (b)(2) to read as follows:

### § 429.56 Integrated light-emitting diode lamps.

* * * * *

(b) * * *

(2) *Values reported in certification reports are represented values.* Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, the date of manufacture, initial lumen output in lumens (lm), input power in watts (W), lamp efficacy in lumens per watt (lm/W), CCT in kelvin (K), CRI, power factor, lifetime in years (and whether value is estimated), and life (and whether value is estimated). For lamps with multiple modes of operation (such as variable CCT or CRI), the certification report must also list which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode. Lifetime and life are estimated values until testing is complete. When reporting estimated values, the certification report must specifically describe the prediction method, which must be generally representative of the methods specified in appendix BB. Manufacturers are required to maintain records per § 429.71 of the development of all estimated values and any associated initial test data.

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## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by:

■ a. Adding in alphabetical order the definitions of ''ANSI base,'' ''Black light lamp,'' ''Bug lamp,'' ''Colored lamp,'' ''General service light-emitting diode (LED) lamp,'' ''General service organic lighting-emitting diode (OLED) lamp,'' ''GU24 base,'' ''Infrared lamp,'' ''Integrated lamp,'' ''LED Downlight Retrofit Kit,'' ''Left-hand thread lamp,'' ''Light fixture,'' ''Marine lamp,'' ''Marine signal service lamp,'' ''Mine service lamp,'' ''Non-integrated lamp,'' ''Non-reflector lamp,'' ''Pin base lamp,'' ''Plant light lamp,'' ''Reflector lamp,'' ''Showcase Lamp,'' ''Sign service lamp,'' ''Silver bowl lamp,'' ''Specialty MR lamp,'' and ''Traffic signal lamp;'' and

■ b. Revising the definitions of ''designed and marketed,'' ''general service incandescent lamp,'' and ''general service lamp.''

The additions and revisions read as follows:

### § 430.2 Definitions.

* * * * *

*ANSI base* means a base type specified in ANSI C81.61–2016 (incorporated by reference; see § 430.3) or IEC 60061–1:2005 (incorporated by reference; see § 430.3).

* * * * *

*Black light lamp* means a lamp that is designed and marketed as a black light lamp and is an ultraviolet lamp with the highest radiant power peaks in the UV–A band (315 to 400 nm) of the electromagnetic spectrum.

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*Bug lamp* means a lamp that is designed and marketed as a bug lamp,

has radiant power peaks above 550 nm on the electromagnetic spectrum, and has a visible yellow coating.

* * * * *

*Colored lamp* means a colored fluorescent lamp, a colored incandescent lamp, or a lamp designed and marketed as a colored lamp and not designed and marketed for general lighting applications with either of the following characteristics (if multiple modes of operation are possible [such as variable CCT], either of the below characteristics must be maintained throughout all modes of operation):

(1) A CRI less than 40, as determined according to the method set forth in CIE Publication 13.3 (incorporated by reference; see § 430.3); or

(2) A correlated color temperature less than 2,500 K or greater than 7,000 K as determined according to the method set forth in IES LM–66 or IES LM–79 as appropriate (incorporated by reference; see § 430.3).

* * * * *

*Designed and marketed* means exclusively designed to fulfill the indicated application and, when distributed in commerce, is designated and marketed solely for that application, with the designation on the packaging and all publicly available documents (*e.g.,* product literature, catalogs, and packaging labels). This definition is applicable to terms related to the following covered lighting products: Fluorescent lamp ballasts; fluorescent lamps; general service fluorescent lamps; general service incandescent lamps; general service lamps; incandescent lamps; incandescent reflector lamps; medium base compact fluorescent lamps; and specialty application mercury vapor lamp ballasts.

* * * * *

*General service incandescent lamp* means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition does not apply to the following incandescent lamps—

(1) An appliance lamp;
(2) A black light lamp;
(3) A bug lamp;
(4) A colored lamp;
(5) An infrared lamp;
(6) A left-hand thread lamp;
(7) A marine lamp;
(8) A marine signal service lamp;
(9) A mine service lamp;
(10) A plant light lamp;
(11) An R20 short lamp;
(12) A sign service lamp;
(13) A silver bowl lamp;
(14) A showcase lamp; and
(15) A traffic signal lamp.

*General service lamp* means a lamp that has an ANSI base, operates at any voltage, has an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and less than or equal to 4,000 lumens, is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications. General service lamps include, but are not limited to, general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, and general service organic light-emitting diode lamps, but do not include general service fluorescent lamps; linear fluorescent lamps of lengths from one to eight feet; circline fluorescent lamps; fluorescent lamps specifically designed for cold temperature applications; impact-resistant fluorescent lamps; reflectorized or aperture fluorescent lamps; fluorescent lamps designed for use in reprographic equipment; fluorescent lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; fluorescent lamps with a color rendering index of 87 or greater; R20 short lamps; specialty MR lamps; appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; left-hand thread lamps; marine lamps; marine signal service lamps; mine service lamps; plant light lamps; sign service lamps; silver bowl lamps, showcase lamps, and traffic signal lamps.

*General service light-emitting diode (LED) lamp* means an integrated or non-integrated LED lamp designed for use in general lighting applications (as defined in § 430.2) and that uses light-emitting diodes as the primary source of light.

*General service organic light-emitting diode (OLED) lamp* means an integrated or non-integrated OLED lamp designed for use in general lighting applications (as defined in § 430.2) and that uses OLEDs as the primary source of light.

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*GU24 base* means the GU24 base standardized in ANSI C81.61–2016 (incorporated by reference; see § 430.3).

* * * * *

*Infrared lamp* means a lamp that is designed and marketed as an infrared lamp, has its highest radiant power peaks in the infrared region of the electromagnetic spectrum (770 nm to 1 mm), and which has a primary purpose of providing heat.

*Integrated lamp* means a lamp that contains all components necessary for the starting and stable operation of the lamp, does not include any replaceable or interchangeable parts, and is connected directly to a branch circuit through an ANSI base and corresponding ANSI standard lamp-holder (socket).

* * * * *

*LED Downlight Retrofit Kit* means a product designed and marketed to install into an existing downlight, replacing the existing light source and related electrical components, typically employing an ANSI standard lamp base, either integrated or connected to the downlight retrofit by wire leads, and is a retrofit kit classified or certified to UL 1598C–2014 (incorporated by reference; see § 430.3). LED downlight retrofit kit does not include integrated lamps or non-integrated lamps.

*Left-hand thread lamp* means a lamp with direction of threads on the lamp base oriented in the left-hand direction.

* * * * *

*Light fixture* means a complete lighting unit consisting of light source(s) and ballast(s) (when applicable) together with the parts designed to distribute the light, to position and protect the light source, and to connect the light source(s) to the power supply.

* * * * *

*Marine lamp* means a lamp that is designed and marketed for use on boats.

*Marine signal service lamp* means a lamp that is designed and marketed for marine signal service applications.

* * * * *

*Mine service lamp* means a lamp that is designed and marketed for mine service applications.

* * * * *

*Non-integrated lamp* means a lamp that is not an integrated lamp.

*Non-reflector lamp* means a lamp that is not a reflector lamp.

* * * * *

*Pin base lamp* means a base type designated as a single pin base or multiple pin base system in Table 1 of ANSI C81.61, Specifications for Electrics Bases (incorporated by reference; see § 430.3).

* * * * *

*Plant light lamp* means a lamp that is designed to promote plant growth by emitting its highest radiant power peaks in the regions of the electromagnetic spectrum that promote photosynthesis: Blue (440 nm to 490 nm) and/or red (620 to 740 nm). Plant light lamps must

be designed and marketed for plant growing applications.

* * * * *

*Reflector lamp* means a lamp that has an R, PAR, BPAR, BR, ER, MR, or similar bulb shape as defined in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1 (incorporated by reference; see § 430.3) and is used to direct light.

* * * * *

*Showcase lamp* means a lamp that has a T-shape as specified in ANSI C78.20 (incorporated by reference; see § 430.3) and ANSI C79.1 (incorporated by reference; see § 430.3), is designed and marketed as a showcase lamp, and has a maximum rated wattage of 75 watts.

* * * * *

*Sign service lamp* means a vacuum type or gas-filled lamp that has sufficiently low bulb temperature to permit exposed outdoor use on high-speed flashing circuits, is designed and marketed as a sign service lamp, and has a maximum rated wattage 15 watts.

*Silver bowl lamp* means a lamp that has a reflective coating applied directly to part of the bulb surface that reflects light toward the lamp base and that is designed and marketed as a silver bowl lamp.

* * * * *

*Specialty MR lamp* means a lamp that has an MR bulb shape as defined in ANSI C79.1 (incorporated by reference; see § 430.3) with a diameter less than 2 inches; operates at any voltage; and that is designed and marketed for use in projectors, scientific illumination equipment, theatre lighting, studio lighting, stage lighting, film lighting, medical equipment lighting, or emergency lighting.

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*Traffic signal lamp* means a lamp that is designed and marketed for traffic signal applications.

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■ 5. Section 430.3 is amended by:

■ a. Redesignating paragraphs (e)(12) through (e)(20) as paragraphs (e)(13) through (e)(21), respectively;

■ b. Adding new paragraph (e)(12);

■ c. Redesignating paragraphs (p)(2) through (p)(7) as paragraphs (p)(3) through (p)(8) respectively;:

■ d. Adding new paragraph (p)(2);

■ e. Adding new paragraph (u)(4).

The additions read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(e) * * *

(12) ANSI C81.61–2016, (''ANSI C81.61–2016''), American National Standard for Electrical Lamp Bases—Specifications for Bases (Caps) for Electric Lamps, approved April 20, 2016, IBR approved for § 430.2.

* * * * *

(p) * * *

(2) IEC Standard 60061, (''IEC 60061–1:2005''), Lamp caps and holders together with gauges for the control of interchangeability and safety, Amendment 35, Edition 3, 2005–01; IBR approved for § 430.2.

* * * * *

(u) * * *

(4) UL 1598C–2014 (''UL 1598C–2014''), Standard for Light-Emitting Diode (LED) Retrofit Luminaire Conversion Kits, First Edition, dated January 16, 2014, IBR approved for § 430.2.

* * * * *

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Part III

## Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1468

Agricultural Conservation Easement Program; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1468**

**[Docket No. NRCS–2014–0011]**

**RIN 0578–AA61**

## Agricultural Conservation Easement Program

**AGENCY:** Natural Resources Conservation Service (NRCS) and the Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** NRCS published an interim rule, with request for comments, on February 27, 2015, to implement the Agricultural Conservation Easement Program (ACEP) that was authorized by the Agricultural Act of 2014. NRCS received 1,055 comments from 102 respondents to the interim rule. In this document, NRCS responds to comments, makes adjustments to the rule in response to some of the comments received, and issues a final rule for ACEP implementation.

**DATES:** This rule is effective October 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kim Berns, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890; or email: *kim.berns@wdc.usda.gov,* Attn: Farm Bill Program Inquiry.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

The Agricultural Conservation Easement Program (ACEP) is a voluntary program to help farmers and ranchers preserve their agricultural land and restore, protect, and enhance wetlands on eligible lands. The program has two easement enrollment components: (1) Agricultural land easements; and (2) wetland reserve easements. Under the agricultural land easement component, NRCS provides matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase agricultural land easements. Agricultural land easements may be permanent or the maximum duration authorized by State law. Under the wetland reserve easement component, NRCS protects wetlands by purchasing directly from landowners a reserved interest in eligible land or entering into 30-year contracts on acreage owned by Indian Tribes, in each case providing for the restoration, enhancement, and protection of wetlands and associated lands. Wetland reserve easements may be permanent, 30-years, or the maximum duration authorized by State law.

The 2014 Act kept much of the substance of the statutory provisions that originally existed for the Wetlands Reserve Program (WRP) and Farm and Ranch Lands Protection Program (FRPP), with land eligibility elements from the Grassland Reserve Program (GRP) incorporated. In particular, ACEP as authorized by the 2014 Act:

- Consolidates FRPP, GRP, and WRP easement options into one program, and repeals these three programs; and
- Incorporates elements of FRPP and GRP into the agricultural land easement component of ACEP, and elements of WRP into the wetland reserve easement component of ACEP.

The significant statutory differences from the source programs include:

- The agency has program-wide authority to subordinate, modify, exchange, or terminate an easement under certain circumstances, an expansion of authority that had previously applied only to WRP.
- The non-Federal contribution towards the purchase of the agricultural land easement varies slightly from the previous FRPP non-Federal contribution. In particular, if a landowner makes a charitable donation of a large percentage of the agricultural land easement's fair market value, the landowner donation will reduce the Federal government's contribution to a greater extent than previously required under FRPP.
- All ACEP easements will be subject to an easement plan. Previously, WRP and GRP required some form of easement plan for all easements and FRPP only required a conservation plan on highly erodible cropland.
- The landowner tenure requirement for wetland reserve easements is 24 months compared to 7 years under the former WRP.

On February 27, 2015, NRCS published an interim rule with request for comments in the **Federal Register** (80 FR 11032) that promulgated the ACEP regulations at 7 CFR part 1468. While ACEP required its own regulation for its implementation, there were very few new regulatory requirements for participants.

NRCS organized the ACEP regulation into 3 subparts. Subpart A includes those provisions that affect the entire program, Subpart B includes those provisions that affect only the Agricultural Land Easement (ALE) component, and Subpart C includes those provisions that affect only the Wetland Reserve Easement (WRE) component.

In particular, Subpart A of the interim rule addressed:

- Identification of the following lands as ineligible—
  - Federal lands except lands held in trust for Indian Tribes.
  - State-owned lands, including lands owned by agencies or subdivisions of the State or unit of local government.
  - Land subject to an existing easement or deed restriction that provides similar protection that would be achieved by enrollment.
  - Lands that have onsite or offsite conditions that would undermine meeting the purposes of the program.
- Authorization for easement subordination, modification, exchange, or termination of easements under specific criteria.
- Identification that lands enrolled in FRPP, GRP, and WRP are considered enrolled in ACEP.

Subpart B of the interim rule addressed the ALE component, including:

- Limiting the Federal share of the easement cost for projects that are not *grasslands of special environmental significance* to not exceed 50 percent of the *fair market value* of the agricultural land easement, while requiring the non-Federal share to be at least equivalent to the Federal share, with an eligible entity contributing at least 50 percent of the Federal share with its own cash resources.
- Identifying that eligible entities may include Indian Tribes, State governments, local governments, or nongovernmental organizations that have farmland or grassland protection programs that purchase agricultural land easements.
- Authorizing NRCS to pay up to 75 percent of the fair market value of the agricultural land easement for the enrollment of grassland of special environmental significance.
- Authorizing NRCS to waive the eligible entity cash contribution requirement with no increase in Federal share for projects of special significance where the landowner voluntarily increases the landowner contribution commensurate to the amount of the waiver and the property is in active agricultural production.

• Maintaining a certification process for eligible entities.

• Prohibiting the assigning of a higher priority to an application solely on the basis of lesser cost to the program.

• Requiring all easements to be subject to an *agricultural land easement plan.*

Subpart C of the interim rule addressed the WRE component including:

• Maintaining most elements of the WRP eligibility and administrative framework.

• Authorizing a waiver process to allow enrollment of Conservation Reserve Program (CRP) lands established to trees.

• Allowing ranking criteria to consider the extent to which a landowner or other person or entity leverages the Federal investment.

• Reducing length of ownership requirement prior to enrollment from 7 years to 24 months.

• Exempting ''subclass w'' soils in the land capability classes IV through VIII from county cropland limitations.

• Keeping the WRP easement compensation framework for wetland reserve easements.

NRCS originally solicited comments on the interim final rule for 60 days ending April 28, 2015. NRCS extended the comment period an additional 30 days to May 28, 2015, to provide interested parties additional time to review the new regulatory provisions and associated policy.

NRCS received 102 timely submitted responses to the rule, constituting of 1,055 discrete comments. NRCS welcomes this enthusiastic response to its new, consolidated, easement program, and will continue to obtain input from interested parties throughout its administration. This final rule responds to the comments received through the public comment period and makes changes that NRCS believes contribute to the effectiveness, equity, transparency, and clarity of the program.

*Summary of ACEP Comments*

In this preamble, the comments have been organized in alphabetic order by topic. Given the range of the number of comments received on each topic, NRCS attempts to enumerate the level of interest received for each subtopic within a topic area. The topics include: ACEP general information; ALE agreements; ALE deed requirements; ALE entity certification; ALE entity eligibility; application process and requirements; cost-share assistance and match requirements; definitions; easement closing and payment procedures; easement valuation and consideration; easement monitoring, management, and enforcement; land and landowner eligibility; national and State allocations; national priorities and initiatives; participation in other USDA programs; planning; ranking; Regional Conservation Partnership Program (RCPP); restoration; State Technical Committees; subordination, modification, exchange, and termination; Wetland Reserve Enhancement Partnerships (WREP); WRE Reservation of Grazing Rights, and WRE-miscellaneous.

The comments were generally supportive with recommendations for improvement. Most comments related to the ALE component of the program. In particular, most recommendations pertained to program eligibility, minimum easement deed terms and requirements, the criteria for the agricultural land easement plan, and ranking.

*ACEP General Information*

*Comment:* NRCS received four comments related to the topic of ACEP general information. Two comments expressed support for the program, one comment opposed public grazing, and one comment supported education classes in Hawaii for small and micro farms.

*NRCS Response:* ACEP does not enroll public lands and thus does not have a public grazing component to its program. NRCS is not authorized to use ACEP funds for education classes, but does provide technical assistance to applicants of all types of operations, including small and micro farms.

*ALE Agreements*

*Comment:* NRCS received 11 comments on the basic topic of ALE agreements. One comment recommended that restrictions related to historical or archaeological features should be consistent with the Secretary of the Interior's standards, eight comments recommended that the NRCS State Conservationist have the delegated authority to approve substitutions of parcels under an ALE-agreement (including one comment that recommended that NRCS allow for more than a 1:1 easement substitution), and one comment recommended that certified entities obtain NRCS review and approval of a deed template prior to entering into a grant agreement. One comment recommended that NRCS allow negotiations with respect to ALE-agreements, including the ability to identify separately pre-closing and post-closing responsibilities.

*NRCS Response:* NRCS restrictions related to historical and archaeologic features are consistent with the Secretary of the Interior's standards. With respect to substitutions, NRCS policy currently delegates authority to the State Conservationist to approve substitutions. Substitutions are on a 1:1 basis to ensure that equal or greater conservation benefit is being obtained as a result of the substitution. NRCS will continue with this policy since it ensures better administration of ALE-agreements by allowing better tracking of funds and benefits achieved from the substitution, and additional parcels can always be added through amending the agreement. NRCS will provide the template ALE-agreement sooner in the process to allow eligible entities sufficient opportunity to review. Use of standard template ALE-agreements allows NRCS to use a more streamlined review and approval process for ALE-agreements helping to ensure agreements can be entered into within the same fiscal year as the initial selection for funding. NRCS adopted the recommendation that NRCS separately identify post-closing responsibilities to ease eligible entities' review of the agreements.

*ALE Deed Requirements*

NRCS received 182 comments related to ALE deed requirements. Prior to discussing the specific comments and NRCS responses, NRCS would like to respond to those comments that requested NRCS provide clarification regarding the difference between the inter-related concepts of ''minimum deed requirements'' and ''minimum deed terms.''

Section 1265B(b)(4)(C) of the ACEP statute identifies that an eligible entity will be allowed to use its own deed terms and conditions provided that NRCS determines that such terms and conditions are ''consistent with the purposes of the program'' and ''permit effective enforcement of the conservation purposes of such easements.'' To streamline program delivery, increase the transparency of program requirements, ease the deed review process and provide consistency and fairness between eligible entities, NRCS identified in the interim rule minimum deed requirements for ALE and then made available standard language that would meet these minimum deed requirements, *i.e.* a standard set of minimum deed terms. Minimum deed requirements that NRCS will now refer to as regulatory deed requirements, are the topics that must be addressed in an ACEP-funded agricultural land easement. Minimum

deed terms provide specific phraseology that NRCS has vetted as effective enforceable language for meeting the regulatory deed requirements. NRCS has revised § 1468.25 by re-organizing and consolidating the paragraphs in § 1468.25, without changing the substance, to better clarify the interface between regulatory deed requirements and minimum deed terms.

NRCS explained in the preamble of the interim rule that an agricultural land easement deed may be determined to meet program purposes by the eligible entity drafting all of the deed terms and conditions for an individual easement and submitting the entire deed to NRCS for review to ensure that the regulatory deed requirements have been met. Alternatively, the eligible entity may adopt the NRCS minimum deed terms as a whole along with the entity's own deed terms. In either scenario, the eligible entity may use their own terms and conditions, the difference being the review process by which NRCS ensures the purposes and requirements of the program are met. NRCS may review and approve at the State level those deeds submitted by eligible entities that have the NRCS minimum deed terms attached as written, whereas NRCS at the national level must review and approve all other deeds submitted by eligible entities.

NRCS further explained in the interim rule that the former approach was taken under FRPP and, based on the inconsistencies that arise with individual deed negotiations, NRCS decided it would provide more transparent and consistent implementation under ACEP to adopt the latter approach of requiring regulatory deed requirements and encouraging the adoption of minimum deed terms. An eligible entity, especially certified entities, can be confident that they have met ACEP funding and regulatory deed requirements if the easement deed incorporates the language from the available minimum deed terms.

The subtopics addressed by the ALE deed requirement comments included the following: Regulatory deed requirements in general (61 comments); modification and termination provisions (11 comments); incorporation of the ALE plan (8 comments); permitted and other uses (2 comments); mining, minerals, oil, and gas (5 comments); construction and building envelope (14 comments); commercial activities (1 comment); impervious surface limitations (12 comments); subdivision (17 comments); advisory committee (8 comments); right of enforcement (17 comments); access (3 comments); acquisition purpose restrictions (8 comments); and miscellaneous (10 comments).

*General Comments:* The breakdown of the 61 general comments related to the regulatory deed requirements or the minimum deed terms, and the NRCS response to these comments, are as follows:

- Four comments expressed support for the minimum deed terms;
- Eight comments recommended eliminating the minimum deed term requirement; NRCS has determined that identifying regulatory deed requirements that address statutory purposes, including specific statutory requirements, provides an equitable and transparent basis upon which to achieve program purposes and make consistent programmatic decisions. In particular, this final rule retains the following regulatory deed requirements at § 1468.25, including provisions that must address: (1) Right of enforcement—statutory requirement; (2) compliance with an agricultural land easement plan—statutory requirement; (3) impervious surface limitation—statutory requirement; (4) indemnification—standard clause in conservation easements; (5) amendments must be in compliance with ALE purposes—ensure that deed will further statutory program purposes for easement term; (6) prohibition of commercial and industrial activities except those activities determined consistent with the agricultural use of the land—statutory purpose for limiting conversion to non-agricultural uses or protecting grazing uses and related conservation values; (7) prohibition or limitation of the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS and the Grantee—statutory purpose for limiting conversion to non-agricultural uses or protecting grazing uses and related conservation values; (8) specific protections related to the purposes for which the easement is acquired—statutory requirement; and (9) other terms as identified by the Chief in the agreement between NRCS and the eligible entity—necessary flexibility to address emerging resource issues. NRCS determined that these regulatory deed requirements ensure the financial and programmatic integrity of the program. This approach also retains flexibility for cooperating entities to determine regional, State, or local priorities within their deeds and for enrolling projects.
- Two comments recommended eliminating the minimum deed terms; NRCS did not adopt this recommendation because minimum deed terms provide consistency and transparency to eligible entities and landowners about NRCS program requirements, and are required to ensure effective program delivery.
- Nine comments recommended eliminating priority given to eligible entities that adopt the minimum deed terms, while two comments supported the priority. Given the mid-fiscal year publication of the interim rule and the requirement to incorporate into the ALE-agreement the agreed-upon terms for funded easements, NRCS identified that it would give fund priority in fiscal year (FY) 2015 to eligible entities who were willing to adopt NRCS minimum deed terms. Several eligible entities, especially those accustomed to negotiating deed terms required as a condition of receiving Federal funds, expressed concern about priority being given to eligible entities willing to adopt the minimum deed terms. NRCS reiterates that eligible entities are authorized to use their own deed terms and that the minimum deed terms are in addition to the entity's deed terms. As described above, participation in ACEP requires the regulatory deed requirements to be addressed in the deed. Therefore, NRCS will continue to encourage eligible entities to adopt NRCS minimum deed terms because such adoption addresses the regulatory deed requirements and greatly facilitates reviews of both the ALE-agreements and the deeds, streamlines program delivery, and ensures long term consistency and equitable treatment of eligible entities and landowners. This encouragement will be implemented through a National ranking factor among other factors, and if an eligible entity adopts the minimum deed terms then such eligible entity will receive priority in the ranking. Eligible entities may opt to negotiate an entity-specific template that incorporates the minimum deed terms and are encouraged to do this prior to the start of a funding year. States may also decide whether they wish to screen applications from eligible entities that request such individualized negotiation dependent upon the State's ability to manage its workload. If an entity has an entity-specific template deed that has been approved by the national level in the fiscal year prior to ranking, this entity-specific template deed will also be captured in the ranking. However, any subsequent requests for changes to either the minimum deed terms or

approved entity-specific template deed may affect this ranking consideration.

• Three comments recommended NRCS create a process to allow approved minimum deed terms to be developed at the State level and two comments recommended allowing for modification of the minimum deed terms to create a better balance between national oversight and local needs by allowing more flexibility for easements to include local deed restrictions. NRCS has determined that program consistency is better served by the development of a standard set of minimum deed terms at the National level. However, State Conservationists in consultation with the State Technical Committee, may propose additional minimum deed terms that are State specific to address actual, local concerns that are not adequately encompassed by the National set of minimum deed terms. The proposed State-specific terms must be submitted by the State Conservationist to the National office for review and if the National office approves the additional State-specific terms, such terms would then be utilized uniformly throughout the State as the standard set of minimum deed terms for that State. Submissions for additional minimum deed terms that are State-specific must occur in the fiscal year prior to their proposed use to ensure adequate time for review and approval. Eligible entities may be authorized to use an approved set of State-specific minimum deed terms on any unclosed ACEP–ALE easements through an amendment to the ALE-agreement.

• Three comments recommended that State entities should be exempt from the regulatory deed requirements specified in the ACEP regulation; NRCS did not adopt this recommendation. ALE is a voluntary funding source that is available to eligible entities where mutual purposes can be met through a partnership arrangement. Just as State entities must ensure that their program purposes will continue to be met through the partnership arrangement, NRCS must ensure that ACEP purposes will be furthered by the expenditure of ACEP funds. NRCS recognizes that State entities may have special statutory restrictions, and State entities, like other eligible entities, have flexibility to use their own deed terms, and with the exception of the United States Right of Enforcement language, can request review and approval of an individual template deed if they are unable to use the standard minimum deed terms. NRCS will work with State entities, and others, where there are programmatic conflicts that must be addressed in order to create an effective partnership arrangement.

• Five comments recommended replacing the minimum deed terms with an entity specific template that could be further modified on a per project basis. NRCS recognizes that individually-tailored provisions provide eligible entities with negotiation flexibility in their discussions with landowners. However, NRCS experience has revealed that individually-negotiated provisions create inconsistencies in how eligible entities and landowners are treated, which is inconsistent with how Federal funds should be administered. NRCS also has extensive and successful experience in administering Federal conservation program funds through the use of standard agreement and contract language and has found that the use of such standard language increases the transparency of the programs, ensures the equitable treatment of landowners and program participants, and ultimately aids in the enforceability of the agreement or contract to ensure the purposes for which the Federal funds have been invested are achieved and protected consistent with the statutory intent of the conservation program. An entity-specific template that is then further negotiated on an individual project basis is not considered a template but rather an individually negotiated deed and may affect any ranking consideration given for the use of an approved template. Therefore, NRCS encourages that the regulatory deed requirements be met through use of the minimum deed terms.

• One comment recommended that any easement template deed waiver should require approval of the other funding partners; NRCS did not adopt this recommendation. NRCS works with an eligible entity that must meet ACEP–ALE terms and conditions to receive ACEP funding, including having an easement deed that meets ALE program requirements. NRCS does not have a direct relationship with the other funding partners of the eligible entity and therefore it is the eligible entity's responsibility to ensure that its partners are notified about any matters that may affect the transaction and the partners' funding commitments.

• One comment recommended that NRCS provide more flexibility and clarity in determining whether an eligible entity's deed terms are consistent with program purposes. NRCS has outlined in the regulation the deed requirements that must be addressed in an eligible entity's deed, and has also made available minimum deed terms that have been determined to be consistent with program purposes and that satisfy the regulatory deed requirements. NRCS will work with an eligible entity to answer questions that arise with respect to other deed provisions that the eligible entity may wish to include and how such provisions could further or inhibit ALE purposes.

• Two comments recommended that certified entities should be authorized to use their own deed terms and conditions so long as those terms and conditions meet the statutory requirements of the program, and two comments recommended that NRCS should review them upon request; NRCS did not adopt these recommendations. NRCS regulatory requirements apply to all eligible entities, including certified eligible entities. NRCS has determined the regulatory deed requirements specified in this regulation are essential to meeting ALE program purposes and statutory requirements. While an eligible entity may avail itself of a streamlined administrative process if certified, such streamlined process must also result in meeting ALE program purposes. NRCS believes that an eligible entity that has sufficient familiarity with ALE program purposes to be certified is also knowledgeable of the deed provisions that NRCS considers sufficient to meet program purposes. A certified entity has gained this familiarity through NRCS approval of an eligible entity's template deed prior to certification, and the transparent manner in which NRCS has made available the minimum deed terms that are similarly determined to be sufficient to meet program purposes. The availability of a grant agreement for certified entities is to minimize NRCS involvement in the prior review of each of the certified entity's easement transactions. The certified entity can use their own deed terms provided that the deed meets the regulatory deed requirements.

• Three comments recommended that NRCS ensure that future habitat restoration is not prohibited on an ALE easement, and that good riparian and floodplain management necessary to achieve salmon recovery and shellfish protection are implemented. NRCS recognizes that conservation organizations have different understanding about whether habitat restoration activities are consisted with agricultural uses of land. NRCS has determined that habitat restoration is generally consistent with ALE program purposes. However, NRCS does not believe that habitat restoration is a minimum program requirement for ALE enrollment like it is for WRE

enrollment, and therefore has not included it as a regulatory deed requirement. A State Conservationist, in consultation with the State Technical Committee, may request that a provision authorizing habitat restoration activities be included as an additional State-specific minimum deed term for ALE enrollment in their State.

• Three comments recommend NRCS clarify the difference between minimum deed terms and regulatory deed requirements and when they are or are not mandatory. As discussed above, NRCS identified in the interim rule the regulatory deed requirements that are the topics that must be addressed in an ACEP-funded easement, and addressing these regulatory deed requirements is mandatory in order to receive ALE funding. Alternatively, minimum deed terms, provide specific phraseology that NRCS has vetted as effective enforceable language for meeting the regulatory deed requirements. Mechanisms for the adoption and incorporation of the minimum deed terms into the eligible entities agricultural land easement deed are described in this rulemaking and more specifically addressed in policy and in the terms of the ALE-agreement.

• NRCS received one comment recommending that a specific minimum threshold be required for public access, particularly for those properties where there is not visual access from a public right-of-way. NRCS requires that a landowner provide the Grantee with access to facilitate required easement monitoring, and ensure that NRCS has sufficient access should NRCS ever need to exercise its right of enforcement. However, public access is a matter beyond the scope of protections needed to meet ALE purposes, and the landowner reserves the right to control public access consistent with the terms of an ALE easement deed.

• NRCS received one comment requesting clarification of the regulatory provision that the regulatory deed requirements may include ''other minimum deed terms required by NRCS to insure that ACEP ALE purposes are met.'' This provision provides the Chief with the flexibility to identify resource concerns that may be necessary to meet program objectives. For example, where ALE funds are used specifically to protect grassland habitat for sage grouse, the Chief may require a provision that prohibits the conversion of grassland to other uses.

• NRCS received two comments recommending that the regulatory deed requirements be consistent with other Federal law, including the Endangered Species Act and fiduciary obligations to protect tribal treaty reserved rights. NRCS implements ALE, including its regulatory deed requirements, consistent with the legal framework associated with the implementation of a Federal program. No changes are required in response to these comments.

• NRCS received one recommendation to alter the language in the minimum deed terms to conform to the language found at § 1468.28(c) related to the protection of the interests of the United States. NRCS will ensure the United States Right of Enforcement language provided in the ALE-agreements and minimum deed terms are consistent with the applicable regulation and statute.

• NRCS received three recommendations related to having a clear template review and decision process. NRCS agrees and has established the following process for reviewing ALE deed templates for non-certified eligible entities that are outlined in the ALE-agreements. Those methods are:

1. Non-certified eligible entities seeking approval of an entity-specific ALE deed template will review the regulatory deed requirements and the minimum deed terms. Entities should notify NRCS whether they will be requesting an entity-specific ALE deed template as early in the process as possible, preferably prior to ranking. Such entities are likewise encouraged to submit the proposed entity-specific ALE deed template as early in the process as possible, preferably in the fiscal year prior to submitting an application and at a minimum prior to entering into the ALE-agreement.

2. The entity will draft a proposed entity-specific ALE deed template that addresses all of the regulatory deed requirements, incorporates the required United States Right of Enforcement language without alteration, and to the greatest extent practicable will incorporate the minimum deed terms as written. The entity will identify in their request for approval the specific terms within the proposed ALE deed template that meet the regulatory deed requirements by citation and where applicable the minimum deed terms.

3. Eligible Entities will submit the proposed entity-specific ALE deed template to the State Conservationist of the State in which they plan to apply for ACEP–ALE funding.

4. The State Conservationist will review the proposed entity-specific ALE deed template for conformance with program requirements and submit the template for National review.

5. The Easement Programs Division (EPD) Director will review the proposed entity-specific ALE deed template and then approve, reject, or approve with required changes.

6. The EPD Director decision will be communicated in writing to the eligible entity and the State Conservationist.

7. Eligible entities with an approved entity-specific ALE deed template must use the language of the template as approved, and if further changes are made, the deed must be re-submitted for EPD Director approval and will be treated as an individual deed for review.

8. If an entity is provided ranking points for having an approved entity-specific ALE deed template, that template must have National-level approval in the fiscal year prior to submitting an application for that parcel.

• NRCS received one recommendation to remove requirements of the Grantee, *i.e.* eligible entity, from the minimum deed terms; NRCS did not adopt this recommendation because it is essential to the program structure that the Grantee, which has affirmative duties, is identified as having the lead responsibility for enforcement of the deed terms. Therefore, in the enforcement clause, both the Grantor and Grantee must comply with the deed terms.

*Modification and termination provisions (11 comments):* Of the 11 comments that NRCS received related to the modification and termination provisions of the minimum deed terms, one comment recommended allowing for boundary line adjustments when the adjacent properties are also under conservation easement; one comment recommended allowing land to be substituted for repayment when an easement is extinguished or condemned; two comments recommended allowing for fee simple road takings for minor road improvements or defer to State law on the topic; three comments recommended not giving the United States exclusive power, or any authority, to reject a proposed easement administration action affecting the United States' interests, and four comments recommended changes to the valuation calculations for termination actions, such as incorporating language from the Internal Revenue Service regulations; providing the State with a specific pro rata share; or provide alternative deed forms in order to protect landowners who wish to take a charitable donation deduction.

NRCS recognizes that several parties have an interest in the implementation of the easement administration provisions in the deed, especially as these provisions may affect the future

administration, use, terms, or configuration of the easement area or whether the easement is considered a qualified conservation contribution for the tax treatment of the transaction itself. In particular, the Internal Revenue Code (IRC) permits taxpayers to deduct from their taxable income the value of a qualifying charitable contribution, including a qualified conservation contribution (also known as a bargain sale to a charitable organization) 26 U.S.C. 170(a)(1). The donation of a conservation easement can properly provide the basis of a deduction under the IRC if the restriction is granted in perpetuity. The Treasury Regulations offer an exception to the requirement that a conservation easement impose a perpetual use restriction where a subsequent unexpected change in the conditions surrounding the property makes impossible or impractical the continued use of the property for conservation purposes. In these limited situations, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and the proceeds from a subsequent sale or exchange of the property are used by the Donee organization in a manner consistent with the conservation purposes of the original contribution. Several of the concerns raised by the comments relate to how the easement administration deed terms affect the treatment of the transaction under the tax code. For example, modifying an easement boundary, accommodating a future roadway, valuation at condemnation, extinguishment, or termination, or the treatment of proceeds from a condemnation action may all have impacts on how the IRS views the permanence of the easement for charitable deduction purposes. Therefore, NRCS will consider alternate valuation options for these types of actions that ensures NRCS will be reimbursed for the Federal investment in the agricultural land easement and receive its proportionate share of the proceeds. As to the other recommendations on the easement modification and termination provision, all parties who have an interest identified in the easement deed, including the United States, have a right to oppose an easement administration action, or include specific provisions with in the deed that relate to their specific authority to modify or terminate an easement once acquired.

*Incorporation of the ALE plan (8 comments):* Of the eight comments NRCS received related to the deed terms incorporating reference to the ALE plan, one comment requested NRCS explain what is meant by the phrase ''excluding NRCS-approved conservation practices developed under the ALE Plan'' in the collective impervious surface footprint paragraph; one comment recommended NRCS clarify the ALE plan requirements; two comments recommended removing the requirement that the Grantee has to file and revise ALE plans, including approving erosion and sedimentation control plans; two comments recommended removal of the requirement that Grantee take all reasonable steps to secure compliance with the ALE Plan; one comment recommended that NRCS de-emphasize the ALE plan and instead focus on conservation practices that are required by statute; and one comment recommended NRCS eliminate the cross-reference to the ALE plan in the various terms related to permitted uses. As described more fully below under the topic of ''Planning'', the ACEP statute requires that the terms and conditions of an ALE easement include an agricultural land easement plan. Thus, the terms of an agricultural land easement deed are not separate from the requirement that there must be an agricultural land easement plan, and to ensure that the deed terms and the agricultural land easement plan are consistent, the applicable minimum deed terms cross-reference to management decisions made by the landowner that are documented in the agricultural land easement plan. Additionally, conservation practices identified in the ALE plan are excluded from the calculation of the impervious surface limitation. Given that the agricultural land easement plan is a required element of the easement deed, the eligible entity and landowner have primary responsibility for ensuring that it is updated to reflect accurately the nature of the agricultural operations on the easement area.

*Permitted and other uses (2 comments):* Of the two comments received on the ''permitted and other uses'' term in the minimum deed terms, one comment recommended that NRCS not make the ''permitted uses'' term mandatory, and the other comment recommended eliminating the minimum deed term that allows a Grantee to approve ''other uses.'' The minimum deed terms for ALE no longer include a ''permitted uses'' section. Instead, NRCS has identified that agricultural uses must be protected under the terms of the deed. Therefore, NRCS has removed the references to uses that are not necessary to protect agricultural uses, and an eligible entity has the flexibility to have more restrictive limitations in the deed terms. NRCS did not, however, change the term that allows a Grantee to approve other uses.

*Mining, minerals, oil, and gas (5 comments):* Of the five comments NRCS received related to the minimum deed terms for mining, minerals, oil, and gas, one comment recommended complete prohibition of these activities, one comment recommended complete allowance of these activities, and the remaining three comments recommended options ranging between allowance and prohibition. These activities, including their impacts upon the agricultural values of enrolled easements, vary significantly regionally and by eligible entity. If these activities occur in the agricultural landscape, they must be addressed because they may result in a conversion to a non-agricultural use or may threaten the protection of grazing uses and related conservation values. Therefore, NRCS provides alternatives within the minimum deed terms, and an eligible entity can choose the option that fits best for its transactions. An eligible entity can include its own additional deed terms that are more restrictive.

*Construction and building envelope (14 comments):* Of the 14 comments related to the construction and building envelope term, one comment recommended that NRCS remove the requirement that the Grantee approve construction activities; four comments recommended that NRCS remove or reduce the stringency on building envelope requirements; four comments recommended NRCS clarify that landowners may construct and maintain agricultural structures outside of building envelopes with prior written approval from the Grantee; two comments recommended NRCS eliminate the requirement that utilities or agricultural structures outside of building envelopes follow NRCS-approved conservation practices consistent with the ALE plan; two comments recommended allowing alternative building envelope sites with a final selection in the future if local laws prohibit or make it economically infeasible to locate in the original location; and one comment recommended that the deed term should not allow agricultural structures outside of the building envelope. NRCS requires the identification of a building envelope because the location of potential impervious surfaces is often as important to the future agricultural viability of a parcel as the extent of the impervious surface. NRCS accommodates the desire for flexibility

in the building envelopes by allowing adjustments to the identified location of building envelopes with approval from the Grantee, and NRCS also allows agricultural structures to be built outside the building envelope with Grantee approval.

*Commercial activities (1 comment):* NRCS received one comment recommending that the commercial activities minimum deed term allow for activities related to interpretation of the property as a historic resource, such as charging a fee for a battlefield tour or other similar event. NRCS has incorporated this recommendation into its minimum deed terms.

*Impervious surface limitations (12 comments):* Of the 12 comments NRCS received related to the impervious surface limitation provision in the minimum deed terms, five comments recommended that entities be allowed to establish their own limit up to 10 percent; four comments recommended NRCS only waive the 2 percent limitation on impervious surfaces for farms of a certain size; one comment recommended waivers be limited to 6 percent rather than up to 10 percent; and 3 comments recommended to remove the availability of the waiver or scale it to various categories of easement acreage. NRCS has explained in prior rulemakings the basis for its use of a 2 percent limitation and the flexibility of having a waiver that allows up to 10 percent based upon site specific factors. This limitation provides a reasoned balance between ensuring the continued agricultural viability of the land itself with flexibility to allow for changes to the agricultural operation. The existing NRCS approach is within the range of comments received, therefore no changes were made in response to these recommendations. An eligible entity can always include its own additional deed terms that are more restrictive.

*Subdivision (17 comments):* Of the 17 comments NRCS received about the subdivision minimum deed term, 10 comments recommended that NRCS eliminate the requirement that subdivided parcels not be below the median size of farms in the county or parish; two comments recommended that NRCS prohibit subdivision on protected parcels; two comments recommended subdivision requirements should defer to State law; two comments supported the adoption of ''median farm size'' as the threshold; and one comment recommended that subdivisions be allowed to facilitate the building of residences that are permitted under the deed. NRCS currently provides three options related to subdivision under the existing minimum deed terms, allowing the entity to select which option they prefer in the deed terms. The current options are as follows:

Option 1: Outright prohibition of future subdivision.

Option 2: Future subdivision allowed and boundaries identified prior to easement closing and approved by the entity and NRCS as part of the initial easement acquisition.

Option 3: Future subdivision allowed, but must be reviewed and approved by the entity and NRCS, prior to division occurring.

Under option 2, NRCS evaluates the proposed parcels identified for potential subdivision using the program eligibility criteria. Under option 3, since the entity is electing to have the flexibility to identify the subdivision of parcels after the easement has closed, NRCS does not use all of the program eligibility criteria to evaluate the individual parcels proposed for subdivision but rather has adopted the threshold of the median size of farms, including ranches, in the county or parish as an objective criterion upon which to base decisions. The use of median farm size is an objective indicator that the subdivided parcels are of a minimum size, based on county-level data that indicates the parcels would remain viable for agricultural use. Since the data is evaluated at the county level, it accounts for localized agricultural trends and the use of the median rather than the mean data provides a more generous threshold for the minimum size.

*Advisory committee (8 comments):* NRCS received eight comments recommending that NRCS convene a national easement deed advisory committee to provide input on easement deed terms and conditions. NRCS does not believe that an advisory committee is the appropriate vehicle for obtaining input. NRCS published the deed terms and utilized the comment period associated with the interim rule as an avenue to receive broad and open public input on the minimum deed terms. Additionally, NRCS may receive input on program implementation matters, including minimum deed terms, through the State Technical Committee process. The State Technical Committees are exempt from the Federal Advisory Committee Act and provide the best opportunity for all stakeholders to have fair and equal access to provide NRCS input on program implementation.

*Right of enforcement (17 comments):* Of the 17 comments NRCS received about the United States right of enforcement language in the minimum deed terms, two comments recommended removal of the recovery of administrative and legal costs from the Grantor or the Grantee associated with enforcement or remedial action related to enforcement; one comment recommended NRCS have co-responsibility to ensure compliance with any violation in the easement; one comment recommended that the provision should also include the reasonable costs incurred by the eligible entity holding the conservation easement; four comments recommended that the right of inspection be ''corrected'' to refer to a ''right of enforcement'' and not to a ''right of inspection''; two comments recommend that the right of inspection should not be part of right of enforcement; one comment recommended that NRCS' right of enforcement or inspection only be exercised in cases where the annual monitoring report is insufficient, is not provided in a timely manner, or if the eligible entity fails to adequately enforce the terms of the easement; two comments recommended that NRCS limit the right of enforcement further and create defined cure mechanisms that must be used prior to the United States exercising its right of enforcement; one comment recommended that the United States should be required to prove its rights and claims in litigation; one comment recommended NRCS explain what constitutes an insufficient monitoring report; one comment recommended NRCS should be required to notify both the Grantor and the Grantee of an ongoing non-compliance in order to have the Grantee take corrective action; and one comment recommended NRCS eliminate the 180-day restriction for corrective actions.

Section 1265B(b)(4)(C)(iii) requires that any easement purchased with ACEP–ALE funds: ''(iii) include a right of enforcement for the Secretary, that may be used only if terms of the easement are not enforced by the holder of the easement.'' Additionally, Section 1265B(b)(4)(E) sets forth the authorities in the event of a violation ''If a violation occurs of a term or condition of an agreement under this subsection—(i) the Secretary may terminate the agreement; and (ii) the Secretary may require the eligible entity to refund all or part of any payments received by the entity under the program, with interest on the payments as determined appropriate by the Secretary.''

NRCS held numerous meetings with stakeholder organizations about the scope and wording of the United States right of enforcement language, incorporating and addressing most of the stakeholder comments and concerns. However, several aspects of

the United States right of enforcement are necessary in order for NRCS to protect the Federal investment and exercise the right in accordance with statute, including the ability to inspect the easement area to ensure that the Grantor and Grantee are meeting their responsibilities under the easement deed, the requirement for the Grantee to enforce the terms of the easement deed as primary easement holder, and the ability to recover costs if NRCS must enforce the easement because the Grantee failed to do so. NRCS requires the identical language for the right of enforcement for all ALE-funded easements. NRCS believes that this right and the consistency of its terminology and application are necessary to ensure equitable treatment of landowners and eligible entities, and is critical to the protection of the Federal investment in these transactions. NRCS will publish the required right of enforcement language in the ALE-agreements and in the ALE policy.

All NRCS program participants are required to meet the terms of the program requirements, and if they fail to do so, NRCS has the ability to recover costs. However, unlike the 30-day timeframe given financial assistance participants under other NRCS conservation programs, ALE participants are given 180 days to correct any deficiencies prior to NRCS taking further action with respect to violations. Additionally, recovery of costs is authorized specifically by the ALE statute and ensures that the eligible entity maintains its role as primary title holder of the easement under the terms of the ALE agreement. Given the statutory basis for the level of recovery and that such level is consistent with the administration of other NRCS conservation programs, NRCS has modified the minimum deed term language and the regulation to limit NRCS' cost recovery from a Grantee for the Grantee's failure to enforce the easement to the amount of financial assistance provided to the eligible entity by NRCS. Further, NRCS reserves the right to pursue other equitable or legal remedies should the conduct of the eligible entity be considered scheme, device, fraud, misrepresentation, waste, or abuse.

*Access (3 comments):* Of the three comments NRCS received about the access provision in the minimum deed terms, one comment recommended NRCS modify access requirements under ALE to provide reasonable flexibility, particularly in cases where ALE parcels are surrounded by Federal land; one comment encouraged NRCS to adopt greater flexibility for ALE access requirements; and one comment supported the ACEP manual interpretation of ''reasonable'' access. NRCS is clear in the regulation and policy that it is the landowner's and eligible entity's responsibility to provide sufficient access to the easement area. However, NRCS has provided flexibility under ACEP–ALE for alternative access when the landowner currently has physical access from a public roadway across lands owned in fee by the United States to the Parcel and current legal access is authorized by any of the following:

1. Use of roads owned and maintained by the United States and managed by Federal agencies such as the Bureau of Land Management (BLM) or United States Forest Service (USFS), this may include numbered system roads;
2. Use of rights of way established under the Federal Land Management Policy Act of 1976;
3. Use of reciprocal rights of way between the landowner and a Federal agency;
4. Long-term access permits issued by a Federal agency, 30 years or greater in length that may be renewed upon agreement of the landowner and the Federal agency; and
5. A letter from an authorized representative of a Federal agency establishing the landowner's permission to cross the Federal land for casual use.

Since NRCS first adopted this policy, NRCS has been able to complete high-priority transactions where a checkboard pattern of Federal and private land ownership exists.

*Acquisition purpose restrictions (8 comments):* The eight comments that NRCS received about the minimum deed terms that impose additional restrictions based upon the purpose for which an easement is being acquired are as follows:

- One comment recommended that NRCS require additional deed restriction language for grassland of special environmental significance (GSS). Currently NRCS requires protection for grassland resources to be addressed in the easement deed but allows the eligible entity to provide greater protection.
- One comment recommended that NRCS retain the GSS deed restriction language in the final rule; NRCS has maintained the GSS deed restriction language in this final rule.
- Three comments recommended that NRCS change the term related to management activities during nesting season to include additional language to allow haying during nesting season if it provides critical habitat outside the breeding season; NRCS did not adopt this recommendation because of the critical need to protect at-risk species during the nesting season.
- One comment recommended that NRCS clarify that bird nesting restrictions are required for grassland enrollments only, and are not required for traditional ALE projects; the bird nesting season restrictions are required for all ALE enrollments that have grassland uses but only for at-risk species. Determinations of nesting seasons for at-risk bird species will be made in writing to the landowners prior to closing, or set forth within the ALE plan developed with the landowners. Please see preamble discussion below under ''Definitions'' section about comments related to NRCS adding a definition of at-risk species to this regulation.
- One comment recommended that new roads on grassland enrollments should be allowed with the prior approval of the eligible entity and subject to the 2 percent impervious surface limit; NRCS did not adopt this recommendation because allowing new roads on grassland enrollments would create fragmentation of habitat.
- One comment expressed support for the language in the minimum deed term language.

*Miscellaneous minimum deed term comments (10 comments):* Of the 10 comments NRCS received on miscellaneous topics, the comments made the following recommendations or observations:

- One comment recommended revising the fencing language for grassland enrollments; NRCS has adopted this recommendation and updated the minimum deed terms.
- One comment recommended NRCS remove the deed language that specifies the terms that are controlling between NRCS terms and the eligible entity's; The language referenced in the comment applies to provisions that NRCS included in the minimum deed terms when such terms would be appended to an eligible entity's deed as a separate attachment. NRCS included this language to ensure that in the event of a conflict between the minimum deed terms language in the Federal attachment and the eligible entity's deed, the Federal minimum deed term language would control. However, there are several deed terms where an eligible entity may have more stringent requirements, and the statement identifies that where the terms in the main body of the eligible entity's deed are more stringent than the attached Federal minimum deed terms, the deed

terms in the main body of the eligible entity's deed will control.

• One comment recommended revising the environmental warranty to reference the Phase I audit report, identifying that a landowner should not warrant that they are in compliance with environmental laws when that is contradicted by the Phase I report accepted by and approved by NRCS. NRCS is not adopting the language recommended by the comment because a landowner must be able to warrant that they are in compliance with environmental laws. However, NRCS is reviewing the concern with the deed language raised by this comment about awareness of known prior environmental law violations that have since been remediated, and may adjust the deed language accordingly.

• One comment recommended NRCS list the activities that are and are not consistent with the agricultural uses of the land; NRCS did not adopt this recommendation because it is impractical to list all such potential activities. Activities that are consistent with the agricultural use of the land are highly site- and region-specific. An eligible entity can include its own additional deed terms that are more specific.

• One comment recommended NRCS remove the reference to the Chief in the oversight and approval requirements. NRCS did not adopt this recommendation because the purpose of identifying the Chief is to ensure that NRCS has maximum flexibility with respect to delegating such responsibilities in the future.

*ALE Entity Certification*

*Comment:* NRCS received 59 comments related to entity certification, of which 10 comments related to the criteria and process for certification; 8 comments related to corrections to the regulatory references; 15 comments related to the deed requirements that apply to certified entities including the recommendation that certified entities only be subject to statutory deed requirements; 18 comments related to NRCS quality assurance reviews including the potential for NRCS to revoke funding for a breach of the grant agreement; 5 comments related to a dedicated fund pool; and 2 comments related to the administrative flexibility process identified in the regulation.

*NRCS Response:* The majority of the concern expressed by the comments related to the deed requirements and whether a certified entity will be required to repay ALE funding if the entity's deed terms are subsequently determined to be insufficient to meet program purposes. More particularly, several comments recommended that certified entities only be subject to statutory deed requirements, and not the regulatory deed requirements that were outlined in the interim rule. This topic was discussed in part above under the topic of ALE deed requirements, including the NRCS determination that a certified entity, through their familiarity with ALE program requirements, will already have extensive understanding of the deed terms that NRCS considers sufficient to meet program requirements and address the regulatory deed requirements.

The ACEP statute specifies the statutory deed requirements that any eligible entity, including a certified entity, must meet. Based upon statutory deed requirements and the statutory purposes of ALE to protect the agricultural use and future viability, and related conservation values, of the easement area by limiting non-agricultural uses or to protect grazing uses and related conservation values, NRCS identified as regulatory deed requirements the provisions it believed were necessary to meet those statutory requirements and purposes. In the ACEP interim rule, the regulatory deed requirements that meet specific statutory requirements include the right of enforcement (16 U.S.C. 3865B(b)(4)(C)(iii)), ALE plan (16 U.S.C. 3865B(b)(4)(C)(iv)), impervious surface limitations (16 U.S.C. 3865B(b)(4)(C)(v)), and an amendment clause requiring post-recordation changes to be consistent with deed and ALE purposes (16 U.S.C. 3865D(c)). To ensure the deed terms are consistent with ALE statutory requirements that they meet program purposes (16 U.S.C. 3865(b)(4)(C)(i)) and permit effective enforcement (16 U.S.C. 3865B(b)(4)(C)(ii)), the regulatory deed requirements also include: (1) An indemnification clause concerning landowner actions; (2) a prohibition of commercial and industrial activities except those activities that are consistent with the agricultural use of the land; (3) a limitation of subdivisions except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS; (4) specific protections related to the purposes for which the agricultural land easement is being purchased; and (5) other minimum deed terms specified by NRCS to ensure that ACEP–ALE purposes are met.

NRCS has determined that there is no basis for exempting certified entities from its regulatory determination of the deed requirements that are essential for meeting ALE program purposes and statutory requirements, and therefore all eligible entities will remain subject to the regulatory deed requirements in the regulation. Certified entities have flexibility to use their own policies and procedures and, with the exception of specific language of the United States Right of Enforcement, are not required to use the minimum deed terms.

Of the comments related to regulatory corrections, NRCS has made the corrections to the typographical errors that the comments identified were in the interim rule.

The five comments related to the dedicated pool requirement requested clarification and increased flexibility in a certified entity's ability to meet the requirement. NRCS requires by policy that a dedicated fund be capitalized with a minimum of $50,000, and such requirement only applies with respect to certified nongovernmental entities. NRCS has amended the definition of ''dedicated fund'' to clarify that the requirement only applies to certified eligible entities that are nongovernmental organizations. Eligible entities are able to form or participate in a risk pool with sufficient resources to satisfy the dedicated fund requirements for certified nongovernmental organizations, provided it is explicit about what activities are encompassed. For example, most risk pools cover enforcement and associated litigation, but not monitoring, so monitoring would need to be specifically identified.

The remaining two comments related to the request that certified entities be able to set their own thresholds for impervious surface area, that they not be required to obtain a waiver on a parcel-by-parcel basis, and that certification of eligible entities provide flexibility to allow contracting of monitoring to conservation districts. NRCS requires a parcel-by-parcel determination because impervious surface limitations are fact-specific, and NRCS believes that certification should not equate to reduced protection of the parcels being protected with ALE funding. NRCS wishes to clarify that there is no limitation on whether monitoring can be done by conservation districts.

*ALE Entity Eligibility*

*Comment:* NRCS received 19 comments related to the topic of ALE entity eligibility, of which seven comments related to eligibility criteria; five comments related to contribution agreements; one comment related to policy development; two comments related to forms; and four comments related to donations.

*NRCS Response:* Of the seven comments related to eligibility criteria, five comments recommended that NRCS replace the requirement that all of the entity's matching funds be available at the time of application with the requirement that the entity instead provide proof of application to other funding programs along with evidence of funding availability through that program. NRCS did not adopt this recommendation. NRCS requires more definitive evidence, such as a grant award, that the eligible entity has the necessary resources to complete the transaction for which it is seeking Federal involvement. Furthermore, NRCS allows the entity to self-certify that they have sufficient funds available at the time of application, but the submission of additional verifying documentation may be required by the State Conservationist either at the time of application or as part of a quality assurance review. One of the comments recommended that NRCS allow grant contracts or other bona fide promises to provide cash match from partner sources to qualify as sufficient evidence of the availability of matching funds at the time of application, and NRCS has and continues to accept this type of documentation as evidence of match so no change is needed to address this recommendation. One of the comments recommended that NRCS require eligible entities to use a resource management plan to be considered eligible for ALE funding. NRCS did not adopt this recommendation as NRCS believes that such an approach may be too restrictive and instead has adopted a more voluntary progressive planning approach as discussed more fully under the ''Planning'' topic heading below.

Of the five comments about contribution agreements, one comment recommended NRCS hold title to the grassland easements instead of the eligible entity, which NRCS cannot do under the program statute; one comment recommended that NRCS only be able to charge costs of enforcement against the landowner or eligible entity if NRCS is the prevailing party, which NRCS believes is counter to the purposes for which it obtains the right of enforcement; two comments recommended that all references to the term ''cooperative agreement'' in the eligible entity certification section at § 1468.27 of the ACEP rule be changed to reference the term ''grant agreement'', which NRCS has addressed by amending the definitions in § 1468.3 by removing the definition for ''cooperative agreement'' and introducing a new term, ''ALE-agreement'', which includes references to the use of either a ''cooperative agreement'' that is the type of ALE-agreement used with non-certified eligible entities or ''grant agreement'' that is the type of ALE-agreements used with certified entities. NRCS use of either a cooperative agreement or a grant agreement used in ACEP implementation is governed by the Federal Grants and Cooperative Agreements Act. NRCS believes this more global term and definition, ALE-agreement, more effectively addresses the concern raised by the comments; one comment recommended that the terms of ALE-agreements be negotiable, which NRCS currently allows non-certified eligible entities to make a request for limited changes to the terms of the template ALE-agreement if there are specific circumstances that prohibit the entity from executing the agreement as written, such as a statutory prohibition. Beyond these limited circumstances, NRCS does not allow the terms of the ALE-agreements to be individually negotiated as the ALE-agreement is the program level agreement between NRCS and the eligible entity. Executing a standard program enrollment agreement is a standard practice across all NRCS cost-share programs and ensures that all eligible entities are subject to the same terms and conditions to be a recipient of Federal cost-share assistance. Furthermore, template ALE-agreements are reviewed and approved pursuant to the Federal Grant and Cooperative Agreement Act of 1977 and the uniform regulation for grants and agreements at 2 CFR parts 25, 170, 200 and 400, such that the published templates have been determined to meet the applicable policy and regulations governing agreements generally as well as ACEP specifically. As a result, changes to the template ALE-agreements require the agreement to be re-reviewed at the National-level for compliance with applicable authorities; therefore, NRCS also identifies that such agreements may not obtain the same priority. However, the terms of the ALE-agreement with certified entities, which uses a template grant agreement for certified entities, unlike the ALE-agreements with non-certified entities that use a template cooperative agreement format, are not negotiable, as the terms of the grant agreement are inherently more flexible and the entity's agreement to use the template grant agreement as published is a condition of certification.

The comment about policy development recommended that eligible entities be involved in the creation of certification processes and procedures. NRCS used the opportunity of the interim rule's public comment period to obtain input from the public, including eligible entities, about the certification process. Additionally, NRCS may receive input on program implementation matters, including the certification processes and procedures, through the State Technical Committee process. The State Technical Committees are exempt from the Federal Advisory Committee Act and provide the best opportunity for all stakeholders to have fair and equal access to provide NRCS input on program implementation.

Two comments recommended that NRCS combine forms 41 and 41A into the SF–424 forms. NRCS did not adopt this recommendation because the SF–424 forms are Standard Forms used government-wide, and thus not subject to change for a particular agency program.

Four comments recommended NRCS provide greater clarity about the restriction related to donations of easement value, including donations to stewardship funds. NRCS established its policy about the limits to which a landowner contributes to an eligible entity's endowment fund to ensure that the eligible entity meets its responsibilities under the ACEP statute requiring contribution of its own cash resources towards an easement transaction. Several eligible entities have been investigated by the Office of Inspector General (OIG) over the years and were found to be fraudulently representing their contribution of cash resources, hiding landowner donations in other entity accounts and then representing these funds as independent entity cash resources. More troubling, many of these same entities required the landowner to make such donations in order for the eligible entity to fund their transaction.

Two of the comments expressed concern about IRS requirements to ensure that landowners could continue to claim charitable deductions, and NRCS will consider alternative deed language addressing valuation of proceeds in the event of an approved condemnation or other termination actions proposed by eligible entities in an effort to reduce potential conflicts between IRS and NRCS requirements as was discussed above in the topic about ALE deed requirements.

*Application Process and Requirements*

*Comment:* NRCS received 10 comments about the ALE application process and requirements. Of these 10 comments, 4 comments recommended changes to the impervious surface

limitations. The remaining 6 comments provided recommendations to improve the application process, including recommending that the NRCS application deadline should occur shortly after the first week of June to accommodate the State's application period, delegating to the NRCS State Conservationist the authority for approving parcel substitution, and creating a time period during which eligible entities have the opportunity to review and negotiate the terms and conditions of the ALE-agreement.

*NRCS Response:* NRCS has not adopted the recommended changes to the impervious surface limitation given that the requirement to include a limit on impervious surfaces is statutory and the extensive review and adjustments NRCS has made through the years of its farmland easement administration about the essential need to limit impervious surfaces to protect the viability of agricultural lands, and the flexibility for waving this limitation be based upon case-specific needs and conditions. NRCS did not adopt the recommendation about the June deadline for project proposals since NRCS accepts applications on a continuous basis and such date is three quarters of the way into the Federal fiscal year, though NRCS believes the no-year funding will help smooth out the respective funding cycles. NRCS currently has delegated to the State Conservationist the authority to make substitution decisions, and only references the Chief in the regulation due to the nature of agency delegation authority. The conditions under which a non-certified eligible entity can request limited changes to the terms of the ALE-agreement are described above and NRCS recommends that any such requests be made prior to or at the time of application for funding for that Federal fiscal year.

*Cost-Share Assistance and Match Requirements*

*Comment:* NRCS received 64 comments related to the match requirements for ACEP funding. Of these 64 comments, 27 comments related to the criteria and match for ALE projects of special significance; 11 comments related to the respective match requirements for standard ALE projects; 11 comments related to the availability of the cash match for ALE eligible entities; 6 comments related to ALE restrictions on landowner contributions; 4 comments related to other assistance that NRCS can provide to the ALE transactions; and 5 comments related to the Wetland Reserve Enhancement Project (WREP) match requirements.

*NRCS Response:* Of the 27 comments about ALE projects of special significance criteria, 6 comments expressed supported the criteria and availability of a waiver, and the remaining 21 comments made suggested recommendations to add or replace the criteria identified in the interim rule. Section 1265B(b)(2) requires that the Federal share of the cost of the purchase of an agricultural land easement must not exceed 50 percent of the fair market value of the agricultural land easement. The eligible entity must provide a share that is at least equivalent to that provided by NRCS but may include a charitable donation by the landowner provided the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the NRCS contribution. However, for ''projects of special significance'', NRCS may waive any portion of the eligible entity cash contribution requirement, subject to an increase in the private landowner donation that is equal to the amount of the waiver, if the donation is voluntary, and the property is in active agricultural production.

NRCS identified in the interim rule the criteria by which a project may be determined to be one of special significance, including but not limited to, if:

- The project is listed on the National Register of Historic Places;
- the location is within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land;
- the location is within a metropolitan statistical area;
- the project will increase participation in agriculture by underserved communities, veterans, or beginning or disabled farmers and ranchers;
- the farm or ranch is used as an education or demonstration farm focused on agricultural production and natural resource conservation.

Among the recommended changes to the criteria, several comments recommended changes that were not based upon the attributes of the parcel itself, but aspect of the eligible entity's program, such as the incorporation of an Option for Purchase at Agriculture Value (OPAV). NRCS did not adopt the criteria that were not based upon the conservation benefits of enrolling a particular parcel. However, among the recommended criteria, NRCS will adopt the following:

- Several parcels within a special project area being offered for enrollment in that fiscal year that are being protected pursuant to a comprehensive plan approved by the State Conservationist, with input from the State Technical Committee, for the permanent protection of a large block of farm or ranch land.
- A parcel that is part of a comprehensive plan to facilitate transfers to new and beginning farmers approved by the State Conservationist, with input from the State Technical Committee, for the permanent protection of a block of farm or ranch land that, if implemented, will facilitate the transfer of farmland to a next generation farmer.
- A parcel that is the subject of a conservation buyer transaction where a member of underserved community, veteran, beginning farmer or rancher, or a disabled farmer or rancher has a valid purchase and sale agreement to acquire the property subject to an agricultural land easement. Or
- A parcel that has an existing NRCS Resource Management System (RMS) level plan with NRCS conservation practices applied or under contract to be applied in accordance with NRCS standards and specifications, and the landowner has agreed that the ALE plan will be developed at the RMS level in accordance with the purposes for which the ALE easement is being acquired.

Five of the 11 comments about the match requirements for standard projects requested clarification, especially as the match requirements related to the enrollment of forest land. The remaining six of the comments either expressed support for the cash requirement, requested reduction in the cash requirement, or complete removal of the cash requirement of the eligible entity. In the interim rule, NRCS identified that NRCS may approve a waiver of the two-third limitation for forest land eligibility for sugar bushes. If so, then the acreage associated with the sugar bush are to be included in the eligible land for which cost-share is provided. Forest land beyond the two-thirds, if not waived for sugar bush, is not eligible for ALE cost-share assistance. NRCS cannot adopt the recommendation that NRCS provide a ''no cash match'' option, with easements using only NRCS funding and the donation of value by the landowner. Not only does this option not meet statutory requirements, but it undermines the nature of the transaction where all parties have financially invested in its success from the outset. The circumstances under which the entity cash contribution can be lowered are described above in the section on ALE 'projects of special significance'.

Of the 11 comments about the requirement that the eligible entity document that they have their match available at the time they apply for ALE funding, two comments supported the requirement; five comments recommended that standard of evidence for cash match availability should be one of high probability as can be evidenced by a successful history in being awarded matching funds in the past; two comments recommended that NRCS substitute this requirement with a requirement that eligible entities be allowed to adequately demonstrate their ability to obtain the requisite funds; and two comments recommending allowing eligible entities to submit a plan for obtaining matching funds when they do not have cash match available on hand. NRCS has always required an eligible entity to certify the availability of match at the time of application as it is a matter of eligibility in determining whether the entity is in fact eligible for the program. Prior to tying up Federal funds for the eligible entity's transaction, an entity must establish that it is eligible and that it is able to perform under the terms of the ALE-agreement. The easement transaction is the eligible entity's transaction, for which they are acquiring title and for which they wish to obtain cost-share assistance from the Federal government for the entity's purchase of an agricultural land easement. Therefore, the NRCS funds are to match an eligible entity's funds that have been set aside for the eligible entity's transaction, not an eligible entity's funds to match NRCS funds that have been set aside for the transaction. NRCS recognizes that an eligible entity may not have its match in its own account, and therefore already provides flexibility for the match to be established through self-certification and, as needed, supplemental documentations such as an award letter or other documentation that the funds have been set aside for the transaction. NRCS believes it has balanced maximum flexibility for the eligible entities with responsible administration of Federal funds and thus no additional flexibility is warranted.

Of the four comments about the restrictions that NRCS has identified in the interim rule related to landowner contributions, two comments recommended eliminating the restriction on landowner contributions to eligible entities and two other comments recommended that NRCS eliminate the reference to landowner contributions to a stewardship endowment. As explained above, NRCS adopted these restrictions to meet the statutory requirement that an eligible entity contribute its own cash resources to a transaction. During the OIG investigations referenced above, landowners had been misled, threatened, and otherwise coerced into making contributions to other accounts of an eligible entity to hide the eligible entity's inability to contribute its own cash resources. NRCS recognizes that this behavior is limited, but believes strongly that providing reasonable parameters on what NRCS will accept as evidence of a voluntary landowner contribution removes the potential for these types of inappropriate behaviors. NRCS did not make any changes to the regulation in response to this comment, but is reviewing the policy levels established for this limitation.

Of the four comments about the availability of other NRCS assistance, two comments recommended that NRCS reimburse land trusts for transaction costs once the easement has been recorded; one comment recommended NRCS provide 10 percent of the administrative costs to eligible entities to reduce financial burden; and one comment recommending that NRCS make funding available to cover the conservation organizations' dedicated fund in NRCS funded transactions. NRCS did not adopt any of these recommendations as they are not supported by the statute. Under ALE, NRCS only has authority to provide cost-share assistance for the cost of an easement, and appropriate technical assistance, and no other activities are authorized to be funded. All other financial responsibilities belong to the purchaser of the easement that is the eligible entity.

Of the five comments about the WREP match requirements, three comments recommended NRCS use the 5 percent minimum requirements instead of the new 25 percent requirement, and two comments recommended that the WREP match requirements be available through the Regional Conservation Partnership Program (RCPP). NRCS did not adopt either recommendation. WREP is a component of ACEP–WRE through which NRCS enters into agreements with eligible partners to target and leverage resources to carry out high-priority wetland protection, restoration, and enhancement activities and improve wetland and associated habitats on eligible lands. In FY 2015, NRCS published a request for WREP proposals and awarded approximately $30 million in financial assistance (FA) funds to competitive projects. NRCS believes the 25 percent match requirement encourages meaningful partnership effort and represents a match requirement well-established in similar watershed and conservation efforts. The non-Federal match also expands the number of wetland acres that can be protected and restored, resulting in an even more cost-effective use of Federal financial resources. NRCS provides flexibility concerning the component of the project upon which a partner's contribution will be based. Given the match requirements that must be met in WREP, NRCS prefers not to complicate WREP implementation efforts with RCPP implementation efforts and allow each partnership effort to remain distinct.

*Definitions*

*Comment:* NRCS received 63 comments about the Definitions section, § 1468.3, of the interim rule. The comments made recommendations about the following definitions:

- Access (4 comments)
- Active agricultural production (4 comments)
- Agricultural commodity (1 comment)
- Agricultural Land Easement (3 comments)
- Agricultural Land Easement Plan (5 comments)
- Agricultural uses (3 comments)
- At-risk species (5 comments)
- Beginning farmer or rancher (1 comment)
- Dedicated funds (2 comments)
- Easement administration definitions (4 comments)
- Eligible entity (1 comment)
- Fair market value (3 comments)
- Farm viability (2 comments)
- Grassland Management Plan (4 comments)
- Grassland of special environmental significance (11 comments)
- Historical and archaeological resources (1 comment)
- Succession plan (7 comments)
- Request for terms to be defined (2 comments)

To ease readability, NRCS describes the comments received for each of the definitions in its response to such recommendations below.

*NRCS Response:* Of the four comments about the definition of *access,* one comment requested that the definition add a phrase to clarify that access is over at least one adjacent or contiguous parcel; one comment requested that the definition match the definition that appears in the ACEP manual; one comment recommended NRCS rely on established real estate laws and customs of the region in which the ALE easement is acquired; and one comment requested clarification of how access appears in the easement deed.

NRCS cross-checked the definition and the referenced citation in the ACEP manual and no change to the regulatory definition is needed. The referenced manual provision simply provides guidance to NRCS personnel about how to determine whether sufficient access to the easement area exists, and does not affect the definition of access itself. NRCS needs only one route identified, but that route must be able to facilitate access to the entire easement area, otherwise multiple routes may be needed to ensure there is sufficient access to the entire easement area. NRCS has identified that access must be described in the deed document.

Of the four comments received about the definition of *active agricultural production,* two comments supported the definition and two comments recommended that the word ''timber'' be included in the definition. NRCS did not adopt this recommendation as the definition already references land on which ''forest-related products'' are produced, and NRCS believes this sufficiently encompasses land in timber production.

The one comment received about the definition of *agricultural commodity* recommended that the definition include all agricultural commodities or eliminate the definition completely. NRCS did not adopt this recommendation. Section 1201 of the Food Security Act of 1985, as amended, defines the term for all Title XII programs, which includes ACEP.

The three comments related to the definition of *Agricultural Land Easement* recommended that NRCS specifically include States with easements subject to duration restrictions. NRCS did not adopt this recommendation as duration restrictions are already addressed in the program requirements criteria. In particular, § 1468.20(a)(4) specifies that the ''duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration permitted by State law.''

Of the five comments related to *Agricultural Land Easement plan,* two comments recommended that the definition should be defined as a plan that meets Resource Management System standards; one comment expressed support for the definition; one comment recommended that the definition only require conservation practices in component plans for highly erodible soils and grasslands; and one comment recommended that less discretion be given to ALE applicants. NRCS did not adopt these recommendations as the current definition provides the basic framework as based upon statutory requirements.

Of the three comments related to the definition of *agricultural uses,* one comment supported the definition; one comment requested that the agricultural use must be made by a ''qualified farmer''; and one comment recommended that NRCS provide a single definition with its own terminology specific to the purposes of the program. As described in the interim rule, the ACEP definition of ''*agricultural uses''* employs a more universal term of ''farm or ranch land protection program'' than was used previously under FRPP to ensure that programs that have the principal purpose of protecting grasslands or grazing uses are included. Given that NRCS provides assistance to State and local agricultural land easement program efforts, NRCS will continue to refer to the State definition of agricultural use found in either its farm and ranch land protection program or tax assessment authority, but reserves the right to impose deed restrictions to comply with Federal law or to protect soil or related natural resources. NRCS believes that making determinations of who would be considered as a ''qualified farmer'' leads to inappropriate subjective determinations and would interfere with the ability to implement the program in a fair and equitable manner.

Of the five comments about the definition of *at-risk species,* one comment recommended that NRCS add the definition and four comments recommended that such a definition be consistent with other NRCS conservation programs. NRCS has adopted these recommendations as the term ''at-risk species'' is used in other definitions, and is an important concept in ACEP implementation and prioritization of efforts. Therefore, NRCS has added the following definition to the final rule:

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

The one comment about the definition of *beginning farmer or rancher* recommended amending that NRCS establish a minimum of at least three years' experience providing ''substantial day-to-day labor and management of the farm.'' NRCS did not adopt this recommendation because the definition is established by statute, and NRCS uses the same definition for all its conservation programs.

Of the two comments about the definition of *dedicated funds,* one comment recommended adopting the Land Trust Alliance's definition for dedicated funds, and one comment recommended removing the restriction that the account cannot be used for other purposes. NRCS believes that the Land Trust Alliance's discussions about dedicated funds is similar to the NRCS definition, but believes that the NRCS definition more adequately addresses the needs for ALE program implementation. NRCS did not adopt the second recommendation because, as the definition implies, the fund must be dedicated for the eligible entity's stewardship responsibilities.

Of the four comments about the definitions for the various types of easement administration actions—easement exchange, easement modification, easement subordination, and easement termination—one comment recommended minor changes to the easement modification definition; two comments requested clarification to each of the definitions; and one comment requested clarification to the definition of ''compelling public need.'' NRCS developed the definitions to provide a clear distinction between each type of easement administration action so, for example, an easement modification is readily distinguished from an easement exchange. NRCS based these definitions on its experience with processing easement administration action requests under the predecessor authorities, and familiarity with other Federal agency requirements under similar authorities. NRCS finds that these definitions provide clarity to landowners, provide for the long-term protection of critical resources, and ensure the integrity of the Federal investment in easements.

The comment about the definition of *eligible entity* recommended that NRCS reflect the statutory definition verbatim. NRCS did not adopt this recommendation because NRCS believes that the regulatory definition fully encompasses the statutory definition and does so in simpler language and thus improves the accessibility of the program. Additionally, the definition includes criteria related to an eligible entity that are either identified explicitly in the statute or are needed as a matter of consistent and effective program administration.

The one comment about the definition of *fair market value* recommended that NRCS give equal valuation to easements subject to State mandated duration restrictions as perpetual easements. NRCS did not adopt this recommendation because the shorter duration easements do not have the same impact on land value as permanent easements and landowners who provide a permanent easement should receive the commensurate greater compensation.

Of the two comments about the definition of *farm viability,* one comment requested clarification of how the mechanisms to preserve farm viability will function, and one comment recommended replacing the language for the term ''future viability'' with ''availability for continued agricultural use; continued capacity for productive agriculture by independent farmers and ranchers; accessibility to beginning farmers and ranchers; and continued affordability for purchase by working farmers and ranchers for generations to come.'' NRCS has added the term ''Future Viability'' to the definition section and it has been defined as ''the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values.''

Of the four comments about the definition of *grassland management plan,* one comment expressed support for the definition and three comments recommended adding haying as a management tool. The grassland management plan relates to the enrollment of land for which grazing is the predominant use, but is also required for grassland located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value. The focus on grazing as a component of the grassland management plan is a holdover from the Grassland Reserve Program, and NRCS has modified the definition to include a reference to haying as landowners may also conduct haying on grasslands protected under ALE.

Of the 11 comments about the definition of *grassland of special environmental significance,* three comments expressed support for the definition especially with the added definition of ''at-risk species''; three comments focused on ''highly sensitive natural resources'' recommending that the State Conservationist consult with the State Technical Committee on the appropriateness of a particular parcel's enrollment and allowance of habitat for native pollinators as a highly sensitive natural resource; three comments recommended including language that they must be identified in State, regional, or national conservation plans or initiatives; and three comments about including grasslands located around wetlands or in regions with high wetland densities.

NRCS recognizes the benefit of these recommendations and has adopted many of them in the definition. In particular, NRCS has provided guidance to its State offices to obtain State Technical Committee input about highly sensitive natural resources within the State, including the ability of States to consider whether such lands are identified in special initiatives or plans.

The one comment about the definition of *historical and archaeological resources* recommended that battlefield properties should be identified as a separate subcategory. NRCS did not adopt this recommendation as the existing subcategories sufficiently encompass historic battlegrounds.

Of the seven comments about the definition of *succession plan,* three comments recommended replacing the term ''historically underserved landowner'' with ''beginning, limited resource, or socially disadvantaged farmer or rancher'' and four comments recommended including an Option to Purchase at Agricultural Value (OPAV) as a type of qualifying succession plan. NRCS did not adopt the first recommendation because the meaning of the term ''historically underserved landowner'' includes reference to the three categories of farmers or ranchers to whom NRCS provides special priority in the administration of its conservation programs. NRCS did include an OPAV as a type of qualifying succession plan because OPAV is a deed term negotiated by the Grantor and Grantee in the course of the implementation of the Grantee's program.

There were two comments that recommended that NRCS define additional terms, one comment recommending that ''Future Viability of Agricultural Land'' be defined, and one comment recommending that ''Amendment for the minimum deed terms'' be defined. NRCS has added a definition of Future Viability, as described above. NRCS has also provided further clarification on the purpose and use of the minimum deed terms, and has determined that an additional definition is not necessary to provide further clarification.

*Easement Closing and Payment Procedures*

*Comment:* NRCS received one comment recommending that NRCS shorten the time needed to close an easement transaction.

*NRCS Response:* Through policy, NRCS has changed its easement business process to require as much due diligence as possible to be completed prior to entering into an agreement. This practice will significantly reduce the time it takes to close on an easement as it will reduce the number of agreements entered into on parcels with outstanding issues such as unacceptable title encumbrances, hazardous substance contamination issues, boundary disputes or insufficient access, and other issues that tend to result in delays in closing if not discovered until after an agreement has been entered into. Additionally, in FY 2015, NRCS piloted an Easement Support Services (ESS) team to assist States with improving the quality and efficiency of easement acquisition activities. Under ESS, teams managed by the National Office assume various tasks related to easement acquisition, including closing, for a group of States, thus providing a more centralized, consistent process. ESS is expected to expand nationwide by FY 2018, and NRCS believes that this focused, specialized team combined with other efforts to strengthen communication between the States and the National Office, will help resolve issues earlier in the process, clarify policy, provide training, and serve as a platform to provide a more consistent process by which easements will be acquired. NRCS believes that this process will reduce the time needed to close an easement consistent with program requirements.

*Easement Monitoring, Management, and Enforcement*

*Comment:* NRCS received 34 comments related to the topic of easement monitoring, management, and enforcement, of which five comments related to the authority under WRE to delegate such authorities; four comments related to easement management; 11 comments related to easement monitoring; nine comments related to easement violations; and five related to the right of enforcement.

*NRCS Response:* Of the five comments about delegation, two comments supported the delegation language; two comments recommend NRCS allow State and Federal agencies that have fee title ownership of an easement parcel to receive delegation of authority; and one comment

recommended that NRCS policy limiting such delegations only apply to future formal delegations. NRCS adopted the policy about not delegating easement responsibilities to fee title landowners due to issues that have arisen where the fee title landowner's program policies and authorities are inconsistent with ACEP. NRCS has been reviewing its prior delegations to ensure that appropriate stewardship of NRCS-funded easements is being conducted by the partners who have received the delegation of authority in the past, and is working with these partners to ensure the appropriate follow-up where problems have been identified.

Of the four comments related to easement management, one comment recommended NRCS increase opportunities and incentives to utilize haying and grazing as a wetlands management tool, which NRCS does through the compatible use authorization process to improve quality of management on WRE easements; one comment recommended eliminating ''lesser of 2% or $20,000'' restriction on landowner contributions to endowments, which NRCS explained above that a limitation on endowment contributions is important to ensure the voluntary nature of landowner donations to ALE easement acquisitions and adherence to the statutory requirements but the level of the limitation may be adjusted upon review and approval by NRCS prior to closing. One comment recommended that NRCS require ALE eligible entities to incorporate necessary deed restrictions related to grasslands of special environmental significance, which NRCS already does, and one comment recommended existing easements should not be retroactively subject to and required to comply with new stewardship and management requirements of ACEP, the passage of the new ACEP does not affect the terms of any existing recorded easements or the terms of agreements entered into prior to February 7, 2014. However, the statute identifies that lands enrolled in the predecessor programs are considered enrolled in ACEP, therefore the new authorities related to easement administration actions and delegations are applicable to all FRPP, GRP, WRP, and ACEP easements.

Of the 11 comments about easement monitoring, one comment requested that NRCS clarify that NRCS may only monitor an ALE easement after formally exercising the right of enforcement. This is inaccurate because NRCS monitors easements, including review of eligible entities' monitoring reports, to ascertain whether there is cause for NRCS to exercise its right of enforcement. Three comments recommended NRCS prohibit NRCS staff from monitoring an ALE easement when visiting a property for other reasons. NRCS did not adopt this recommendation because it is irresponsible for the Agency to ignore possible violations it becomes aware of in the performance of its duties. Two comments recommended that NRCS clarify when certified entities will lose certification or an ALE-agreement due to failure to monitor or enforce its easements, which NRCS has done in its ACEP policy manual at 440 CPM 528.75. One comment recommended increasing monitoring and enforcement to ensure easement compliance, which NRCS will consider when it updates its monitoring policy for all easements. For current entity-held easements, NRCS policy requires NRCS to conduct onsite monitoring 1 in 5 years and review of the entity's monitoring documents the remaining 4 in 5 years. However, NRCS recognizes that the Grantee has primary responsibility to conduct monitoring and enforcement. Two comments recommended NRCS work with eligible entities to add, if necessary, additional questions to the eligible entities existing monitoring forms, such as any ''required questions'', which NRCS will do. The NRCS monitoring form is available to the public on the NRCS Web site and it contains the required monitoring questions that NRCS must answer to complete its annual report on easement condition. One comment recommended NRCS provide review and comment about an eligible entity's monitoring activities, which NRCS will do upon request by the eligible entity. One comment recommended NRCS clarify the required conditions regarding dedicated funds. NRCS clarifies these conditions at 440 CPM 528.72, including specifying the dedicated fund will be considered committed to these purposes if it is held in a separate account and may not be used for other purposes, the dedicated fund is considered sufficient if it has at least $50,000 for legal defense and $3,000 per easement for management and monitoring, and clarification that a sufficiently capitalized risk pool will satisfy the requirement of a dedicated fund.

Of the nine comments about easement violations, one comment recommended NRCS notify the eligible entity's other funding partners when there is a violation, which NRCS did not adopt as it is the eligible entity's responsibility to notify the partners from which the entity received funding; three comments recommended that damage or destruction caused by natural events should not be considered an easement violation, which is already the case; one comment recommended clarifying violations of the ALE plan, which as NRCS has explained is the responsibility of the eligible entity with the exception of violations of the conservation plan component of the agricultural land easement plan for which verification of compliance is the responsibility of NRCS in accordance with the conservation compliance provisions at 7 CFR part 12. One comment recommended always requiring notice to landowners about violations, which by policy, NRCS notifies the landowner for WRE easements and notifies the Grantee for ALE easements if NRCS discovers the violation prior to the Grantee despite the Grantee having primary enforcement responsibility, though there may, however, be emergency circumstances where written notice prior to addressing a violation is not practicable; two comments recommended that a violation notice does not negate or circumvent the role of funding partners to assist in determinations of violations, entitlements to recovery of fees and expenses, determination of easement termination valuations, and proportional dispensation of termination proceeds, which NRCS agrees it does not; and two comments that NRCS should only be entitled to recover costs if the eligible entity was negligent in its enforcement role, which would be the most likely circumstance if the eligible entity failed to enforce its easement.

Of the five comments related to the right of enforcement, two comments recommended that NRCS notify land trusts if they are inadequately reporting and also create an opportunity to resolve any issues before NRCS asserts its enforcement rights, which NRCS will do in situations where all parties are acting in good faith; one comment recommend NRCS amend the right of enforcement language to include a provision by which the entity could repay the value of the easement to avoid enforcement action, which NRCS finds fundamentally in opposition to the statutory purposes of the program; and one comment recommended that the ACEP manual should not focus on NRCS' stewardship, monitoring, and enforcement responsibilities because entities have primary responsibility in these areas, which NRCS recognizes in policy. But this does not alleviate NRCS' responsibility to ensure that the statutory program purposes are met and

the substantial Federal investment is being protected.

*Easement Valuation and Consideration*

*Comment:* NRCS received 40 comments on the topic of easement valuation and consideration, of which three comments were about the valuation methods in general, five comments related Geographic Area Rate Caps (GARCs) and Area-Wide Market Analyses (AWMAs); three comments related to alternative valuation methodologies; three comments related to the appraisal effective date; seven comments related to appraisal reviews; eight comments related to appraisal specifications; and 11 comments related to projects of special significance.

*NRCS Response:* The comments related to the valuation methods expressed support for the methods identified. One of the commenters requested NRCS specify that following the Uniform Standards for Professional Appraisal Practices (USPAP) Standard 6, the Mass Appraisal Standard, is only appropriate in certain circumstances. However, NRCS does not reference Standard 6, and for the last two years NRCS referenced USPAP Standards 4 and 5—the consulting standards. Since these standards were omitted in the latest version of the USPAP, NRCS handles the AWMAs with reference to Standards 1 and 2, as these place the appraiser in a better situation with respect to the valuation opinion. The remaining four comments related to the GARCs and AWMAs expressed support for the regulatory language.

Of the three comments related to the availability of alternative valuation methodologies for ALE, one comment expressed support; one comment sought assurance that industry-approved appraisal standards will be sufficient; and one comment recommended that NRCS use the Farm Credit Association's ''benchmark valuation'' model. NRCS will review any standards submitted by eligible entity and compare to the appraisal standards under USPAP or the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) to determine if the alternative methodology sufficiently determines the fair market value of the easement. NRCS reviewed the benchmark valuation model but has determined that this methodology alone is not sufficient because it only derives market value of the fee estate, and does not derive easement value as required by statute.

The three comments about the adjustments to the ALE appraisal effective date supported the change that NRCS made to policy allowing approved appraisals to have an effective date that is either within one year of the closing date, or within six months on either side of the signing of the ALE-agreement.

Of the seven comments about the appraisal review process, one comment expressed support for the process; one comment recommended NRCS review the current appraisal contracts and instructions to review appraisers; one comment recommended NRCS work with eligible entities to review the current contract for review appraisers; one comment requested NRCS clarify the definition of technical appraisal review; one comment recommended NRCS require communication between the appraiser and the review appraiser during the development of the preliminary scope of work; one comment recommended that review appraisers meet an ASFMRA Real Property Review Appraiser program, ASA Appraisal Review and Management, or NAIFA Independent Fee Appraiser Agricultural (IFAA) designation to be qualified to competently perform as a review appraiser; and one comment recommended that NRCS strengthen the review appraisal function.

NRCS continuously reviews the appraisal instructions with its contracted technical review appraisers. It is difficult to make reviews consistent since they are professional opinions and not simply a checklist. However, NRCS will note that it may identify problems with an appraisal that do not affect validity of the determination of value. NRCS has not adopted the recommendation that would allow eligible entities to review the current contract NRCS has with review appraisers because the review appraisers are to provide an independent review of the appraisal submitted by the eligible entity. A technical appraisal review is a review completed by a State certified general appraiser. NRCS cannot require communication between the review appraiser and appraiser during the development of the preliminary scope of work of the appraisal because of the timing issues since the eligible entity often does not know that NRCS funding will be sought or obtained at the time the appraisal is being conducted. However, the NRCS appraisal specification and scope of work and appraisal technical review specification and scope of work are both publically available on the NRCS Web site and can be accessed by the eligible entities or the appraisers at any time. Additionally, the appraiser always has access to the NRCS National Appraiser should questions arise during the development of the original appraisal. With respect to the comment recommending various designations, NRCS requires review appraisers to meet strict qualifications, though the referenced designations are not required. NRCS continually reviews its procedures to ensure the quality of the appraisal and appraisal review functions meet program requirements.

Of the eight comments about NRCS appraisal specifications, one comment requested NRCS clarify the appraisal scope of work to bar appraisers who have had disciplinary actions that did not result in suspension but did result in a license restriction, which NRCS will adopt as an appropriate additional consideration. One comment requested NRCS specify that USPAP and UASFLA be identified as appraisal thresholds, which NRCS already does in both the regulation and policy manual. One comment recommended that a survey should not be required as part of the appraisal report if a current recorded deed meets closure requirements under State law, which is the current standard NRCS applies, if a survey is available then it should be included, but otherwise the existing recorded legal description is sufficient if it meets the State law and describes the area to be encumbered by the easement. One comment recommended using an UASFLA appraisal instead of USPAP when discounted cash flow valuation method is used, which NRCS did not adopt as UASFLA actually discourages the use of the cash flow valuation method. One comment recommended NRCS allow landowners to obtain the appraisal and another comment recommended that NRCS allow the landowner to be listed as a client on an appraisal, neither of which NRCS adopted because conflict of interest concerns prohibit such steps, as do prior OIG audit management actions. NRCS policy, however, does allow landowners to be identified as a user and to pay for the appraisal, but does not allow the landowner to select the appraiser or direct the appraiser as the client. One comment opined that UASFLA is the most accurate and proven method for developing an opinion of ''fair market value'' for fractional and partial interests, such as those involved in the ALE program, which is why NRCS considers it as an acceptable methodology to use. One comment requested NRCS clarify that a farm with excess forestland can be protected under one easement as long as the additional forestland is not included in the appraisal, which NRCS considers as much a program issue as an appraisal issue, and simply requires that the

appraisal upon which NRCS bases its cost-share assistance must be of the area being enrolled in ALE only.

Of the 11 comments about projects of special significance, three of the comments recommended establishing a time limit for NRCS consideration of requests of an eligible entity's cash contribution, which NRCS will not adopt as an unnecessary prioritization of a program implementation action; additionally the eligible entity has the flexibility to request a project of special significance determination before or after the ALE-agreement is entered into. The remaining comments requested clarification or recommended replacing the national criteria with considerations such as whether the parcel is: Owned by a new or beginning farmer; part of a comprehensive plan to protect a block of farms or ranchland adjacent to Federal or State lands dedicated to conservation or military use; an education or demonstration farm; or would include an Option to Purchase at Agricultural Value (OPAV) in the deed, or the project would have significantly lower probability of happening without a reduction in the required eligible entity cost-share.

Section 1265B(b)(2) requires that the Federal share of the cost of the purchase of an agricultural land easement must not exceed 50 percent of the fair market value of the agricultural land easement. The eligible entity must provide a share that is at least equivalent to that provided by NRCS, but may include a charitable donation by the landowner provided the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the NRCS contribution. However, for projects of special significance, NRCS may waive any portion of the eligible entity cash contribution requirement, subject to an increase in the private landowner donation that is equal to the amount of the waiver, if the donation is voluntary, and the property is in active agricultural production.

While at first it appears that identifying parcels owned by a new or beginning farmer as a project of special significance would prioritize such enrollment, the actual impact of such identification would result in the eligible entity providing less financial compensation to a landowner who, given the newness of the operation, would best benefit from the capital investment of the eligible entity. Therefore, NRCS has incorporated criteria specifically to encourage enrollment of parcels owned by historically underserved landowners as projects of special significance where such criteria do not have such unintended consequences. NRCS does consider ''buy-sell-protect'' or ''conservation buyer'' parcels that are subject to a valid purchase and sale agreement to transfer land to historically underserved buyer at the closing of the ALE as a project of special significance. NRCS has added such criteria, as discussed above, to the regulation. NRCS also believes that a parcel could qualify as a project of special significance if it is one of several parcels within a special project area being offered for enrollment in that fiscal year that are being protected pursuant to a comprehensive plan approved by the State Conservationist, with input from the State Technical Committee, for the permanent protection of a large block of farm or ranch land. However, agricultural zoning or being identified for protection by an established farmland protection program is not sufficient to meet this standard. NRCS already provides priority for enrollment of parcels near military installations or other conservation lands, and while these efforts are standard among farmland protection efforts, the proximity of a parcel to such lands in conjunction with other factors may qualify a parcel as a project of special significance. As discussed above, OPAVs are an administrative tool used by eligible entities and do not represent any special resource condition of the parcel itself, and therefore NRCS will not identify parcels that will have OPAV provisions as a project of special significance.

*Land and Landowner Eligibility*

*Comment:* NRCS received 122 comments related to the topic of land and landowner eligibility. Of the 122 comments, in descending order of number of comments: 32 Comments related to lands in entity ownership; 17 comments related to ALE forest land eligibility; 15 miscellaneous comments; 11 comments related to ACEP landowner requirements; nine comments related to ALE eligibility criteria; seven related to ALE infrastructure; six comments related to grasslands eligibility; six comments related to prime farmland eligibility; five related to mineral rights; four comments related to the ALE written pending offer; four related to WRE enrollment of Conservation Reserve Program acres; three comments related to access; two comments related to ALE State or local policy eligibility; and one comment related to historical and archaeological significance.

*NRCS Response: Lands in entity ownership:* Of the 32 comments about the eligibility of lands owned by an eligible entity, one comment recommended that such land be ineligible and the remaining comments recommended either temporary or permanent eligibility of such lands. NRCS did not adopt these recommendations due to the statutory framework of the program. More particularly, the statutory framework for eligible land and eligible landowners prevents NRCS from providing ALE funds for the reservation of an easement in land currently owned by an eligible entity. As to eligible land, the definition of an agricultural land easement is: ''an easement [or other interest] in eligible land that—(A) is conveyed for the purposes of protecting natural resources and the agricultural nature of the land; and (B) permits the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan, as approved by the Secretary.

The statutory definition of ''eligible land'' is private or tribal agricultural land that is ''subject to a pending offer for purchase of an agricultural land easement from an eligible entity.'' Section 1265A(3)(A)(i) (Emphasis supplied).

As to limitations imposed by the definition of eligible landowners, to qualify as an eligible landowner an eligible entity would need to comply with adjusted gross income limitations (AGI) and conservation compliance requirements. Currently under ACEP–ALE, eligible entities are not evaluated for AGI or conservation compliance as the benefits of the program and therefore the landowner eligibility requirements are attributed to the landowner. However, if an eligible entity were to apply for ACEP–ALE as a landowner then they would be subject to AGI and conservation compliance checks. While AGI is unlikely to limit eligible entities, the conservation compliance check would present a new and significant hurdle for an eligible entity. Furthermore, because only private and tribal land is eligible an eligible entity that is a State or local government cannot be an eligible landowner.

Further, under Section 1265B(b)(1) of the ACEP statute, cost-share assistance is only authorized to be provided for ''purchasing agricultural land easements.'' In a situation where the eligible entity already owns the land, an agricultural land easement is not being purchased but reserved and the residual fee title is being sold to a private landowner. NRCS has developed policy to address temporary buy-sell-protect situations. By including within the definition of a landowner those buying

eligible land under a purchase agreement, NRCS has enabled eligible entities to engage in buy-sell-protect or conservation buyer transactions through ALE. Typically, eligible entities will act as a conservation buyer when the land is of high conservation value and is subject to an imminent threat that is incompatible with the preservation of the land's conservation values and, as a result, time is of the essence. In such a scenario, eligible entities may acquire eligible land, enter into a valid purchase agreement with an eligible landowner, apply for ALE cost-share assistance before the landowner acquires fee title and then acquire an ALE using the Federal cost-share assistance only after the eligible landowner acquires a fee title. Combining conservation buyer strategies and ALE allows eligible entities to act quickly to protect land, ensures the lands are held in ownership by an eligible landowner in order to meet ALE program requirements, and preserves the conservation values in perpetuity with assistance from NRCS.

*Forest land eligibility:* Of the 17 comments received about forest land eligibility, 11 comments supported the waiver of the forest land limitation for sugar bush acreage but requested further clarification; four comments requested that non-industrial forest land would either be exempt from the forest land restrictions or qualify for a waiver; and the remaining two comments simply expressed support for the continued restriction on the enrollment of forest land in ALE. In the interim rule, NRCS explained that NRCS would continue the former FRPP determination that forest land was only eligible if it did not exceed two-thirds of the easement area, and that NRCS would reduce its cost-share in proportion to the extent that an easement protects forest land that exceeds two-thirds of the easement area. However, NRCS also identified that it may waive the two-thirds forest land limitation for sugar bush acreage that contributes significantly to the economic viability of the parcel being offered for enrollment, since landowners manage their sugar bush as an integral part of their overall agricultural operations. Thus, if the waiver is granted, then NRCS would provide cost-share assistance for the enrollment of the land subject to the waiver. NRCS did not adopt the recommendations concerning non-industrial private forest land since the ALE currently limits the eligibility of forest land to ''non-industrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.'' NRCS believes that the two-thirds restriction on the enrollment of non-industrial forest land meets this criteria, and the waiver for sugar bush provides sufficient flexibility to this restriction.

*Miscellaneous:* Of the 15 miscellaneous comments, one comment requested NRCS clarify which types of unrecorded interests might impact a property's chances of receiving funding. There are numerous types of unrecorded interests that can affect the quality of title that a landowner is able to provide, including, but not limited to, those that could interfere with the future agricultural use of the land, such as oil extraction leases with no limitation, adverse possession claims, unresolved boundary disputes, utility or infrastructure options, 'floating' leases or rights-of-way with third parties, or other unrecorded agreements for non-compatible uses that cannot be cancelled, revoked, or otherwise subordinated prior to closing. The due diligence and title evaluation documents NRCS uses when conducting its own due diligence activities are available to the public on the NRCS Web site and provide a good reference for eligible entities to identify the types of issues NRCS evaluates in the course of determining eligibility and quality of title.

Six of the 15 comments recommended that Confined Animal Feeding Operations (CAFOs) should be ineligible for ACEP–ALE funding by adding CAFOs at § 1468.20e ''ineligible land criteria'' as these lands impair groundwater, surface water, and air quality. For any proposed easement containing a CAFO, the confined area is a heavy use area that must be evaluated by NRCS to determine if the on-site or off-site conditions render the site ineligible and make a determination whether the land meets the required land eligibility criteria. This is necessarily a case specific determination and therefore broad categorization of land eligibility simply based on type of operation would not be appropriate.

With respect to WRE land eligibility, one comment requested clarification about the WRE water depth factor for determining eligibility of potholes and closed basins. As an eligibility determination, the ''6.5 foot or less'' criterion refers to the depth of flooding at the time of application and is not based upon any hydrologic features that could be planned to be constructed for the project. One comment requested NRCS give flexibility at the NRCS State level when consulting with the United States Fish and Wildlife Service to determine how to maximize wildlife benefits and wetland values and functions, which NRCS already does. One comment recommended prohibiting commercial game farms and shooting preserves on NRCS easements, which NRCS will not do as some related activities may be consistent with the long term wetland purposes of the easement, as determined by NRCS through the compatible use authorization process.

Two of the 15 comments requested that NRCS emphasize that land enrolled in WRE would not be eligible for wetland mitigation credit. WRE easements and contracts provide NRCS the authority to restore, protect, and enhance enrolled wetlands and associated habitats in a manner that will maximize wildlife habitat and other wetland functions and values. The assumption is that WRE lands will receive the conservation attention from NRCS necessary to achieve this full degree of protection, restoration, and enhancement. Therefore, NRCS does not allow another entity to expend mitigation funds on any of the land treatment conservation actions that would be appropriate and practicable to fund under WRE. This policy extends to any compensatory action taken by a third party to mitigate adverse ecological impacts, including but not limited to, the Federal Water Pollution Control Act (*i.e.* Clean Water Act), the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972.

However, there may be limited opportunities when enhancement activities under a mitigation project would go beyond those conservation actions normally carried out under a WRE. NRCS notifies landowners who wish to enter into mitigation arrangements that if they enter into an agreement with a third party that such agreements are subordinate to the WRE and that if the agreement requires the exercise of rights held by the United States, such actions are subject to the compatible use authorization process.

Furthermore, NRCS recognizes that environmental benefits will be achieved by implementing conservation practices, components, measures, and activities funded through WRE, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRE easement or contract. NRCS asserts no direct or indirect interest in credits generated by activities not funded through WRE. Landowners should be aware that any applicable credits may be subject to additional requirements

and may not be possible on certain WRE lands.

The remaining three comments expressed support for the exemption of wetland land capability classes from the county cropland limitation. NRCS would like to clarify that the subclass w exemption also applies to easements enrolled through the predecessor program, the Wetlands Reserve Program.

*ACEP Landowner requirements:* Of the 11 comments about ACEP landowner requirements, four comments supported the reduction of the ownership requirement from seven years to 24 months; three comments recommended eliminating the Adjusted Gross Income (AGI) requirements, which NRCS cannot do as AGI is required by statute; three comments recommended that landowners who participate through the Regional Conservation Partnership Program should not obtain a waiver of AGI, which NRCS did not adopt as such flexibility is provided by statute; and one comment recommended that the Farm Bill be amended to allow governmental entities that are landowners to participate and enroll projects in WRE, which is outside of NRCS authority.

*ALE Eligibility criteria in General:* Of the nine comments about ALE eligibility criteria, one comment recommended delineating the four criteria for land eligibility, which NRCS has done by slightly modifying § 1468.20(d); one comment expressed support for the inclusion of expiring CRP acres as eligible land; two comments requested clarification about what on-site and off-site conditions may render a site ineligible, which NRCS has not done as while an infrastructure project with documented approval or existing environmental contamination can be readily evaluated it is difficult to draw a line that covers all cases (whether an off- or on-site condition impairs the conservation value of a property will depend on the specific condition and the specific conservation values that NRCS and the eligible entity are seeking to protect on the parcel and NRCS has delegated this evaluation to the State Conservationist and provided guidance in policy); two comments recommended emphasizing ''protecting and enhancing related conservation values of the land'', which NRCS adopted in substance by making the necessary changes to the definition of ''pending offer'' and how that term is used at § 1468.20(a) by using the purpose terminology from the statute that includes these concepts; two comments recommended that program requirements should include protection and restoration of Tribal treaty-reserved resources, which may occur through limiting non-agricultural uses of the land but is not a specific program requirement established in the statute; and one comment requested the regulation be revised with respect to incidental lands to clarify that it can be enrolled with any eligible land, which is not needed as the clear language of § 1468.20(d)(2) states that if land offered for enrollment is determined eligible, then ''NRCS may also enroll land that is incidental to the eligible land.''

*Access:* Of the three comments about access as an eligibility criterion, one comment recommended that NRCS lessen the requirements for establishing sufficient access under ALE and two comments recommended that NRCS apply ALE access requirements to WRE easements. NRCS did not adopt either of these recommendations. NRCS has reviewed what is required for access under the respective components of the program, and has provided greater flexibility to ALE participants since NRCS must only ensure its ability to access the parcel to exercise its right of enforcement in the event the Grantee does not fully protect the interests provided to the Grantee under the easement. However, under the WRE component of the program, NRCS must acquire access sufficient to restore, protect, and enhance the wetland functions and values of the easement as the easement holder and thus what is sufficient access for purposes of providing cost-share assistance to a third-party easement holder under ALE is not sufficient for the purposes of NRCS administering a Federally-held easement under WRE.

*Specific ALE eligibility criteria:* Four comments made recommendations about the requirement for a written pending offer; six comments made recommendations about grassland of special environmental significance; six comments made recommendations to eliminate the prime farmland requirement; two made recommendations about State or local policies consistent with ALE purposes; and one comment made recommendations about historical and archaeological resources.

NRCS cannot adopt the recommendations to eliminate the written pending offer requirements as it is a statutory requirement. However, a purchase agreement is not required. NRCS has made available, upon request, an example model pending offer that can be adopted by eligible entities.

Of the ALE grasslands eligibility recommendations, three comments recommend adopting flexibility to include grasslands of special environmental significance with noxious or invasive species where the grasslands are supported by State, regional, or national plans, and three comments recommended that NRCS clarify that land eligible for grazing uses and other conservation values do not need to contain historical or archaeological resources to be eligible. To be eligible as grasslands of special environmental significance, NRCS requires that the grassland have little to no noxious or invasive species. If a grassland is supported by State, regional or National plans, but contains noxious or invasive species that occupy more than a minor extent of the grassland or are not under effective control, those lands may be eligible as a general ALE grassland enrollment, but would not be eligible as a grassland of special environmental significance. NRCS has clarified that land eligible for grazing uses and related conservation values does not also need to contain historical or archaeological resources by listing more discretely the eligibility criteria as outlined in § 1468.20(d).

NRCS will not eliminate the 50 percent prime or unique farmland requirement as this requirement can be waived, is only one of four land eligibility options, and the agency already has significant flexibility to ensure that the most important lands, whether identified nationally or locally, are eligible for enrollment.

NRCS will not adopt the recommendation that agricultural historic resources receive a priority review during land eligibility determinations, since State screening criteria or ranking factors can accommodate this concern for priority if identified at the State level.

Of the two comments about ALE State or local policy consistent with the purposes of the ACEP–ALE, one comment requested NRCS clarify the process whereby an eligible entity may meet this requirement, and one comment recommended NRCS eliminate the deed requirement that the agricultural land easement must address the purposes for which the land was acquired if the land is being acquired because it ''furthers a State or local policy.'' NRCS does not define what constitutes a State or local farmland protection policy that is consistent with ALE as such a definition may inadvertently limit the potential for effective farmland protection efforts. However, if an easement transaction depends upon the eligibility of the land being based on the protection of land furthering a State or local policy, the eligible entity must submit to NRCS the documentation necessary for NRCS to

review and determine whether the State or local policy is tied in an effective way to the protection of the agricultural uses of the land by limiting conversion to non-agricultural uses or to the protection of grazing uses and related conservation values. Land must be able to meet land eligibility criteria at the time of NRCS' selection for funding, and thus the State or local policy must exist at the time of application and documentation of how the parcel will further such State or local policy submitted as part of the application package for such parcel.

While it is unlikely that a parcel will be enrolled as eligible solely because it furthers a State or local policy consistent with ALE, if its enrollment is based upon such criteria then NRCS must ensure that such criteria will be furthered by the purchase of an agricultural land easement. For parcels determined eligible based this eligibility type, the agricultural land easement deed must address the ACEP–ALE purposes that are being supported by a specific State or local policy.

*Specific ALE Ineligibility Criteria:* NRCS received five comments related to how mineral rights are addressed under ALE, and seven comments related to how NRCS addresses infrastructure projects. Both of these activities can affect whether NRCS will determine that a parcel is eligible to receive ALE funding based upon the significant, uncontrollable risk that such activities present to the conversion of agricultural lands to a non-agricultural use or to the protection of grazing uses and related conservation values. NRCS does not, however, determine that land is ineligible simply because the gas, oil, earth, or mineral rights have been leased or are owned by someone other than the landowner. NRCS recognizes that the risks presented by exploration and development activities differ by region, and that, in some cases, appropriate limitations can reduce the risks associated with these activities. Therefore, NRCS evaluates the purposes and methods of the infrastructure development due to the statutory mandate to limit conversion to non-agricultural uses or to protect grazing uses and related conservation values, but may allow the development of mineral rights and energy infrastructure when surface disturbances can be minimized and localized within specific thresholds. NRCS provides a range of options in the minimum deed terms that provides sufficient flexibility related to mineral exploration and development. An eligible entity can always include its own additional deed terms that are more restrictive.

With respect to infrastructure projects, if there is an existing or known infrastructure project that introduces disturbances or risks that could undermine the purposes of the easement and there are documented routes approved by a government authority, the land may be determined ineligible or may require reconfiguration in order to become eligible because NRCS will not knowingly interfere with the proposed infrastructure project objectives of another agency. However, if an infrastructure project is not definitive as to its location and scope, then NRCS will not determine a parcel ineligible simply because an infrastructure project is under consideration in an area.

*WRE Enrollment of CRP Acres:* NRCS received four comments supporting the enrollment of CRP acres, including the process outlined in § 1468.30(g)(2) to allow WRE enrollment of land established to trees under CRP. NRCS considers all CRP sites that meet the basic eligibility criteria as eligible, subject to the stipulations for lands established to trees under CRP as outlined in § 1468.30(g)(2), and then uses the State ranking processes to determine whether an existing CRP parcel is a good candidate for the ACEP–WRE, especially sites that will benefit migratory bird or at-risk species habitat objectives.

*National and State Allocations*

*Comment:* NRCS received 20 comments on the topic of national and State allocations. Of these 20 comments, 5 comments related to funding levels requesting an increase to ACEP funding levels, encouragement of continued apportionment of adequate technical assistance for wetland restoration, and encouragement for NRCS to continue to find ways to leverage funding through partnership opportunities. The remaining 15 comments made recommendations about the allocation of funds between the two components of the program, with 11 comments recommending that NRCS maintain the historic proportion of funding between the programs subject to producer demand, 2 comments recommending a minimum of 40 percent share to ALE, and 2 comments recommending that grassland of special environmental significance (GSS) receive its own allocation under ALE.

*NRCS Response:* The ACEP allocation between the program components is based upon demand. NRCS recognizes that there is strong demand for both components of ACEP, including demand for enrollment of grassland of special environmental significance, and that this demand may fluctuate year to year. NRCS, therefore, works diligently to provide an appropriate allocation of acres and funds across States between the ACEP program components to respond to demand. Over the course of the 2008 Farm Bill, the predecessor easement programs received an average of $780 million annually. The historic proportion of funding was approximately 73 percent WRP funds and 27 percent GRP and FRPP funds. The current average funding available under ACEP will be approximately $368 million annually, about 47 percent of the amount available under the repealed programs. As a result, NRCS is able to fund only approximately 30 percent of the total ACEP applications received each year. In both FY 2014 and FY 2015, the demand under ACEP has been approximately 65 to 70 percent demand for WRE and 30 to 35 percent demand for ALE, this breakdown in demand is in both number of applications being submitted for funding and dollars requested. In FY 2014 and FY 2015, an average of 130,000 acres of have been enrolled in ACEP each year. This includes 80,000 acres annually of farm and ranch lands protected through new ACEP–ALE enrollments, and 50,000 acres annually of wetlands restored and protected through new ACEP–WRE enrollments, a split of 61 percent ACEP–ALE acres and 39 percent ACEP–WRE acres. The associated funding split has averaged approximately 39 percent ACEP–ALE and 61 percent ACEP–WRE. While the reduced funding under ACEP resulted in reduced enrollments across the entire program compared to prior years, the reduction in ACEP–WRE enrollments have been disproportionately larger than ACEP–ALE. ACEP–ALE has been allocated sufficient funds to enroll 60 percent of the historic average acres under FRPP/GRP, from 132,000 acres annually under FRPP/GRP to 80,000 acres under ACEP–ALE; while ACEP–WRE was allocated sufficient funds to enroll 28 percent of the historic average acres under WRP, from 177,000 acres per year under WRP to 50,000 acres per year under ACEP–WRE. Similarly, in both FY 2014 and FY 2015, ACEP–ALE received a larger relative proportion of funds than historically received under the predecessor programs. NRCS will continue to work to balance demand, resource needs, and maximizing the benefits of Federal funds invested.

*National Priorities and Initiatives*

*Comment:* NRCS received nine comments related to the topic of national priorities and initiatives. These comments included recommendations

for ALE to target GSS priority areas for waterfowl and migratory bird populations—such as the Prairie Pothole Region—for inclusion as National GSS priority areas, include OPAVs in the list of optional criteria for determining projects of special significance, emphasize projects that involve beginning farmers or ranchers as a project of special significance, and for WRE, to emphasize a watershed approach for WRE project selection, and determine WRE priority areas at the State level.

*NRCS Response:* Identifying and targeting enrollment to the most imperiled grassland, such as the Prairie Pothole and Great Plains Regions, is a procedural issue. Additionally, at § 1468.22(c)(4), the States may adopt as priority ranking criteria ''(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects.'' Therefore, no changes are needed to the regulation to address the comment's concern. NRCS has addressed recommendations about OPAVs earlier in this preamble related to identifying criteria for projects of special significance in general, and again emphasizes that factors related to projects of special significance are not based upon administrative matters within the control of the eligible entity but the attributes of the parcel itself. NRCS also addressed above the additional criteria NRCS has adopted for projects of special significance to encourage the involvement of beginning farmers or ranchers where such criteria do not have inadvertent impacts upon them. Most of the criteria for projects of special significance, including those for GSS, are focused upon environmental factors and priority resource concerns that can be addressed by encouraging enrollment. However, with this new criterion, NRCS is utilizing its authority under 16 U.S.C. 3844 to encourage enrollment of parcels that will assist historically underserved landowners who own and protect valuable agricultural lands that otherwise might not be enrolled due to unintended barriers to their participation under eligible entity programs. Under WRE, States determine WRE priority areas, including whether to emphasize a particular watershed within the State and then rank parcels within that watershed.

*Participation in Other USDA Programs*

*Comment:* NRCS received four comments recommending that landowners who have an ALE easement encumbering their lands should receive priority for financial assistance through other NRCS conservation programs to implement practices identified in the ALE plan.

*NRCS Response:* The ACEP statute only authorizes financial assistance under ALE for the purchase of a conservation easement, and financial assistance for other purposes, such as closing costs or easement plan implementation, are not authorized. NRCS has received comments over the years that landowners who have demonstrated their land stewardship through encumbering the land with a conservation easement should receive priority for financial assistance funding under NRCS conservation program. Given the statutory requirement for lands encumbered by an ALE easement to be subject to an agricultural land easement plan, this recommendation has been made again by conservation organizations. NRCS is reviewing its financial assistance programs and will provide guidance, where appropriate, to its State offices about the practices identified in ALE plans and how such practices may address other program's priority resource concerns.

*Planning*

*Comment:* NRCS received 136 comments related to planning, 50 of which related to ALE plan criteria. Of these ALE planning criteria comments, 12 comments expressed support for the current rule language or planning process; four comments encouraged flexibility for addressing short-term management needs or current planning efforts; 10 comments requested clarification of particular requirements; eight comments recommended that NRCS only require those plans mandated by statute; eight comments recommended that NRCS require RMS level of planning; and six comments recommended NRCS decouple ALE Plans from the minimum easement deed terms. NRCS also received two comments recommending that NRCS eliminate the requirement for an ALE plan.

Additional comments related to planning included 6 comments related to regulatory references; 29 comments related to the development of the ALE plan; 13 comments related to the voluntary nature of ALE plans; 33 comments related to the monitoring and enforcement of ALE plans; three comments related to the stringency of plans; one comment related to plans required by other programs; and one comment related to WRE wetland restoration plan of operations (WRPO).

*NRCS Response:* The ACEP Interim Rule identified the minimum requirements for an agricultural land easement plan and described the relationship between the agricultural land easement plan and the individual component plans that are required for certain land-use types. In particular, 7 CFR 1468.26 required that all ALE plans must, at a minimum:

(1) Describe the activities that promote the long-term viability of the land to meet the purposes for which the easement was acquired;

(2) Identify required and recommended conservation practices that address the purposes and resource concerns for which the parcel was selected;

(3) Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed; and

(4) If the agricultural land easement contains certain land use types, a component plan must be incorporated by reference into the agricultural land easement plan for grasslands, forest lands required by § 1468.20(d)(3) to have a forest management plan, and highly erodible land.

In the interim rule's preamble, NRCS encouraged the development of a robust and comprehensive agricultural land easement plan, such as a plan at the NRCS Resource Management System (RMS) planning level, and identified that such a plan could include both required and recommended practices. NRCS recommended that NRCS' planning procedures, conservation practices, and standards and specifications be used to develop the agricultural land easement plans.

An ALE plan identifies conservation practices or management standards necessary to meet statutory requirements and recommends conservation practices based on landowner goals and the purposes of the individual easement. Eligible entities may, at their option, address additional resource concerns in the ALE plan. NRCS will continue to conduct outreach about the relationship between deed terms and the plan, to clarify that the ALE plan is a living document that can be adjusted as landowner operations or objectives change and is intended to provide flexibility for management of the land within the purposes of the easement over the term of the easement. Additionally, NRCS has made available example plans as exhibits to the ACEP manual available on the NRCS Web site to help alleviate concern about the ''unknown.''

The comments related to the development of the ALE plan focused

upon the costs for plan development, when the plan must be developed, who reviews and approves the plans, who enforces the plans, and whether a plan can be terminated if the landowner decides not to proceed with selling the easement. An eligible entity is responsible for ensuring that an ALE plan is developed prior to easement closing. NRCS or an NRCS-certified technical service provider (TSP) at NRCS cost may assist with the development of the plan if requested by the eligible entity. To ensure that there is sufficient technical assistance available, NRCS provides the eligible entity the opportunity to request NRCS assistance for plan development at the time that the parties enter into the ALE-agreement. NRCS requires that the eligible entity, the landowner, and NRCS must sign the plan prior to closing the easement. It is the responsibility of the eligible entity to enforce the plan. NRCS has responsibility to enforce a conservation plan on highly erodible land pursuant to 7 CFR part 12. NRCS affirms that the commenter is correct that a landowner is not required to implement an ALE plan unless the easement transaction closes.

*Ranking*

*Comment:* NRCS received 135 comments on the topic of ACEP ranking. The breakdown of comments was as follows:

- General ranking recommendations (22 comments)
- Specific ALE National criteria (76 comments)
- Recommended new National criteria (13 comments)
- ALE State criteria (12 comments)
- Recommended new ALE State criteria (10 comments)
- WRE Ranking criteria (6 comments)

*General Ranking Recommendations:* The breakdown of the 22 general ranking recommendations, and the NRCS response to these comments, are as follows:

○ Seven comments recommended that the national criteria should comprise no more than half of the total score. NRCS believes that the existing weighting provides ample opportunity for resource priorities within States to be addressed. In particular, State Conservationist have discretion to have State factors provide up to 50 percent of the weighting, and can also weight the national criteria in a manner that corresponds with the resource concerns in the State.

○ One comment recommended that NRCS provide a clear and consistent national framework for project selection, but also maintain the role of the State Technical Committee. NRCS agrees and believes the current balance between National and State criteria furthers this goal.

○ One comment recommended that NRCS revise the ACEP manual to allow representatives of eligible entities that are seeking ALE funding to serve as State Technical Committee members and participate in State ranking criteria and weighting discussions, as long as they do not vote on recommendations. NRCS did not adopt this recommendation as an ethical matter. Even without voting on the recommendations, the influence upon the State ranking criteria and weighting factors could affect the selection of particular parcels the eligible entity is seeking funding for and represent an inherent conflict of interest.

○ Three comments recommended that general ALE and grassland of special environmental significance should be ranked separately. NRCS would like to clarify that while these projects are ranked using the same form, the specific ranking questions applicable to the different types of enrollments have offsetting scores such that the applications are competitive within and between enrollment types. Furthermore, the State Conservationist has the ability to request separate allocations of ALE funds split into general ALE and GSS and thus not have the applications compete against each other for access to the same funds.

○ One comment recommended consistent ranking scoring. NRCS agrees that consistent ranking scoring provides greater transparency and is one of the changes NRCS made from FRPP implementation to how it is implementing ALE. NRCS will also explore the implementation of using a consistent total ranking score across WRE as well.

○ One comment expressed support for the use of thresholds in setting priority ranking and one comment expressed support for the ALE eligibility requirements that help ensure enrollment of priority acres that meet objectives of the program.

○ One comment advised that project ranking should not be penalized for delays generated by NRCS and that some accommodation should be made if the delay is not the fault of the eligible entity. NRCS must maintain objectivity in the application of the criteria and whether to assess penalties for delays is at the State Conservationist's discretion who is most familiar with the situation.

○ One comment recommended that NRCS prioritize easements with high conservation values that include strong conservation plans. NRCS believes the current ranking criteria addresses this comment.

○ One comment recommended that NRCS release a scoring tool to eligible entities to use to evaluate projects prior to submittal. NRCS State offices make available the ranking criteria at least 30 days prior to the application deadline.

○ One comment recommended that NRCS revise the ranking criteria to ensure the application process does not negatively affect smaller acreage producers. There are many factors that NRCS balances in the development and implementation of its ranking factors and weightings. The State Conservationists have the flexibility to address the impact to smaller acreage producers through the weighting of the different ranking criteria.

○ One comment recommended that if ''other criteria'' are to be determined, that such criteria should be subject to public comment. Ranking criteria are a topic of discussion at State Technical Committee meetings, and these meetings are publicized by NRCS at the State level and open to the public. Additionally, NRCS at the State level posts the criteria it will use for ranking at least 30 days prior to the end of an application period.

○ One comment recommended that NRCS segment the core of the parcel from incidental land in the ranking form. NRCS did not adopt this recommendation because NRCS is cost-sharing on the entirety of the parcel and therefore the entirety of the parcel must be evaluated in the ranking.

○ One comment recommended that NRCS provide a Web site that outlines State and local program priorities and priority geographies for applicant to evaluate eligibility under those categories. Each NRCS State office has its own Web page and NRCS will provide this greater detail on these NRCS State Web pages.

*Specific ALE National Criteria:* (76): Section 1468.22(b) of the interim rule identified the following as national ranking criteria:

○ *Criterion One—Percent of prime, unique, and other important farmland in the parcel to be protected:* Five comments made recommendations about Criterion One. Four of the comments recommended adding grassland of special environmental significance and one comment recommended adding ''or ranchland'' to the ranking criterion. NRCS will address this comment by replacing the word farmland with soils, which is inclusive of these other uses.

○ *Criterion Two—Percent of cropland, rangeland, grassland, historic grassland, pastureland, or non-industrial private forest land in the parcel to be protected:* NRCS did not receive any comments about Criterion Two.

○ *Criterion Three—Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture:* Eighteen comments made recommendations about Criterion Three. Ten of these comments recommended eliminating the factor; one comment recommended amending the factor to encourage the priority of small farms; three comments recommended that when analyzing the comparison of farm size to average farm size in the county that farmland and rangeland are distinguished so that properties in the county with similar land uses are compared to each other; one comment recommended NRCS use a more frequently updated metric, such as Important Farmland data in States where it is available, instead of the Census of Agriculture reports; two comments recommended NRCS exclude impervious surface areas from the calculation of total project acres; and one comment recommended using the term ''mean'' instead of ''average.'' NRCS believes that the State criteria can address the recommendations made by the comments, depending upon the availability of information within the State. For example, States can adopt criteria that place less weight on land that has significant acreage in impervious surfaces. NRCS uses the nationally-available data for the National criteria to provide consistent, objective ranking criteria that is equally available across the country. However, States can include in the State ranking criteria more localized or more frequently updated data sources. NRCS did not adopt the recommendation about replacing terms as the term ''average'' in this case is synonymous with ''mean.''

○ *Criterion Four—Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture.* NRCS received 15 comments about Criterion Four. Twelve of the comments recommended eliminating this criterion; two comments recommended allowing consideration for regional goals and objectives; and one comment requested that NRCS clarify how ''development pressure'' to a non-agricultural use will be determined. NRCS will keep this National criterion as prioritizing land that is most at risk of conversion is at the heart of the program and this factor is fundamental to how that risk of conversion can be objectively and consistently evaluated.

○ *Criterion Five—Percent population growth in the county as documented by the United States Census.* NRCS received one comment about Criterion Five recommending NRCS eliminate the criterion. NRCS did not adopt this recommendation as population growth is another objective indicator of development pressure that increases the risk of conversion of agricultural lands to non-agricultural uses or threatens grazing uses and related conservation values.

○ *Criterion Six—Population density (population per square mile) as documented by the most recent United States Census.* NRCS received two comments on Criterion Six, one recommending NRCS eliminate the criterion and one comment requesting calcification on how the criterion will be applied. NRCS did not adopt this recommendation because this criterion similarly reflects whether a parcel is subject to a high risk of conversion. NRCS applies this criterion by providing higher priority to parcels in areas that have population that is denser than the average density for the State.

○ *Criterion Seven—Existence of a farm or ranch succession plan or similar plan established to address farm viability for future generations.* NRCS received 24 comments about Criterion Seven. One comment supported the use of the criterion, eight comments recommended that NRCS allow an Option to Purchase at Agricultural Value (OPAV) to score points as a ''succession plan'', four comments recommended allowing scoring for an affirmative requirement to maintain land in productive agriculture, two comments recommended moving this criterion from the national criteria to the State criteria, seven comments recommended eliminating the criterion, and two comments recommended replacing the succession plan ranking criterion with one that provides priority for land that is being sold to a new farmer or other priority historically underserved landowner. This criterion existed under FRPP as part of the State ranking criteria, but was elevated to a national ranking criterion due to the change in the statutory purposes of ALE to include future viability. An OPAV or other affirmative requirement to maintain land in productive agriculture can be considered a form of succession planning. As is already allowed under the ACEP interim rule, the State Conservationist can include in the State ranking criteria the multifunctional benefits of an ALE, including deed provisions that provide for the future sale of a parcel to a historically underserved landowner. The final easement deed must include provisions that address the items for which the parcel receives ranking points, such as the presence of a succession plan or multifunctional easement benefits.

○ *Criterion Eight—Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use.* NRCS did not receive any comments about Criterion Eight, but is expanding the last sentence to include the phrase 'or protects the grazing uses and related conservation values' to address the statutory purposes of ALE.

○ *Criterion Nine—Proximity of the parcel to other agricultural operations and agricultural infrastructure.* NRCS did not receive any comments about Criterion Nine.

○ *Criterion Ten—Maximizing the protection of contiguous acres devoted to agricultural use.* NRCS received nine comments about Criterion Ten. Five of these comments recommended that NRCS modify the criterion to give priority to ''blocks'' of farmland that are in proximity to each other; three comments recommended to eliminate the criterion; and one comment recommended NRCS modify the criterion for small States. NRCS adopted the recommendation to modify the criterion to reflect priority for farmland or ranchland that are contiguous or in proximity to each other.

○ *Criterion Eleven—Whether the land is currently enrolled in CRP in a contract that is set to expire within one year and is grassland that would benefit from protection under a long-term easement.* NRCS received two comments about criterion eleven. One of the comments expressed support for the criterion and the other comment recommended that NRCS retain the flexibility at the State level to determine relative priority assigned to expiring CRP acres versus other grasslands. NRCS did not adopt the recommendation as it has determined to exercise the discretion provided by statute to prioritize CRP acres.

○ *Criterion Twelve—Other additional criteria as determined by NRCS.* NRCS did not receive any comments related to criterion twelve. Due to the addition of

a new National criterion, described below, this criterion will be the thirteenth criterion to appear in the regulation under National criteria.

○ *Criterion Thirteen* —In response to comments received regarding the need for national criteria that reflect that ALE purposes include the protection of grazing uses and related conservation values from conversion to non-grassland uses, NRCS is adding a new National criteria. In particular, NRCS has added to the regulation the following criterion in order to assist in balancing the respective purposes of the program. The new criterion reads as follows: *Decrease in the percentage of acreage of permanent grassland, pasture and rangeland, other than cropland and woodland pasture in the county in which the parcel is located between the last two USDA Censuses of Agriculture.*

*Recommended New National Criteria:* NRCS received 13 comments recommending new national criteria, including:

• One comment recommending adding a national ranking criterion to score parcels that include a ''buy-protect-sell'' approach. NRCS did not adopt this recommendation because this type of transaction can present statutory authority issues, and while flexibility exists for certain types of these transactions, NRCS does not believe it is appropriate to prioritize such approaches.

• Five comments recommended adding a national ranking criteria for grassland easements where enrollment of land will contribute to achieving the goals and objectives of national, regional and State fish and wildlife conservation plans and initiatives. NRCS affirms that the existing State Criterion Four, as provided in the current ACEP interim regulation § 1468.22(c)(4), is intended to allow State Conservationists to account for the priorities identified in these types of plans in their State ranking criteria.

• One comment recommended adding a national ranking criteria for lands in areas of high conversion pressure from grasslands to cropland. NRCS believes that this criterion is appropriate given the grassland conservation purposes of ALE, and as described above, has added it to the National criteria.

• One comment recommended adding a national ranking criteria to give special consideration to applications that serve micropolitan and metropolitan statistical areas that have high risk of farm conversion. NRCS believes that the national factor related to population growth factors addresses the priority that would be provided by a micropolitan ranking factor.

• One comment recommended that ''effective agricultural zoning'' should be considered within the national ranking criteria for eligible ALE parcels. NRCS did not adopt this recommendation because such determination would be too subjective.

• One comment recommended adding State ranking criteria to the list of national ranking questions to address areas of national importance. NRCS did not adopt this recommendation.

• Two comments recommended consolidating national ranking criteria three though six because the commenter believed that such factors weigh against enrollment of remote, intact parcels of significant ecological value. NRCS did not adopt this recommendation because the statutory criteria for the program is to maximize the benefit of the Federal investment with an emphasis on protecting agricultural uses and related conservation values and maximizing the protection of areas devoted to agricultural use. In NRCS' experience in administering conservation easement programs NRCS has determined that if two parcels of similar agricultural and related conservation values are offered for the program, but one is subject to threat of development or conversion, the benefit of the Federal investment is maximized by prioritizing the protection of the agricultural uses on the parcel subject to the most immediate threat of conversion to non-agricultural or non-grassland uses. Ranking criteria three through six are intended to evaluate this risk and provide an objective, transparent, and nationally-available data sources upon which to base this evaluation.

• One comment recommended adding a national ranking criterion to consider the number of development rights to be extinguished. NRCS did not adopt this recommendation because this information is not consistently available nationwide or at the time of ranking. If an individual State has a consistently available data source or mechanism by which to evaluate at the time of ranking the risk of development or conversion, the State Conservationist has the discretion to include such a consideration in the State ranking criteria as provided in § 1468.22(c)(7).

*ALE State Criteria* (12): NRCS received twelve comments making recommendations about the seven State criteria. Section 1468.22(c) of the interim rule identified the following as State ranking criteria:

• *State Criterion One—The location of a parcel in an area zoned for agricultural use.* NRCS did not receive any comments about State Criterion One.

• *State Criterion Two—The eligible entity's performance in managing and enforcing easements.* One comment recommended that performance be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported. The eligible entity's performance in managing and enforcing easements is outlined in the ALE-agreement with NRCS, which includes the requirement that the eligible entity must provide a complete monitoring report based on an at-least-annual monitoring of the easement.

• *State Criterion Three—Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, environmental benefits, species protection, or climate change resiliency.* NRCS received five comments about State Criterion Three, including one comment that supported the inclusion of ''climate change resiliency''; one comment recommended NRCS consider social values when prioritizing projects; and three comments recommended that NRCS encourage State Conservationists to prioritize easements that establish and maintain perennial cover and other practices to sequester carbon, limit greenhouse gas emissions, and improve soil health. On May 12, 2016, USDA Secretary Vilsack released a roadmap for the USDA Building Blocks for Climate Smart Agriculture and Forestry, the Department's framework for helping farmers, ranchers, and forestland owners respond to climate change. The effort relies on voluntary, incentive-based conservation, forestry, and energy programs to reduce greenhouse gas emissions, increase carbon sequestration, and expand renewable energy production in the agricultural and forestry sectors. In response to the commenters and to support USDA's climate initiative, NRCS has revised State Criterion Three to identify more clearly that State ranking criteria may prioritize projects that enhance carbon sequestration potential and further climate resiliency efforts. NRCS determined that at the State level, NRCS can better tailor the ranking factor to prioritize the actual types of projects within a State or region that can best deliver climate resiliency/carbon sequestration benefits to the types of operations within their State and give them proportionately greater weight as determined appropriate. NRCS believes that State Criterion Three, with this adjustment, includes the flexibility for

the State Conservationist to address the commenters' recommended factors and meet statutory objectives for protecting other conservation values.

• *State Criterion Four–Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects.* NRCS received one comment about State Criterion Four that recommended NRCS allow consideration for National, State, and regional agricultural goals and objectives. NRCS agrees and added the words ''agricultural or'' to State Criterion Four.

• *State Criterion Five—Diversity of natural resources to be protected.* NRCS received five comments about State Criterion Five. Four of the comments recommended NRCS modify the criteria to emphasize natural resources protection and ''improvement'' and the remaining comment recommended NRCS support the flexibility provided at the State level to fund projects based on resource needs. NRCS agrees with the comments and added the words ''or improved'' to State Criterion Five. NRCS cautions that while points could be added for projects where there will be an improvement to resource conditions as a result of enrolling the land in ALE, protection efforts alone should also score in priority.

• *State Criterion Six—Score in the land evaluation and site assessment system or equivalent measure for grassland enrollments. This score serves as a measure of agricultural viability (access to markets and infrastructure).* NRCS did not receive any comments about State Criterion Six.

• *State Criterion Seven—Other criteria determined by NRCS that will allow for the selection of parcels that will achieve ACEP–ALE purposes.* NRCS did not receive any comments about State Criterion Seven.

*Recommended new ALE State Criteria:* NRCS received 10 comments that recommended new ALE State criteria, including one comment that recommended NRCS provide more information on the development of State ranking criteria, ALE plan components and stewardship; five comments recommended adding pollinator habitat conservation, two comments recommended NRCS address the likelihood that the easement will lead directly to a farming or ranching opportunity for a beginning farmer or rancher; one comment recommended NRCS give State Conservationists the flexibility to meet local unique resource needs, and one comment recommended including a requirement for National office approval before a State overrides ranking criteria. Pollinator habitat conservation, access to land by new and beginning farmers, and local unique resource needs are the type of criteria that a State has the flexibility to adopt under the category of natural resources benefits social and economic benefits, and regional conservation goals. The recommendation about social benefits fits better with State Criterion Three. State Conservationists do have the flexibility to provide greater detail and weighting to the factors in a manner that addresses local unique resource needs. However, in response to the comment recommending National office review prior to a State overriding ranking criteria, NRCS would like to clarify that a State cannot override or eliminate criteria as the criteria are required by regulation.

• *WRE Ranking criteria:* NRCS received six comments about WRE ranking criteria. Three of the comments expressed support for the provision that authorizes the leveraging of Federal funding, of which two comments recommended a slight re-write the section about leveraging at § 1468.32(a)(3); one comment recommended allowing State Conservationists to prioritize partnerships that target multiple benefits; one comment recommended NRCS should only fund permanent easements; and one comment recommended opposing efforts to shorten easement duration. NRCS adopted the recommendation about adding language to § 1468.32(a)(3) to include contribution of funds from a person or ''other entity.'' State Conservationists currently have the necessary flexibility to prioritize partnerships that prioritize projects with multiple benefits. NRCS offers enrollment for permanent easements, 30-year easements, easements for the maximum duration under State law, and 30-year contracts. NRCS prioritizes longer-term easements over shorter-term easements in the ranking criteria.

*Regional Conservation Partnership Program (RCPP)*

*Comment:* NRCS received eight comments on the topic of RCPP. Five of the comments addressed waivers of non-statutory provisions, including three comments that expressed support of the waiver; one comment recommended a waiver for forestry; and one comment recommended waiver for adjusted gross income limitation. Three of the RCPP comments recommended NRCS allow acquisition and implementation costs to be recognized as in-kind RCPP match.

*NRCS Response:* NRCS addresses waiver recommendations on a project-specific basis. NRCS will recognize entity acquisition and implementation costs as contributions of resources required under RCPP.

*Restoration*

*Comment:* NRCS received seven comments on the topic of restoration under the WRE component of ACEP. Two comments expressed support for the priority for migratory bird habitat restoration; three comments recommended modifying wetland restoration to include flexibility for other than pre-disturbance hydrology and vegetation; one comment recommended that NRCS address delays in easement restoration completion; and one comment encouraged agreements with partners to accelerate restoration.

*NRCS Response:* Wetland restoration is a primary purpose of ACEP–WRE. NRCS based the ACEP–WRE definition upon the definition from the predecessor Wetlands Reserve Program in place since 1995, and there is only difference between the former Wetlands Reserve Program definition and the ACEP–WRE definition. In particular, NRCS introduced slight flexibility in the ACEP–WRE definition by allowing 30 percent of the easement area to be in a different hydrologic regime or vegetative community while the former Wetlands Reserve Program definition only allowed 30 percent of the wetland restoration area to be in a different hydrologic regime or vegetative community.

In many parts of the country, especially the southeast and the Midwest, the original vegetative wetland community was bottomland hardwood forest or forested wetland. However, emergent marsh habitat is very popular amongst landowners and various waterfowl organizations given the utilization of such habitat by migratory birds.

NRCS has interpreted the restoration requirements broadly and NRCS believes that the restoration objectives of ACEP–WRE are best met with adhering to the existing parameters. Achieving full restoration of the wetland functions and values on each acre enrolled in WRE to maximize the environmental benefits for Federal funds expended continues to be a high priority activity for NRCS.

*State Technical Committees*

*Comment:* NRCS received 17 comments on the topic of State Technical Committees. Three comments

recommended NRCS allow more opportunity for State Technical Committee input on grasslands of special environmental significance, six comments recommended that NRCS require State Technical Committee input on the identification of lands of statewide importance and related technical matters; two comments expressed support for an expanded role for State Technical Committees; five comments recommended NRCS allow State Technical Committee members that represent eligible entities be able to participate in the discussion of State criteria and weighting, so long as they do not vote on recommendations; and one comment recommended NRCS encourage State Technical Committee input on all ALE matters.

*NRCS Response:* NRCS appreciates the significant contribution of expertise that State Technical Committees contribute to the technical excellence of the implementation of NRCS programs. State Conservationists hold regular State Technical Committee meetings to ensure that broad input is obtained for all aspects of ACEP implementation, including input for the ALE component of the program. NRCS, while obtaining this input, must ensure that the ethical integrity of its program implementation efforts is maintained, and thus as mentioned above NRCS will continue to place parameters upon who is able to participate in discussions about ranking criteria.

*Subordination, Modification, Exchange, and Termination*

*Comment:* NRCS received 33 comments on the topic of subordination, modification, exchange, and termination, collectively known as easement administration actions. The breakdown of these comments was as follows:

- General (5 comments):
- Compelling public interest/not practical alternative standards (2 comments)
- 10 percent of easement area affected (3 comments)
- 8-Digit watershed (1 comment)
- Partner issues (7 comments)
- Easement modification (3 comments)
- Easement termination (3 comments)
- Application of Treasury regulations (9 comments)

*NRCS Response:* The easement administration authority provides NRCS with greater flexibility to address the long-term management of its easement portfolio than existed under the predecessor program authorities. Unlike prior circumstances where congressional action was needed to address conflicts between equally important public values, NRCS can now ensure that its easements will continue to meet program purposes in coordination with other compelling public needs in proximity to NRCS easement interests. In particular, NRCS may subordinate, modify, exchange, or terminate its interests in an easement if NRCS determines that the easement administration action: Is in the Federal government's interest; addresses a public compelling need or furthers the practical administration of the easement; has no practicable alternative that would avoid the easement area; results in equivalent or greater economic value and conservation function and value at no cost to the Government; affects no more than 10 percent of the existing easement area unless special circumstances apply; and is agreed to by the landowner, and if applicable, the eligible entity.

Of the five general comments, three comments supported the provisions; one comment recommended that the easement administration action terms be incorporated directly into the conservation easement deed; and one comment recommended prohibiting any easement administration actions for natural gas and oil exploration and extraction. NRCS identifies in the WRE warranty easement deed the statutory reference to the easement administration action authorities, and the ALE regulatory deed requirements identify that NRCS approval is required for any easement administration actions that may arise on ALE easements. NRCS evaluates all easement administration action requests on a case-by-case basis and determines whether the required criteria have been met.

Of the two comments related to compelling public need, one comment recommended that NRCS eliminate the criteria and the other comment recommended that NRCS clarify that a compelling public need is not limited to Federal agency priorities. NRCS will not eliminate the criterion as it is required by statute and provides a high bar for the requirements that must be met before NRCS will alter the physical boundaries or the terms of an existing ACEP easement on which a significant investment of Federal funds has been made to secure the long-term protection of agricultural and wetland resources for future generations. A compelling public need is not limited to Federal priorities, and may be based upon circumstances that are being addressed by State or local governmental entities.

Of the three comments related to the criterion of limiting the impact of the easement administration action to 10 percent of easement area, two comments recommended eliminating the limitation and one comment recommended adopting a limit of 5 percent of the easement area. NRCS did not adopt either recommendation as 10 percent provides sufficient flexibility, with most easement administration actions affecting much less of the easement area.

The comment received about the limitation that replacement acreage in an easement exchange be within the same 8-digit watershed as the original easement recommended that NRCS allow a waiver for replacement land to go beyond the 8-digit watershed. NRCS did not adopt the recommendation because the nature of the easement values are best served by ensuring that replacement lands are within the same watershed and the criteria serves as an objective and transparent requirement that can be equitably applied.

Of the seven comments about partner issues associated with easement administration actions, one comment recommended that NRCS be required to include the eligible entity in its discussions with the Department of Justice related to condemnation actions; two comments recommended adding language to recognize the role of other funding partners in the approval of changes to easement terms; one comment recommended NRCS consult with the Land Trust Alliance, two comments recommended that in the case of ALE easements, NRCS should notify the eligible entity immediately upon receiving notice of any ''infrastructure project request'', and one comment recommended that for condemnation or termination, the eligible entity should reimburse NRCS proportionally to NRCS' initial investment in the easement, provided that the condemnation of the property provides adequate compensation to the eligible entity. The Department of Justice represents the United States and NRCS is a client agency, and it is not appropriate to adopt a requirement to include third parties in its discussions with its own legal representatives. NRCS does not believe it is appropriate for it to include language in the regulation regarding the relationship between the eligible entity and a third-party funding partner of the eligible entity. It is the responsibility of the eligible entity to ensure that it is meeting the requirements of all of its funding partners. NRCS welcomes input from any partner organization. NRCS will notify an eligible entity if it receives an easement administration action or infrastructure project proposal that may affect an ALE easement. NRCS identifies in the minimum deed terms of

the respective shares that NRCS and an eligible entity may receive if a parcel is condemned.

Three comments about easement modification recommended that modification actions should be subject to a less stringent standard of review than termination actions, and that these two types of actions should not be addressed in the same provision. NRCS agrees termination actions are more significant than modification actions; however, NRCS did not adopt this recommendation as the statute specified the primary criteria by which all of the easement administration actions should be evaluated, and there are separate definitions and further limitations on easement termination actions than exist for easement modification actions even though they stem from the same section of the ACEP interim regulation.

The three comments specific to easement termination actions included one recommendation that NRCS ensure that easement extinguishment is not incentivized when property value increases; one recommendation that the notice to Congress for termination actions should be replaced with written notice to the State Conservationist by the entity; and a third recommendation that recovery of costs should be limited to the NRCS proportionate value. NRCS policies promote the full and long-term protection of the resources and Federal investments made through its conservation easement programs and does not promote or incentivize the termination of easements. Besides meeting the criteria regarding the nature of the easement administration action, NRCS specifies that NRCS applies requirements of avoidance and minimization prior to considerations of mitigation. NRCS, by statute, must notify Congress and therefore did not adopt the recommendation about replacing such requirement. There are other costs associated with an easement administration action and thus it would not protect the Federal investment to limit recovery to the proportionate NRCS investment in the easement.

The issues raised by the nine comments on the topic of the applicability of the IRS regulations were discussed above under the topic of ALE deed terms. In particular, easement administration actions may impact the availability of a tax deduction for charitable donations of easement value, and therefore NRCS advises that eligible entities and landowners consult with their tax advisor about all aspects of a conservation easement transaction. As mentioned earlier, NRCS will consider requests from eligible entities about how to address in the easement deed valuation concerns associated with easement administration actions.

*Wetland Reserve Enhancement Partnerships (WREP)*

*Comment:* NRCS received seven comments about the topic of WREP, including two comments that support the continued implementation of WREP; three comments recommended that NRCS limit partners' required contribution under WREP to only a portion of the restoration costs and not include a percentage of the easement cost; and two comments that recommended NRCS offer new WREP opportunities over the life of the 2014 Agricultural Act and to continue supporting existing WREP projects.

*NRCS Response:* NRCS published solicitations for new WREP proposals at the State level beginning in FY 2015 and anticipates soliciting proposals for each remaining fiscal year under the 2014 Agricultural Act. The specific match requirements are published with each specific proposal solicitation, but in general partners submitting a WREP proposal for financial assistance funds must provide a combination of in-kind and cash contributions of at least 25 percent of the restoration or management costs. Partners submitting a WREP proposal for technical assistance funds must provide a combination of in-kind and cash contributions of at least 50 percent of the total costs.

*WRE Reservation of Grazing Rights*

*Comment:* NRCS received two comments on the topic of the WRE reservation of grazing rights enrollment opportunity. One comment advised that haying should not be included in the reserved grazing rights, and the other comment recommended that the reserved grazing rights option provide only minimal restrictions under the easement.

*NRCS Response:* NRCS affirms that haying is not part of the reserved grazing rights. Any haying activity that a landowner may wish to conduct on the easement area must first be approved by NRCS under the compatible use authorization process. NRCS did not adopt the recommendation for a minimally restrictive easement option for the grazing rights enrollment option because WRE is a wetland restoration program and reservation of grazing rights is only appropriate where grazing is part of restoration, management, and maintenance of the wetland functions and values. Further, NRCS offers easement compensation commensurate with rights to be obtained.

*WRE—miscellaneous*

*Comment:* NRCS received seven comments that expressed general support for various provisions of the WRE component of ACEP, including support for the exemption from the county cropland limitation for subclass w soils in the land capability classes IV–VIII, and support for the lower WRE ownership requirement and waiver criteria.

*NRCS Response:* NRCS will continue to implement ACEP in accordance with the requirements established by the 2014 Act.

**Regulatory Certifications**

*Executive Order 12866 and 13563*

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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. Upon implementation of this rule the Natural Resources Conservation Service intends to conduct a retrospective review of this rule with the purpose of improving program performance, and better understanding the longevity of conservation implementation.

The Office of Management and Budget (OMB) designated this final rule a significant regulatory action. The administrative record is available for public inspection at the Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 5831 South Building, Washington, DC. In accordance with Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this preamble, and a copy of the analysis is available upon request from Kim Berns, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890; or at: *http://www.nrcs.usda.gov/programs/acep/* under *ACEP Rules and Notices with Supporting Documents.*

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Even so, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

**Congressional Review Act**

Section 1246(c) of the Food Security Act of 1985 (the 1985 Act), as amended by Section 2608 of the Agricultural Act of 2014, requires that the Secretary of Agriculture use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego the usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs, authorized or amended under Title XII of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly. For these reasons, this rule is effective upon [the latter of October 1, 2016, or publication in the **Federal Register**].

**Environmental Analysis**

A programmatic Environmental Assessment (EA) was prepared that resulted in a Finding of No Significance (FONSI) for the ACEP interim final rule. No comments were received on that analysis. Minor modifications to the previous EA were made to support this rulemaking but the analysis remains the same. As a result, the EA again resulted in a FONSI and therefore an Environmental Impact Statement (EIS) is not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for 30 days from the date of publication of this final rule in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the current available draft of the ACEP EA and FONSI.

A copy of the EA and FONSI may be obtained from the following Web site: *http://www.nrcs.usda.gov/ea.* A hard copy may also be requested in one of the following ways: (1) Email: *andree.duvarney@wdc.usda.gov* with ''Request for EA'' in the subject line; or (2) written request: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Post Office Box 2890, Washington, DC 20013–2890. Comments should be specific and indicate they are being provided on the EA and FONSI. Public comment on the environmental analysis only may be submitted by any of the following means: (1) Email comments to *andree.duvarney@wdc.usda.gov,* (2) go to *http://www.regulations.gov* and follow the instructions for submitting comments for Docket No. NRCS–2014–0011, or (3) mail written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, Room 6159–S, P.O. Box 2890, Washington, DC 20013–2890.

**Civil Rights Impact Analysis**

USDA has determined through a Civil Rights Impact Analysis that this final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The data presented in the Civil Rights Impact Analysis indicate producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that ACEP will be administered in a non-discriminatory manner as the predecessor programs have been. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in U.S. Department of Agriculture (USDA) programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this final rule portends no adverse civil rights implications for women, minorities, and persons with disabilities. Copies of the Civil Rights Impact Analysis are available, and may be obtained from Kim Berns, Director, Easement Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013–2890, or electronically at: *http://www.nrcs.usda.gov/programs/ACEP.*

**Paperwork Reduction Act**

Section 1246 of the Food Security Act of 1985 (the 1985 Act) as amended by the Agricultural Act of 2014 (the 2014 Act) requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, chapter 35 of Title 44, U.S.C. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

**Government Paperwork Elimination Act**

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994**

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994, (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

**Unfunded Mandates Reform Act of 1995**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, USDA assessed the effects of this final rule on State, local, and Tribal governments, and the public. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

**Executive Order 13132**

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any

compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, NRCS concludes that this final rule does not have Federalism implications.

**Executive Order 13175**

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 required Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have been substantial direct effects on (1) one or more Indian Tribes, (2) the relationship between the Federal Government and Indian Tribes, or (3) the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not, to NRCS' knowledge, have Tribal implication that requires Tribal consultation under E.O. 13175. The Agency has developed an outreach/collaboration plan that it is implementing as it administers the Farm Bill. If a Tribe requests consultation, NRCS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress. Among other activities, in April 2015, USDA held a series of tribally-focused webinars on this rule, and in December 2016, USDA held an informational discussion of the rule at the Intertribal Agriculture Council Annual Membership Meeting. On February 23, 2016, at the request of the Swinomish Indian Tribal Community (Swinomish Tribe), USDA consulted with the Swinomish Tribe on ACEP as well as other programs operated by USDA.

**Regulatory Impact Analysis—Executive Summary**

Title II of the Agricultural Act of 2014 (the 2014 Act) amended Title XII of the Food Security Act of 1985 to establish the Agricultural Conservation Easement Program (ACEP) in a new Subtitle H. Title II of the 2014 Act repeals the previously authorized programs, Wetlands Reserve Program (WRP), Farm and Ranch Lands Protection Program (FRPP), and Grassland Reserve Program (GRP), but maintains the purposes of these programs in ACEP. Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis (RIA) of ACEP using historical data and information, including information from WRP, FRPP, and GRP. This RIA describes both the potential impact of the ACEP regulation on benefits and costs and the regulatory flexibility in the rule implementation. Implementation of this regulation is required to complete the Congressional Action.

In considering alternatives for implementing ACEP, the agency followed the legislative intent to establish an open participatory process, optimize environmental/conservation benefits, and address natural resource concerns. Because ACEP is a voluntary program, the program will not impose any obligation or burden upon agricultural landowners who choose not to participate.

The 2014 Act requires establishment of ACEP to retain the provisions in the current easement programs by establishing two types of easements: Wetland reserve easements (WRE) that protect and restore wetlands as previously available under WRP, and agricultural land easements (ALE) that limit non-agricultural uses on productive farm or grassland as previously available under FRPP and the easement component of GRP. The WRE component provides technical and financial assistance to landowners to restore and protect wetlands and associated habitats through conservation easements. ACEP–WRE addresses wetlands, wildlife habitat, soil, water, and related natural resource concerns on private lands. The ALE component protects the natural resources and agricultural value of agricultural cropland, pasture and other working land, promotes agricultural viability for future generations, preserves open space, provides scenic amenities, and protects grazing uses and related conservation values by restoring and conserving eligible land and limiting non-agricultural uses.

The 2014 Act also identified ACEP as a covered program for implementation of the Regional Conservation Partnership Program (RCPP), authorized by Subtitle I of Title XII of the Food Security Act of 1985, as amended (16 U.S.C. 3871 *et seq.*) RCPP is funded, in part, by a reservation of 7 percent of funds that have been allocated to implement covered programs, including 7 percent of funds allocated for ACEP implementation.

*Impacts of ACEP*

Most of the ACEP rule's impacts consist of transfer payments from the Federal Government to farmers, landowners, and producers. Although these transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Under the 2014 Act, ALE and WRE enrollments are limited by funding. As set forth in the 2014 Act, total proposed ACEP funding and associated transfer payments by fiscal year is presented in Table ES–1.

TABLE ES–1—PROPOSED CONSERVATION TRANSFER PAYMENTS FACILITATED BY ACEP FUNDING, INCLUDING THE POTENTIAL RCPP ALLOCATION, FY 2014–2018

| FY | Nominal-dollar Farm-Bill authorization (million $) | Real-dollar [1] authorization 2.1% GDP deflator (million $) | Real-dollar [1] authorization discounted at 3% (million $) | Real-dollar [1] authorization discounted at 7% (million $) |
|---|---|---|---|---|
| FY 2014 | $400.0 | $400.0 | $400.0 | $400.0 |
| FY 2015 | 425.0 | 416.3 | 404.1 | 389.0 |
| FY 2016 | 450.0 | 431.7 | 406.9 | 377.0 |
| FY 2017 | 500.0 | 469.8 | 429.9 | 383.5 |
| FY 2018 | 250.0 | 230.1 | 204.4 | 175.5 |
| Total [2] | 2,025.0 | 1,947.8 | 1,845.4 | 1,725.1 |

[1] 2013 dollars.
[2] Net present value of discounted funding levels.

*Conservation Impacts of the Program*

Land enrolled in ACEP–WRE easements will produce onsite and offsite environmental impacts. Those include: Restoration and protection of high value wetlands; control of sheet and rill erosion as lands are restored from cropland to wetlands and associated habitats; restoration, enhancement, and protection of habitat for fish and wildlife, including threatened and endangered species and migratory birds; improving water quality by filtering sediments and chemicals; reducing flooding and flood-related damage; recharging groundwater; protecting biological diversity; controlling invasive species with planting of native vegetation; and providing opportunities for educational, scientific, and recreational activities. Soil health and air quality are improved by reduced wind erosion, reduced soil disturbance, increased organic matter accumulation, and an increase in carbon sequestration. Many of those conservation impacts are difficult to quantify at a national scale, but have been described by studies at an individual project, watershed, or flyway scale.

For land enrolled in ACEP–ALE, the suite of conservation effects on protected grasslands are different than those on protected farmland. ACEP–ALE easements on grasslands limit agricultural activities to predominately grazing and haying, whereas easements on farmland allow crop cultivation and pasture-based agriculture. As such, farmland protection effects are derived from onsite and ecological services, as well as preserving highly productive agricultural areas from development or fragmentation. Impacts on grasslands are derived from onsite and ecological impacts as well as preventing conversion to non-grassland uses. The net conservation effects through time from farmland protection include direct access benefits (pick-your-own, agritourism, and nature-based activities like hunting) indirect access benefits (open spaces and scenic views) and non-use benefits (wildlife habitat and existence values). Grassland protection conservation effects include the direct, indirect, and non-use benefits, but also include on-farm production gains and carbon sequestration.

*Expected Costs of the Program*

The main program costs are the purchase of easements and associated restoration expenses under the ACEP–WRE component. Agricultural production ceases on lands enrolled in ACEP–WRE. At the same time, disaster payments, crop loss payments, and other commodity payments are eliminated.

Through ACEP–ALE, landowners voluntarily restrict the land to agricultural uses by the sale of conservation easements to eligible entities. Local cooperating entities are key drivers in farmland [1] conservation because they benefit from the indirect services (offsite and non-use benefits) provided by agricultural land, and in the case of ACEP–ALE and its predecessors, also share in the costs of purchasing conservation easements. The local nature of the supply of and demand for conservation easements, and the site-specific nature of the potential benefits complicate the description of conservation effects conducted in this analysis.

The public and private costs of ACEP–ALE are: (1) The actual cost of purchasing the easement; (2) a reduced tax base that includes the opportunity cost of lower local economic activity, which for this analysis we assume is offset by a reduction in needed public infrastructure and associated taxes to support that infrastructure; and (3) the forgone economic activity fostered by new development. These costs are not social costs and we do not estimate them in this analysis.

*Allocation Process and Comparison to Legacy Programs*

NRCS allocates ACEP funding based upon State-generated assessments of priority natural resource needs and associated work necessary to address identified resource concerns. These State-developed assessments, following national guidance to assure accuracy and consistency, are submitted to agency leadership for review. At the national level, NRCS analyzes in a systematic manner these State-reported resource needs and requests along with factors including NRCS landscape initiatives or other nationally established conservation priorities; regional factors such as development pressure, migratory bird flyways, multi-state watersheds with water quality resource concerns; existing State capacity, workload, and performance; and other factors. This approach provides flexibility to address nationally and locally important natural resource concerns. Once funds are allocated to the States, individual project selection occurs at the State level based on the prioritization of the eligible applications using the NRCS ranking criteria.

Over the course of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), the three easement programs (WRP, GRP, and FRPP) received an average of $691 million annually, which was comprised of $513 million in WRP, $138 million in FRPP, and $39 million in GRP. All three easement programs were combined under ACEP and the purposes of FRPP and GRP were combined under the ACEP–ALE component. The average annual funding available under the new ACEP program will be approximately $368 million annually, about 53 percent of the amount previously available under the repealed programs.

*Conclusions*

Executive Summary Table ES–2 provides an overview of the potential benefits from both sub-program areas of ACEP. For the private landowner, the end products of the ACEP–WRE include assurances of the restoration of the property and associated recreational use, the potential to engage in compatible uses on the property, and the elimination of negative impacts to agricultural operations on the property. Outcomes from the private landowner view of the ACEP–ALE include the long-term protection of the agricultural nature of the land and potential increases in productivity (from implementing the ALE plan) and sustainability of the local agricultural market (from local production). In addition, the private landowner, along with the general public, will reap the benefits of recreational waterfowl harvest, upland species harvest, and agritourism. Also in many cases easements that protect farmsteads under ACEP–ALE will provide the general public with an opportunity to engage with and obtain food products from a local farm producer.

Both ACEP–WRE and ACEP–ALE may provide benefits that are achieved for society as a whole, within the limitations of a voluntary program. These include: Improved water quality and water quantity; carbon sequestration; restoration of habitat for endangered or threatened wildlife species; flood prevention and protection; and improvements to scenic quality and rural characteristics. We note that agricultural lands and wetlands sequester carbon at higher rates than lands converted to development.

Participation in ACEP is voluntary and landowners participate in the program for many reasons, such as estate planning, income diversity,

[1] Farmland refers to agricultural land used in crop production and livestock production, *i.e.,* cropland and pasture. For the purposes of this document, farmland does not include grasslands.

expanded recreational opportunity, improving agricultural efficiency, and their personal natural resource ethic. Landowners may also participate in part to meet requirements they face in managing their operations. For example, a landowner may decide to enroll acres in ACEP in order to protect highly productive grasslands from conversion to crop production and thus limit soil and chemical runoff into a nearby stream. Such actions may help demonstrate compliance with other State or Federal requirements, such as State plans to meet Federal TMDL requirements. ACEP may help landowners meet any compliance responsibilities that they may have under the Endangered Species Act. Also, ACEP–WRE implementation provides new habitat through the restoration of degraded wetlands that benefit wildlife. Even in the absence of a United States Fish and Wildlife Service (FWS) critical habitat listing, as is generally the case, land enrolled in ACEP could benefit at-risk species.

NRCS has a long-term responsibility to ensure ACEP program objectives are achieved and statutory requirements are met on these lands. Monitoring policy for these lands is in place to guide NRCS in meeting these responsibilities and to maintain working relationships with landowners. In addition, the Statement of Federal Financial Accounting Standards 29 (SFFAS 29) considers easements held by the United States as Stewardship Lands that must be accounted for as part of the agency's annual financial accountability reporting. The SFFAS 29 requires that the ''Condition'' of all Stewardship Lands be reported regularly. Therefore, NRCS incorporates this additional financial accounting responsibility to report on the condition of Stewardship Lands into its monitoring requirements by assessing compliance with the terms of the easement and whether the easement is meeting program objectives. NRCS added functionality to its easement database to aid its State Offices in tracking monitoring events and observations.

NRCS requires an annual monitoring review of all ACEP easements to ensure compliance with easement terms and that program purposes are being met. For ACEP–ALE easements, NRCS requires the eligible entity to submit annual monitoring reports to NRCS for all ALE easements it holds, while NRCS conducts the annual monitoring of all ACEP–WRE easements. For ACEP–WRE, the monitoring conducted by NRCS provides a qualitative assessment of the outcomes of the restoration and management practices implemented on the easements. Additionally, data and information obtained through the Conservation Effects Assessment Project (CEAP) will continue to be used to provide qualitative assessments of the various benefits provided by NRCS easements and the outcomes being achieved in the study areas. Over the next two years as funding allows, NRCS will encourage its State offices to develop and utilize rapid wetland assessment tools or other methodologies that will provide greater ecological information about the condition of its wetland easements over time.

Data, however, currently do not exist that would allow for parsing, or attributing, different potential benefits to the suite of motivations that might result in a producer participating in this program. What can be said, is that the ACEP easement payment compensates the landowner for the rights they are encumbering as a result of participating in ACEP. In addition, those transfer payments from the Federal Government to farmers, landowners, and producers may also create incentives that cause changes in the way society uses its resources. As mentioned, we lack data with which to estimate and attribute the overall social costs or benefits. The agency will continue to utilize tools such as producer surveys, case studies, and conservation innovation grants to gain knowledge of producer motivations for programs participation.

NRCS is committed to the continual improvement of its collection and analysis of administrative and programmatic data (such as the impact and natural resource outcome of program funding) to ensure that program benefits are being achieved through adoption and implementation of targeted resource-based policies and procedures. Given the agency's lack of outcome-based program data, NRCS will implement other measures to quantify the incremental benefits obtained from this program.

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**Table ES-2 Potential benefits from the Agricultural Conservation Easements Program described in the 2014 Farm Bill by recipient**

| Ecosystem Function | Ecosystem Service | Wetlands Reserve Easements | Agricultural Lands Easements |
|---|---|---|---|
| **Benefits likely to accrue to private landowner** | | | |
| Tree growth medium | Commercial timber harvest | √ | |
| Fish habitat | Commercial fish harvest | √ | |
| Grassland preservation | Forage production | √ | √ |
| **Benefits that potentially accrue to both private landowner and public** | | | |
| Wildlife habitat | Recreational waterfowl harvest | √ | |
| Wildlife habitat | Recreational upland species harvest | √ | √ |
| Land for food production | Local food production | | √ |
| Recreation opportunities | Agri-tourism | √ | √ |

| Potential Social Benefits | | | |
|---|---|---|---|
| Flood retention | Reduced flood flows/peaks | √ | √ |
| Water filtration | Water quality | √ | √ |
| Endangered and Threatened wildlife habitat | Biodiversity | √ | √ |
| Open space | Scenic quality and rural characteristics | √ | √ |
| Carbon sequestration | Carbon storage | √ | √ |
| Groundwater recharge | Water quantity | √ | √ |

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**List of Subjects in 7 CFR Part 1468**

Agricultural operations, Conservation practices, Conservation payments, Conservation easements, Farmland protection, Grasslands, Natural resources, Soil conservation, Wetlands, and Wildlife.

Accordingly, the interim rule revising 7 CFR part 1468, which was published at 80 FR 11032 on February 27, 2015, is adopted as a final rule with the following changes:

## PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

■ 1. The authority citation for part 1468 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3865–3865d.

### Subpart A—General Provisions

■ 2. Amend § 1468.1 by revising paragraph (a) to read as follows:

**§ 1468.1 Applicability.**

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS). ACEP purposes include:

(1) Combining the purposes and coordinate the functions of the wetlands reserve program established under section 1237, the grassland reserve program established under section 1238N, and the farmland protection program established under section 1238I, as such sections were in effect on the day before the date of enactment of the Agricultural Act of 2014;

(2) Restoring, protecting, and enhancing wetlands on eligible land;

(3) Protecting the agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land; and

(4) Protecting grazing uses and related conservation values by restoring and conserving eligible land.

* * * * *

■ 3. Amend § 1468.3 by:

■ a. Revising the definitions of ''agreement'' and ''agricultural land easement plan'';

■ b. Adding definitions for ''ALE agreements'' and ''at-risk species'';

■ c. Removing the definition of ''cooperative agreement'';

■ d. Revising the definitions of ''dedicated fund'', ''easement payment'', ''easement restoration agreement'', ''eligible activity'', and ''eligible entity'';

■ e. Adding definitions for ''future viability'' and ''grassland''; and

■ f. Revising the definitions of ''grassland of special environmental significance'', ''grasslands management plan'', ''nongovernmental organization'', ''other productive soils'', ''participant'', and ''pending offer''.

The additions and revisions read as follows:

**§ 1468.3 Definitions.**

* * * * *

*Agreement* means the document that specifies the obligations and rights of NRCS and any person, legal entity, or eligible entity who is participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, an ALE-agreement, a wetland reserve easement restoration agreement, a cooperative agreement, a partnership agreement, or an interagency agreement.

* * * * *

*Agricultural land easement plan* means the document developed by NRCS or provided by the eligible entity and approved by NRCS, in consultation with the eligible entity and landowner,

that describes the activities that promote the long-term viability of the land to meet the purposes for which the easement was acquired. The agricultural land easement plan includes a description of the farm or ranch management system, conservation practices that address applicable resource concerns for which the easement was enrolled, and any required component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part. Where appropriate, the agricultural land easement plan will include conversion of highly erodible cropland to less intensive uses.

*ALE-agreement* means the financial assistance document that specifies the obligations and rights of NRCS and eligible entities participating in the program under subpart B, including a cooperative agreement or grant agreement.

*At-risk species* means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

* * * * *

*Dedicated fund* means an account held by a certified nongovernmental organization that is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

* * * * *

*Easement payment* means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP–WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts under ACEP–WRE.

*Easement restoration agreement* means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract.

* * * * *

*Eligible activity* means an action other than a conservation practice that is included in the Wetland Reserve Plan of Operations (WRPO), as applicable, and that has the effect of alleviating problems or improving the condition of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through a ACEP–WRE easement or 30-year contract.

*Eligible entity* means an Indian Tribe, State government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land; or

(2) Grazing uses and related conservation values by restoring and conserving eligible land.

* * * * *

*Future viability* means the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values.

*Grassland* means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

*Grassland of special environmental significance* means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to non-grassland uses or fragmentation; and the land is:

(1)(i) Rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Improved, naturalized pastureland, rangeland, and wet meadows; and

(2)(i) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or

(iii) Provides protection of highly sensitive natural resources as identified by NRCS, in consultation with the State Technical Committee.

*Grasslands management plan* means the site-specific plan developed or approved by NRCS that describes the management system and practices to conserve, protect, and enhance the viability of the grassland. The grasslands management plan will include a description of the grassland management system consistent with NRCS practices contained in the Field Office Technical Guide, including the prescribed grazing standard for easements that will be managed using grazing; the management of the grassland for grassland-dependent birds, animals, or other resource concerns for which the easement was enrolled; the permissible and prohibited activities, including the use of haying as a management tool; and any associated restoration plan or conservation plan. The grasslands management plan is a component of either an agricultural land easement plan or wetland reserve plan of operations.

* * * * *

*Nongovernmental organization* means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described in—

(i) Section 509(a)(1) and (2) of that Code, or

(ii) Section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

* * * * *

*Other productive soils* means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland or farm and ranch land of statewide and local importance.

* * * * *

*Participant* means a person, legal entity, Indian Tribe, native corporation, or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase or agreement to enter a 30-year contract, or the ALE-agreement for agricultural land easements.

*Pending offer* means a written bid, contract, or option extended to a landowner by an eligible entity to acquire an agricultural conservation easement before the legal title to these

rights has been conveyed for the purposes of protecting:

(1) The agricultural use and future viability, and related conservation values, of eligible land by limiting non-agricultural uses of that land; or

(2) Grazing uses and related conservation values by restoring and conserving eligible land.

* * * * *

■ 4. Amend § 1468.4 by revising paragraph (c) to read as follows:

**§ 1468.4 Appeals.**

* * * * *

(c) Easement administration determinations under ACEP after easement closing. NRCS determinations that are made pursuant to its rights in an ACEP-funded easement after closing may be appealed to the State Conservationist as specified in the notice provided to the landowner when NRCS exercises its rights under the easement. Such determinations are not subject to appeal under 7 CFR part 11 or part 614.

■ 5. Amend § 1468.5 by revising paragraph (a) to read as follows:

**§ 1468.5 Scheme or device.**

(a) In addition to other penalties, sanctions, or remedies that may apply, if it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.

* * * * *

■ 6. Amend § 1468.6 by revising paragraphs (b)(4)(ii), (b)(6), (d), (f), (g), and (i) to read as follows:

**§ 1468.6 Subordination, exchange, modification, and termination.**

* * * * *

(b) * * *

(4) * * *

(ii) If there is no practicable alternative that exists other than impact to the conservation value of the easement area, such adverse impacts have been minimized to the greatest extent practicable, and any remaining adverse impacts mitigated by enrollment of other lands that provide equal or greater conservation functions and values, as determined by NRCS, at no cost to the government;

* * * * *

(6) The subordination, exchange, modification, or termination action will result in comparable conservation functions and value and equivalent or greater economic value to the United States as determined pursuant to paragraph (d) of this section.

* * * * *

(d) A determination of equal or greater economic value to the United States under paragraph (b) of this section will be made in accordance with an approved easement valuation methodology for ALE easements under subpart B or for WRE easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

* * * * *

(f) When reviewing a proposed action under this section, the preferred alternative is to avoid the easement area. If the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the original easement area and its conservation functions and values.

(g) Easement modifications, including subordinations, are preferred to easement exchanges that may involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.

* * * * *

(i) Where NRCS determines that recordation of a new deed is necessary to effect an easement administration action under this section, NRCS may use the most recent version of the ACEP deed document or deed terms approved by NRCS.

* * * * *

■ 7. Amend § 1468.10 by adding paragraph (c) to read as follows:

**§ 1468.10 Environmental markets.**

* * * * *

(c) ACEP funds may not be used to enter agreements to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

## Subpart B to Part 1468 [Amended]

■ 8. Amend subpart B to part 1468 by revising all references to ''Cooperative Agreement'', ''cooperative agreement'', or ''Cooperative agreement'' to read ''ALE-agreement'' wherever they occur.

■ 9. Amend § 1468.20 by revising paragraphs (a)(1) and (2), (d)(1)(ii), and (d)(3) to read as follows:

**§ 1468.20 Program requirements.**

(a) * * *

(1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is subject to a written pending offer from an eligible entity.

(2) To participate in ACEP–ALE, eligible entities as identified in (b) below must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities with applications selected for funding must enter into an ALE-agreement with NRCS and use the NRCS required minimum deed terms specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan as approved by NRCS, the landowner, and the Grantee.

* * * * *

(d) * * *

(1) * * *

(ii)(A) Contains at least 50 percent prime or unique farmland, or designated farm and ranch land of State or local importance unless otherwise determined by NRCS,

(B) Contains historical or archaeological resources,

(C) The enrollment of which would protect grazing uses and related conservation values by restoring and conserving land, or

(D) Furthers a State or local policy consistent with the purposes of the ACEP–ALE.

* * * * *

(3) Eligible land, including eligible incidental land, may not include forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before the easement is purchased and compensation paid to the landowner.

* * * * *

■ 10. Amend § 1468.21 by revising paragraph (c) to read as follows:

**§ 1468.21 Application procedures.**

* * * * *

(c) NRCS will determine the entity, land, and landowner eligibility for the fiscal year of enrollment based on the application materials provided by the eligible entity, onsite assessments, and the criteria set forth in § 1468.20.

* * * * *

■ 11. Amend § 1468.22 by revising paragraphs (b)(1), (8), (10), (12), and (13) and (c)(3) through (5) to read as follows:

**§ 1468.22 Establishing priorities, ranking considerations and project selection.**

* * * * *

(b) * * *

(1) Percent of prime, unique, and other important soils in the parcel to be protected;

* * * * *

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to non-agricultural use or protects grazing uses and related conservation values;

* * * * *

(10) Maximizing the protection of contiguous or proximal acres devoted to agricultural use;

* * * * *

(12) Decrease in the percentage of acreage of permanent grassland, pasture, and rangeland, other than cropland and woodland pasture, in the county in which the parcel is located between the last two USDA Censuses of Agriculture; and

(13) Other additional criteria as determined by NRCS.

(c) * * *

(3) Multifunctional conservation values of farm and ranch land protection including:

(i) Social, economic, historical, and archaeological benefits;

(ii) Enhancing carbon sequestration;

(iii) Improving climate change resiliency;

(iv) At-risk species protection; or

(v) Other related conservation benefits;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional agricultural or conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected or improved;

* * * * *

■ 12. Amend § 1468.23 by revising paragraph (a)(1) to read as follows:

**§ 1468.23 ALE-agreements.**

(a) * * *

(1) The interests in land to be acquired, including the United States' right of enforcement, the deed requirements specified in this part, as well as the other terms and conditions of the easement deed;

* * * * *

■ 13. Amend § 1468.24 by revising paragraph (b)(4)(vi)(G) and adding paragraphs (b)(4)(ii)(H) through (K) to read as follows:

**§ 1468.24 Compensation and funding for agricultural land easements.**

* * * * *

(b) * * *

(4) * * *

(vi) * * *

(G) One of several parcels within a special project area being offered for enrollment in that fiscal year that are being protected pursuant to a comprehensive plan approved by the State Conservationist, with input from the State Technical Committee, for the permanent protection of a large block of farm or ranch land;

(H) Part of a comprehensive plan to facilitate transfers to new and beginning farmers approved by the State Conservationist, with input from the State Technical Committee, for the permanent protection of a block of farm or ranch land that, if implemented, will facilitate the transfer of farmland to a next generation farmer;

(I) Subject of a conservation buyer transaction where a member of an underserved community, veteran, beginning farmer or rancher, or a disabled farmer or rancher has a valid purchase and sale agreement to acquire the property subject to an agricultural land easement;

(J) Parcel has an existing NRCS Resource Management System (RMS) level plan with NRCS conservation practices applied or under contract to be applied in accordance with NRCS standards and specifications, and the landowner has agreed that the ALE plan will be developed at the RMS level in accordance with the purposes for which the ALE easement is being acquired; or

(K) Meets the definition of grassland of special environmental significance.

* * * * *

■ 14. Revise § 1468.25 to read as follows:

**§ 1468.25 Agricultural land easement deeds.**

(a) Under ACEP–ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ALE-agreement. The easement deed will require that the easement area be maintained in accordance with ACEP–ALE goals and objectives for the term of the easement.

(b) Written pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must address the deed requirements as specified by this part and by NRCS in the ALE-agreement.

(d) All deeds, as further specified in the ALE-agreement, must address the following regulatory deed requirements:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement remains in effect for the duration of the easement and any changes that affect NRCS' interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Ensure compliance with an agricultural land easement plan that is provided by the eligible entity in consultation with the landowner, approved by NRCS, and implemented according to NRCS requirements. NRCS may provide technical assistance for the development or implementation of the agricultural land easement plan. If the parcel contains highly erodible land, the conservation plan component of the agricultural land easement plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations. The access must be sufficient to provide the United States ingress and egress to the easement area to ensure compliance pursuant to its right of enforcement.

(3) Specify that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2 percent impervious surface limitation at the time that a parcel is approved for funding,

(ii) NRCS may waive the 2 percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the

easement area is covered by impervious surfaces,

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired,

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP–ALE easements must include language limiting the amount of impervious surfaces within the easement area.

(4) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP–ALE.

(5) Include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the agricultural land easement and this part. Any substantive amendment, including any subordination of the terms of the easement or modifications, exchanges, or terminations of the easement area, must be approved by NRCS prior to recordation or else the action is null and void.

(6) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(7) Limit the subdivision of the property subject to the agricultural land easement, except where State or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(8) Include specific protections related to the purposes for which the agricultural land easement is being purchased, including provisions to protect historical or archaeological resources or grasslands of special environmental significance.

(9) Other minimum deed terms specified by NRCS to ensure that ACEP–ALE purposes are met.

(e) NRCS reserves the right to require additional specific language or require removal of language in the agricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that could be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. The standard minimum deed terms addendum will specify that if such terms conflict with other terms of the deed, the NRCS terms prevail.

(2) If an eligible entity agrees to use the standard set of minimum deed terms as published by NRCS, NRCS and the eligible entity will identify in the ALE-agreement the use of the standard minimum deed terms as a requirement and the National Office review of individual deeds may not be required. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms as published.

(3) The eligible entity must submit all individual agricultural land easement deeds to NRCS at least 90 days before the planned easement purchase date and be approved by NRCS in advance of use.

(4) Eligible entities with multiple eligible parcels in an ALE-agreement may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(5) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by the National Office and that the appropriate site-specific information has been included.

(g) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management and enforcement responsibilities.

(h) All agricultural land easement deeds acquired with ACEP–ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the ALE-agreement.

■ 15. Amend § 1468.27 by revising paragraphs (a)(1) and (b)(3) introductory text to read as follows:

**§ 1468.27 Eligible entity certification.**

(a) * * *

(1) An explanation of how the entity meets the requirements identified in § 1468.20(b) of this section;

* * * * *

(b) * * *

(3) The terms of the ALE-agreement will include the regulatory deed requirements specified in § 1468.25 of this part that must be addressed in the deed to ensure that ACEP–ALE purposes will be met by the certified entity without requiring NRCS to pre-approve each easement transaction prior to closing.

* * * * *

■ 16. Amend § 1468.28 by revising paragraph (f) to read as follows:

**§ 1468.28 Violations and remedies.**

* * * * *

(f) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the eligible entity at the eligible entity's last-known address. The notice will set forth the nature of the non-compliance by the eligible entity and provide a 180-day period to cure. If the eligible entity fails to cure within the 180-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.

## Subpart C—Wetland Reserve Easements

■ 17. Amend § 1468.32 by revising paragraph (a)(3) to read as follows:

**§ 1468.32 Establishing priorities, ranking consideration and project selection.**

(a) * * *

(3) Whether the landowner or another person or entity is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

* * * * *

■ 18. Amend § 1468.33 by revising paragraphs (d)(3) and (4) to read as follows:

**§ 1468.33 Enrollment process.**

* * * * *

(d) * * *

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a

WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake on its own or through an agreement with the landowner or other third party, any activities to restore, protect, enhance, manage, maintain, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

* * * * *

Dated: October 4, 2016.

**Jason A. Weller,**

*Vice-President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

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Part IV

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 600

Magnuson-Stevens Act Provisions; National Standard Guidelines; Final Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**[Docket No. 120416013–6270–03]**

**RIN 0648–BB92**

# Magnuson-Stevens Act Provisions; National Standard Guidelines

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

**ACTION:** Final rule.

**SUMMARY:** This final action revises the guidelines for National Standards (NS) 1, 3, and 7 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA or The Act) and to the General section of the NS guidelines. This action is necessary to improve and clarify the guidance within the NS guidelines. The purpose of this action is to facilitate compliance with requirements of the MSA to end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield (OY).

**DATES:** This rule is effective October 18, 2016.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, such as the proposed rule and public comments that were received, can be found at the Federal e-Rulemaking portal: *http://www.regulations.gov* by searching for RIN 0648–BB92.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Hunt, 301–427–8563.

**SUPPLEMENTARY INFORMATION:**

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## I. Overview of Revisions to the NS Guidelines

The MSA serves as the chief authority for fisheries management in the U.S. Exclusive Economic Zone (EEZ). The Act sets ten national standards (NS) for fishery conservation and management, and requires that the Secretary of Commerce (the Secretary) establish advisory guidelines based on the NS to assist in the development of fishery management plans. Guidelines for the NS are codified in subpart D of 50 CFR part 600. This final action amends the General section of the NS guidelines and the guidelines for NS1, NS3, and NS7.

Since 2007, fisheries management within the U.S. has experienced many changes, in particular the development and implementation of annual catch limits (ACLs) and accountability measures (AMs) under all fishery management plans to end and prevent overfishing. Due to a number of concerns raised during the implementation of ACLs and AMs, NMFS initiated a revision of the NS guidelines in 50 CFR 600.305, 600.310, 600.320, and 600.340 in order to improve the utility of the guidelines for managers and the public. NMFS published an Advance Notice of Public Rulemaking (ANPR) on May 3, 2012, (77 FR 26238, May 3, 2012) to solicit public comments on potential adjustments to the NS guidelines. The comment period on the ANPR was extended once (77 FR 39459, July 3, 2012), and then reopened (77 FR 58086, September 12, 2012), and ended on October 12, 2012. In March 2013, NMFS published a report that summarizes the comments received on the ANPR (*http://www.nmfs.noaa.gov/sfa/laws_policies/national_standards/ns1_revisions.html*). In addition to the ANPR, issues related to the NS guidelines were discussed at several other public forums. NMFS proposed revisions to the General section of the NS guidelines and the guidelines for NS1, NS3, and NS7 on January 20, 2015 (80 FR 2786, January 20, 2015). Further background is provided in the above-referenced **Federal Register** documents and is not repeated here. The proposed rule described the objective of the proposed revisions, which is to improve and streamline the NS1 guidelines, address concerns raised during the implementation of ACLs and AMs, and provide flexibility within current statutory limits to address fishery management issues.

NMFS solicited public comment on the proposed revisions to the guidelines through June 30, 2015, and during that time made presentations on the proposed revisions to seven of the eight Regional Fisheries Management Councils (Councils) and held one public meeting on March 25, 2015 (Silver Spring, Maryland). NMFS received more than 102,000 comments on all aspects of the proposed revisions. Many of the comment letters were form letters or variations on a form letter. In general, the fishing industry and the Councils supported the majority of the provisions in the proposed action meant to provide flexibility within the current statutory limits but stated that many of the new provisions required additional guidance in the final action. In general, the environmental community opposed the proposed revisions, stating that they would reverse recent successes in U.S. fisheries management and did not address pertinent issues such as ecosystem-based fisheries management (EBFM), forage fish, and climate change.

## II. Major Components of the Proposed Action

Some of the major items covered in the proposed guidelines included the following: (1) Add a recommendation that Councils reassess the objectives of their fisheries on a regular basis; (2) consolidate and clarify guidance on identifying whether stocks require conservation and management; (3) provide additional flexibility in managing data limited stocks; (4) revise the guidance on stock complexes to encourage the use of indicator stocks; (5) describe how aggregate maximum sustainable yield (MSY) estimates can be used; (6) develop a definition for a depleted stock; (7) provide increased stability in fisheries by providing guidance on the use of multi-year overfishing determinations; (8) revise the guidance on optimum yield (OY) to improve clarity and better describe the role of OY under the ACL framework; (9) clarify the guidance on acceptable biological catch (ABC) control rules, describe how ABC control rules can allow for phase-in adjustments to ABC, and allow for carry-over of all or some of an unused portion of the ACL; (10) revise the guidance on AMs to improve clarity; (11) clarify the guidance on establishing ACL and AM mechanisms in FMPs; (12) clarify the guidance on adequate progress in rebuilding and extending rebuilding timelines; and (13) provide flexibility in rebuilding stocks.

## III. Major Changes Made in the Final Action

The approaches proposed under items #1, 3–5, 8, and 10–11 above are retained in this final action. The main substantive change in the final action pertains to the proposed definition for

depleted stocks (#6). NMFS proposed adding the term ''depleted'' to the NS1 guidelines to describe those stocks whose biomass has declined as a result of habitat loss and other environmental conditions, as opposed to fishing pressure. However, separating out the impacts of environmental factors from the impacts of fishing on a stock is a difficult task and public comments reflected concern that the proposed definition for depleted stocks was overly restrictive and would not definitively distinguish between stocks primarily impacted by environmental factors and stocks primarily impacted by fishing pressure. Thus, the final action does not include the proposed definition of depleted stocks and instead retains the current requirement that stocks whose biomass has declined below its MSST are considered to be overfished, regardless of the factors (fishing-related or otherwise) responsible for the stock's decline. A Council may use the term ''depleted'' to further describe the status of an overfished stock that has been impacted to some extent by environmental factors in addition to (or in the absence of) fishing pressure.

In response to public comment, this final action also clarifies text on stocks that require conservation and management (#2), multi-year approaches to overfishing stock status determinations (#7), phase-in and carry-over ABC control rules (#9), adequate progress determinations for rebuilding plans (#12), and discontinuing rebuilding plans (#13), and makes minor clarifications to other text. Further explanation of why changes were or were not made is provided in the ''Response to Comments'' section below. Details on changes made in the codified text are provided in the ''Changes from Proposed Action'' section.

## IV. Overview of the Major Aspects of the Final Action

### *A. Stocks That Require Conservation and Management*

NMFS received numerous comments on proposed § 600.305(c), which contains new guidance to Councils on determining, pursuant to their obligation under MSA section 302(h)(1), whether stocks require (or, are in need of) conservation and management. The MSA establishes that each Council should prepare an FMP for each fishery under its authority that requires conservation and management. 16 U.S.C. 1801(b)(1). Because not every fishery requires federal management, NMFS believes that consolidated, streamlined guidance on determining which stocks are in need of conservation and management and thus, federal management, will be beneficial to managers. Further background and rationale for this proposed revision to the guidelines was provided on pages 2788–2789 of the proposed rule. *See* 80 FR 2788–2789, January 20, 2015.

Sections V and VI (Responses to Comments and Changes from Proposed Rule) provide a detailed explanation of changes made from the proposed to final action. Here, NMFS highlights a few of those changes. Final § 600.305(c)(1) provides—unchanged from the proposed action—that stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management. 16 U.S.C. 1853(a)(1)(A) (requiring that FMPs contain conservation and management necessary to prevent overfishing and rebuild overfished stocks). However, the final action clarifies that Federal management is not limited to such stocks (*i.e.,* predominantly caught in Federal waters and overfished or subject to overfishing, or likely to become so). To determine if other stocks require conservation and management, the guidelines contain a non-exhaustive list of factors (*see* § 600.305(c)(1)(i)–(x)) that Councils should consider when determining whether a stock requires conservation and management.

The final action adds an explanation at § 600.305(c)(3) that, when considering adding a stock to an FMP, no single factor is dispositive or required. One or more of the factors may provide a basis for determining a stock is in need of conservation and management. When considering removing a stock from an FMP, final § 600.305(c)(4) provides—as proposed—that Councils should consider each of the ten factors. NMFS received many comments on § 600.305(c)(1)(x) in particular. Section 600.305(c)(1)(x) speaks to the consideration of other existing management regimes when determining whether Federal management is necessary. In response to comments, the final action deletes the phrase ''could be or'' from § 600.305(c)(1)(x), which implied that the mere possibility that other management regimes may exist is an appropriate consideration for determining whether a stock requires conservation and management, which was not the intention behind the proposed revisions.

Finally, while nothing in the proposed revisions changed previous guidance on the optional usage of ecosystem component (EC) species, NMFS clarifies in the final action that Councils may still use EC species at their discretion and re-inserts a definition of EC species. However, the definition of EC species in the final action does not include criteria for designation because a Council is free to designate any stock, that is determined not in need of conservation of management, as an EC species at their discretion. Criteria for the designation of EC species is no longer necessary because the factors listed in § 600.305(c)(1)(i)–(x) of this final action clarify which stocks are in need of conservation and management and therefore cannot be designated as EC species. Because the designation of EC species may be done to accomplish several different goals, NMFS does not believe it is appropriate to prescribe specific guidance on the requirements for managing and monitoring EC species.

### *B. Multi-Year Approaches to Overfishing Stock Status Determinations*

Another major aspect of the revised NS1 guidelines is the inclusion of guidance on a method for determining the overfishing status of a stock based on a multi-year approach. The MSA defines overfishing as a ''rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis.'' 16 U.S.C. 1802(34). Thresholds for deciding whether a stock is subject to overfishing can be determined either by comparing rates of fishing mortality (F) to the maximum fishing mortality threshold (MFMT) or catch to the overfishing limit (OFL). *See* § 600.310(e)(2)(i)(B)–(D).

Pursuant to MSA section 304(e)(1), NMFS must report annually to Congress and the eight Councils on the status of all Federally-managed fish stocks. 16 U.S.C. 1854(e)(1). Overfishing status determinations are typically made based on the most recent year for which there is information. When utilizing the F-based approach, the estimate of F for the most recent year for which there is data is often more uncertain than the estimates of F in prior years (NRC 1998). In addition, the extent to which the effort or catch exceeded the threshold for overfishing has not traditionally been considered when determining whether the stock was subject to overfishing. Small amounts of excess effort or catch in a single year may not jeopardize a stocks' ability to produce MSY over the long term, thus an overfishing stock status determination based on that single year's reference point may not be the most appropriate characterization of stock status. To

address this issue, the proposed revisions introduced a multi-year approach (that may not exceed 3 years) to allow Councils to examine whether the extent to which a stock has surpassed its overfishing threshold actually jeopardizes the stock's ability to produce MSY on a continuing basis. *See* § 600.310(e)(2)(ii)(A)(*3*) of the proposed action. Using a multi-year approach to determine overfishing stock status is best used when managers believe the most recent year's data point may not reflect the overall status of the stock. Further background on the proposed multi-year overfishing stock status determination provision was provided on pages 2791–2792 of the proposed rule. *See* 80 FR 2791–2792, January 20, 2015.

Public comments reflected confusion regarding proper use of this provision. Thus, the final action clarifies that, under certain circumstances, a Council may determine that it is appropriate to use a multi-year approach for overfishing status determination criteria (SDC). Such circumstances may include, but are not limited to, situations where there is high uncertainty in the estimate of F in the most recent year, cases where stock abundance fluctuations are high and assessments are not timely enough to forecast such changes, or other circumstances where the most recent catch or F data does not reflect the overall status of the stock. The final action clarifies that a Council must identify, within its FMP or FMP amendment, the circumstances (such as those listed above) in which a multi-year approach to overfishing SDC will be used. The final action also emphasizes that a multi-year approach is to be used only for retrospective stock status determinations, *i.e.,* determinations that NMFS makes to fulfill statutory reporting requirements. 16 U.S.C. 1854(e)(1). The provision may not be used to establish annual catch limits. For example, if the catch of a stock in a single year was well below its ACL, a Council may not justify setting the next year's catch level above the OFL based on the multi-year approach. NMFS provides additional explanation and clarification on this issue in the responses to comments below.

*C. Acceptable Biological Catch (ABC) Control Rules*

An ABC control rule accounts for scientific uncertainty in the OFL and for the Council's risk policy when establishing an ABC. The proposed guidelines would allow Councils to develop an ABC control rule that would phase-in changes to the ABC over a period of time not to exceed 3 years, so long as overfishing is prevented. *See* § 600.310(f)(2)(ii)(A) of the proposed action. NMFS also proposed allowing Councils to carry-over some of the unused portion of the ACL from one year to increase the ABC for the next year, based on increased stock abundance resulting from the fishery harvesting less than the full ACL. The proposed NS1 guidelines clarified that Councils establishing phase-in and/or carry-over provisions in their ABC control rules would need to specify when each provision can and cannot be used and how each provision prevents overfishing, based on a comprehensive analysis. *See* § 600.310(f)(2)(ii). Further background and rationale on the proposed revisions to establish phase-in and carry-over ABC control rules was provided on page 2794 of the proposed rule. *See* 80 FR 2794, January 20, 2015.

NMFS received a variety of public comments expressing concern that phase-in and carry-over provisions would increase the risk of overfishing. The final action emphasizes that Councils should conduct a comprehensive analysis of every ABC control rule—which would include those with phase-in and/or carry-over provisions—that shows how the control rule prevents overfishing. *See* § 600.310(f)(2)(i) and (ii) of final action. The final action also clarifies that, for stocks that are overfished and/or rebuilding, Councils should evaluate the appropriateness of carry-over provisions for such stocks. Finally, the final action contains language recommending that Councils should consider the reason for ACL underages when deciding whether to allow carry-over.

*D. Adequate Progress Determinations for Rebuilding Plans*

MSA section 304(e)(7) requires the Secretary to review rebuilding plans to ensure that adequate progress toward ending overfishing and rebuilding affected fish stocks is being made. 16 U.S.C. 1854(e)(7). NMFS received several comments in response to the ANPR requesting additional guidance on adequate progress determinations and thus, NMFS proposed guidance to clarify that the review of rebuilding progress could include the review of recent stock assessments, comparisons of catches to the ACL, or other appropriate performance measures. NMFS also proposed that the Secretary may find that adequate progress in rebuilding is not being made if: (1) $F_{rebuild}$ or the ACL associated with $F_{rebuild}$ are being exceeded and AMs are not effective at correcting for the overages; or (2) when the rebuilding expectations of the stock or stock complex have significantly changed due to new and unexpected information about the status of the stock. *See* § 600.310(f)(3)(iv). Public comment raised concern that these criteria do not consider biomass trends, which would allow adequate progress determinations to be made for stocks where, despite maintaining catch at or below $F_{rebuild,}$ the biomass is failing to increase. Having considered public comment, NMFS has decided to keep the proposed criteria for adequate progress determinations in the final action. As mentioned in the proposed action, the 2013 National Research Council (NRC) report on rebuilding highlighted that the primary objective of a rebuilding plan should be to maintain fishing mortality at or below $F_{rebuild}$. By doing so, managers can avoid issues with updating timelines that are based on biomass milestones, which are subject to uncertainty (*see* § 600.310(j)(3)(i)(A)) and changing environmental conditions that are outside the control of fishery managers. NMFS emphasizes in the final action that, despite the uncertainty associated with biomass trends, there is a strong relationship between F-rates and biomass trends. Stocks that consistently experience fishing mortality above $F_{rebuild}$ generally experience declining or little increases in biomass, while stocks that consistently experience fishing mortality equal to or below $F_{rebuild}$ generally experience increasing biomass. Cases where stock biomass is not increasing despite maintaining catch levels at or below $F_{rebuild}$ levels would be unexpected. Such cases would likely trigger the second criteria for determining that adequate progress is not being made (*i.e.,* new and unexpected information has significantly changed the rebuilding expectations of the stock). Thus, NMFS is confident that the criteria for adequate progress determinations (see § 600.310(j)(3)(iv) of the final action), address and cover situations where a rebuilding plan fails to properly constrain fishing mortality rates as well as situations where a rebuilding stock's biomass is failing to increase. NMFS believes that further guidance on this issue is not necessary to include within the NS1 guidelines.

*E. Adding Flexibility in Rebuilding Plans*

Calculating $T_{max}$

The NS1 guidelines provide guidance on determining the minimum ($T_{min}$), maximum ($T_{max}$), and target ($T_{target}$) time to rebuild a stock to a level that supports MSY ($B_{msy}$). In the past, Councils have had difficulties

calculating $T_{max}$ based on the original data-intensive method (*i.e.,* $T_{min}$ + one generation time) that requires data on life history, natural mortality, age at maturity, fecundity, and maximum age of the stock (Restrepo, et al. 1998). In order to allow Councils to make $T_{max}$ calculations despite variable information and data availability amongst stocks, NMFS proposed specifying three methods to calculate $T_{max}$ within the guidelines: (1) $T_{min}$ plus one mean generation time (status quo); (2) the amount of time the stock is expected to take to rebuild to its $B_{msy}$ if fished at 75 percent of the MFMT; or (3) $T_{min}$ multiplied by two. Further background and rationale on the proposed revisions to the guidance on the calculation of $T_{max}$ was provided on pages 2795–2796 of the proposed rule. *See* 80 FR 2795–2796, January 20, 2015.

NMFS received many comments on the proposed additional methods to calculate $T_{max}$, and some commenters stated that if Councils use the method that yields the longest $T_{max}$ estimate, the resulting rebuilding plan would not be effective nor meet the statutory requirement that rebuilding plans rebuild a stock in as short a time as possible. 16 U.S.C. 1854(e)(4)(A)(i).

After taking into consideration public comment, NMFS has decided to keep the additional $T_{max}$ calculation methods, but has revised the final action to provide additional guidance on how to determine which method to use. First, NMFS added language to the final action to emphasize that, where $T_{min}$ exceeds 10 years, $T_{max}$ establishes a maximum time for rebuilding that is linked to the biology of the stock. As such, NMFS also highlighted that decisions regarding which $T_{max}$ calculation method to use should be driven by the best scientific information available with consideration of relevant biological data and the scientific uncertainty of that data (rather than the outcome of the calculation). Councils must also work with their Scientific and Statistical Committees (SSCs) (or agency scientists or peer review processes in the case of Secretarial actions) to determine which $T_{max}$ calculation method to use. Finally, NMFS also provided examples of cases where, given data availability and the life history characteristics of a stock, it may be appropriate to use one of the alternative methods instead of the status quo calculation method ($T_{min}$ plus one mean generation time).

Furthermore, while Councils may use $T_{max}$ as a measureable upper bound on the duration of rebuilding time periods, Councils must set a target time for rebuilding ($T_{target}$) that is as short as possible, taking into consideration certain statutory factors. *See* § 600.310(j)(3)(i). Thus, Councils must demonstrate that their adopted $T_{target}$ is the shortest time possible for rebuilding and Council action addressing an overfished fishery should be based on $T_{target.}$

Discontinuing Rebuilding Plans

Due to scientific uncertainty in the biomass estimates of fish stocks, occasionally a stock is identified as overfished, but is later determined to have never been overfished. In the past, NMFS' approach has been that, once a rebuilding plan has been implemented, the rebuilding plan cannot be discontinued until the stock has been rebuilt to $B_{msy}$, regardless of new information about the status of the stock when it was originally declared overfished. To address this issue, NMFS proposed to allow a rebuilding plan to be discontinued if both of the following criteria are met: (1) The Secretary retrospectively determines the stock was not overfished in the year that the overfished determination was made; and (2) the biomass of the stock is not currently below the MSST. *See* § 600.310(j)(5) of the proposed action. Further background and rationale on the proposed revisions to the guidance on the discontinuation of rebuilding plans was provided on pages 2796–2797 of the proposed rule. *See* 80 FR 2796–2797, January 20, 2015.

Based on public comments, this final action adds that the stock must be shown to have never been overfished in subsequent years following the original overfished determination, including the current year. This revision effectively covers the two criteria, thus the final action deletes the proposed second criteria. *See* § 600.310(j)(5) of the final action. Should new information demonstrate that the stock was overfished in a subsequent year, a rebuilding plan is still necessary and rebuilding timeframes should be adjusted accordingly. It should also be noted that discontinuation of a rebuilding plan that meets the criteria listed within the final action is not mandatory or automatic; a Council may choose to retain a rebuilding plan for conservation and management purposes.

## V. Response to Comments

*Management Objectives of FMPs*

*Comment 1:* NMFS received several comments regarding the proposed provision to regularly re-assess FMP management objectives. Some comments requested clarity regarding the flexibility of the term ''regular''—whether it meant reassessments could be completed on an as-needed basis, or whether the Council needs to specify a numerical period (*e.g.,* every 5 or 7 years). Some commenters suggested that opportunities for reassessments already exist within standard Council processes (*e.g.,* creating FMP amendments; biennial reviews) and that the regularity of objective reassessments should be at the Council's discretion based on workload and resource constraints. Commenters also requested that the guidelines specify ''triggers'' for FMP reassessments, especially to encourage reassessment of outdated objectives. Commenters also supported evaluations of whether management is achieving FMP management objectives. Another commenter requested that the provision be expanded to include a periodic review of fishery monitoring systems that provide data for implementing FMPs in addition to FMP management objectives. Finally, with regard to the result of the proposed reassessments, one commenter requested that the guidelines outline a process for instances when a reassessment finds the FMP management objectives are no longer valid.

*Response:* NMFS believes that a prescribed time period for reassessments is not appropriate and provided rationale for this decision in the proposed action preamble. Nothing raised in the comments has caused NMFS to revise this rationale. NMFS chose not to prescribe a set time period for ''a regular basis'' in order to provide the Councils with the flexibility to determine this time frame themselves. While no time frame is prescribed, Councils should provide notice to the public of their expected schedule for review. Given the scope and complexity of such a task, NMFS does not expect Councils to reassess their FMP objectives every few years; rather some longer time frame which staggers the review of each FMP may be more appropriate. *See* 80 FR 2787, January 20, 2015.

If, following reassessment, a Council finds that an FMP's management objectives are no longer meeting the needs of the fishery and do not properly address relevant social, economic, and ecological factors, NMFS encourages Councils to adjust their management objectives. As with the issue of time periods for review, NMFS believes that it is important to preserve Council flexibility in determining how best to make these adjustments and therefore declines to establish a single process to address issues raised in the reassessments. NMFS urges Councils to

evaluate whether management measures are meeting FMP objectives, especially within the context of evaluating the changing needs of the fishery.

Finally, while NMFS agrees that the fishery monitoring systems and data collection programs set up to deliver the necessary data for FMP implementation are crucial to successfully meeting FMP management objectives, a review of these systems and programs does not need to be included in the reassessment of an FMP's management objectives.

*Comment 2:* One commenter suggested that NMFS replace ''objectives of the fishery'' in § 600.305(b)(2) with ''FMP's management objectives'' to make the language consistent with the rest of the guidelines.

*Response:* NMFS agrees, and has made the suggested edit in the final action.

*Comment 3:* Commenters requested more guidance on what Councils should consider when creating and assessing FMP management objectives. Specifically, commenters requested that the guidelines include additional guidance on how management objectives should tie into objectives related to the MSA; its national standards; and the ecological, economic, and social factors of OY specifications. Commenters also requested guidance on how conflicting objectives should be resolved in favor of the conservation mandate in NS1. While one commenter requested the guidelines encourage reassessments to respond to changes in ecosystem components (*e.g.,* protected species), other commenters requested that the requirements for reassessments be kept at a minimum to preserve resources and flexibility.

*Response:* NMFS believes that the proposed guidelines set appropriate parameters for the reassessment of FMP management objectives while leaving the exact considerations for management objectives up to the discretion of the Councils. The MSA itself ''guides'' (or rather, drives) the development of FMPs, as it sets forth conservation and management mandates and requirements, including the national standards, with which FMPs must be consistent. With regard to ecosystems, NMFS believes that the Council has discretion and flexibility to efficiently respond to changes in ecosystems during their reassessments of FMP management objectives. Thus, NMFS does not believe any further guidance is needed within the NS1 guidelines.

*Comment 4:* One commenter suggested adding language to § 600.310(e)(3)(iii)(B)(*1*) of the proposed action on the enjoyment and participation gained from recreational fishing when some stocks are managed for abundance rather than maximum harvest. The commenter also suggested adding language to § 600.310(e)(3)(iii)(B)(*2*) of the proposed action on necessary shifts in mixed use allocations to achieve maximum economic and public use benefits.

*Response:* NMFS does not believe that § 600.310(e)(3)(iii)(B)(*1*) needs to be revised as suggested. OY is derived from MSY, which is the largest long-term average catch or yield that can be taken from a stock or stock complex, thus ''abundance'' of a stock is a consideration addressed through the description of OY within the guidelines. *See* § 600.310(e)(1)(i), (e)(3)(i)(A) (defining MSY and OY). NMFS agrees that allocation of fishery resources is one of the issues that may need to be considered when re-assessing an FMP's management objectives. NMFS explicitly highlighted allocation as a consideration for reassessments of management objectives in the proposed action. *See* 80 FR 2787, January 20, 2015. However, NMFS disagrees that further allocation examples need to be added to the economic and social factors a Council can consider when setting OY and their management objectives. The NS1 guidelines set forth examples of different considerations for each factor, and NMFS believes the examples provide sufficient guidance.

*Stocks That Require Conservation and Management*

*Comment 5:* NMFS received numerous comments on the newly proposed section on stocks in need of conservation and management. *See* § 600.305(c). Many commenters perceived the revisions as an impermissible narrowing of the obligations imposed by the MSA. Some commenters urged that, to the extent that NMFS is offering guidance on whether stocks are in need of conservation and management, that any factors considered should be solely based on the MSA's definition of ''conservation and management'' at 16 U.S.C. 1802(5) and that it was inappropriate to bring in other statutory provisions such as National Standards 3 and 7 as part of that analysis. In contrast, others believed that by prescribing a list of factors to consider when determining that stocks are in need of conservation and management that NMFS has inappropriately curtailed the discretion afforded to the Councils to make that determination. Commenters suggested alternative approaches for Councils to take to determine whether conservation and management is necessary. Commenters also suggest that in addition to answering whether a stock is in need of conservation and management, they should also consider why that stock may be in need of conservation and management and how that stock should be best managed (if at all). In particular, one commenter requested that NMFS provide additional information on the deletion of two provisions from the NS7 guidelines published in 1998 (§ 600.340(b)(1); 600.340(b)(2)(vii); (*see* 63 FR 24234, May 1, 1998)) from the proposed action. The commenter suggested the provisions should be incorporated into § 600.305(c)(1) to allow Councils to balance the costs and benefits of management and consider whether management serves some useful purpose. Finally, some commenters noted that Councils have the ability to implement protective measures for species that are not necessarily included as stocks in an FMP.

*Response:* An FMP must be prepared for a fishery that requires conservation and management. 16 U.S.C. 1852(h)(1). In proposing § 600.305(c), NMFS did not intend to narrow this requirement to merely those fisheries that are overfished or subject to overfishing. Instead, as explained in the proposed action, NMFS sought to clarify that, while not every stock requires federal management, stocks that are overfished or subject to overfishing (or likely to become so) and that are predominately caught in federal waters *must* be included in an FMP. In addition, a Council may find that other stocks within its jurisdiction require conservation and management as well. Beyond stocks that are overfished or subject to overfishing (or likely to become so), NMFS provides a list of non-exhaustive factors within the guidelines that Councils should consider when determining whether a stock requires conservation and management.

As MSA section 1852(h)(1) is broadly worded, the proposed regulatory guidance was intended to assist Councils in making determinations under this section. To make sure that NMFS' intent is clear, the final action includes clarifying edits to emphasize the agency's approach with regard to overfishing/overfished stocks and other stocks.

As discussed further in response to comment 7, the factors are drawn in the first instance from the statutory definition of ''conservation and management.'' 16 U.S.C. 1802(5). The proposed action cited to that definition,

and the final action adds the citation for the definition. Although the definition of ''conservation and management'' speaks generally to actions that are required to rebuild fisheries, designed to assure a supply of food and recreational benefits, and meet other goals, that definition and section 1852(h)(1) do not provide clear direction on when a stock is in need of conservation and management. Thus, NMFS believes that it is appropriate to consider the statute as a whole, including the National Standards and relevant definitions and provisions, to provide constructive guidance to the Councils on section 1852(h)(1). *See* FR 2786, 2788–278980, January 20, 2015 (discussing National Standard 3 and 7 guidelines and relevant MSA provisions in preamble to proposed action).

The factors incorporate the general principle from the 1998 NS7 guidelines at § 600.340(b)(1) that not every fishery needs Federal management. *See* 63 FR 24234, May 1, 1998. NMFS does not agree with adding a factor on balancing costs associated with an FMP against benefits: This was a criteria under § 600.340(b)(2)(vii) of the 1998 guidelines for deciding whether a fishery ''needs management through regulations implementing an FMP.'' Section 600.305(c) of this action provides guidance on the threshold determination of whether to add a stock to an FMP or remove a stock from an FMP, based on whether a stock requires conservation and management. The factors do not speak to what regulatory measures, if any, may or may not be needed for the stock. Costs and benefits should be evaluated when specific regulatory measures are being considered. For clarification and streamlining purposes, § 600.340(b)(2)(vii) was deleted from the proposed and final revisions to the NS7 guidelines, as § 600.340(c) addresses analysis of costs and benefits.

NMFS disagrees that the factors curtail Council discretion. The list of factors is non-exhaustive, and Councils may take into account any additional considerations that may be relevant to the particular stock. *See* responses to comments 7 and 8 for further discussion of the factors. NMFS realizes that the proposed text may have implied that a Council must analyze all ten factors before adding a stock to an FMP. Thus, NMFS has revised final § 600.305(c)(3) to state that one or more of the factors may provide the basis for adding a stock to an FMP. Response to comment 8 provides a more detailed explanation of other clarifications made in final § 600.305(c)(3) and (4) regarding use of the factors when adding a stock to or removing a stock from an FMP.

NMFS agrees, particularly with respect to stocks that may require conservation and management to address biological or ecological concerns, that the cause of those concerns would be a useful consideration for the Councils. The final guidance does not preclude such considerations, and in fact provides a framework for a Council to consider these very relevant questions. Furthermore, based on factor 3, which considers whether an FMP can improve or maintain the condition of the stocks, NMFS has added language within § 600.305(c)(3)–(4) that emphasizes that if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of inclusion of the stock within an FMP. *See* § 600.305(c)(3)–(4).

Finally, NMFS agrees that Councils may implement discretionary measures for species, even if they do not ''require conservation and management'' pursuant to section 302(h)(1). Section 303(b)(12) of the MSA provides that Councils may include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations. 16 U.S.C. 1853(b)(12). Additionally, in implementing measures to comply with National Standard 9's requirement that an FMP's conservation and management measures minimize bycatch and bycatch mortality to the extent practicable, Councils can take measures that conserve and protect bycatch species even if those bycatch species are not, themselves, included as stocks in a fishery under an FMP. *Id.* 1851(a)(9).

*Comment 6:* Some commenters expressed concern with the proposed text at § 600.305(c)(1) regarding stocks that are ''predominately caught'' in Federal waters. Commenters stated that the limiting ''predominately'' language is not part of the MSA and would improperly exclude stocks from management.

*Response:* The ''predominately caught'' language in § 600.305(c)(1) does not exclude any stocks from management. As explained in the response to comment 5, MSA section 302(h)(1) and other related MSA provisions do not provide clear direction on when to include stocks in an FMP. NMFS proposed the text regarding overfished/overfishing stocks predominately caught in Federal waters to provide clear guidance on when stocks *must* be included in an FMP. MSA section 1853(a)(1)(A), among other provisions, supports this approach, as it requires that FMPs contain conservation and management measures ''necessary and appropriate'' to prevent overfishing and rebuild overfished stocks. 16 U.S.C. 1853(a)(1)(A). If a stock is not predominately (*i.e.* mainly, or for the most part) caught in Federal waters, a Council may lack the authority, and thus ability, to adopt measures that would prevent overfishing and rebuild overfished stocks. It would not make sense, in that case, to require a Council to automatically include the stock in an FMP.

''Conservation and management'' and ''fishery'' are defined in terms of practical use or benefit and the ability to manage, which supports the inclusion of predominately in 600.305(c). ''Conservation and management'' refers to regulations, measures, etc., which are *required* [*i.e.,* considered essential; indispensable] to rebuild, restore, or maintain, and which are *useful* [*i.e.,* having a beneficial use; being of practical use] in rebuilding, restoring, or maintaining any fishery resource and the marine environment. 16 U.S.C. 1802(5). ''Fishery'' refers to ''one or more stocks of fish which *can be treated as a unit* for purposes of conservation and management . . .'' *Id.* § 1802(13) (emphasis added). ''Stock of fish,'' which is referenced in the definition of ''fishery,'' means a species, subspecies, geographical grouping, or other category of fish *capable of management as a unit. Id.* § 1802(42).

As noted above, NMFS does not believe it is appropriate to require inclusion of overfishing/overfished stocks in an FMP, if a Council lacks the authority or ability to adopt measures that will prevent or end overfishing or rebuild the stocks. NMFS proposed, and is retaining in this final action, use of the phrase ''predominately caught in Federal waters'' to address this concern. A similar phrase—fishing ''engaged in predominately within the exclusive economic zone and beyond that zone''—is one of two factors that allow NMFS to regulate a fishery within the boundaries of a State. *Id.* § 1856(b)(1)(A). While section 1856(b) is about preemption, it provides further support for the ''predominately caught'' approach under § 600.305(c)(1). Section 306 recognizes the efficacy of federal management when a fishery is engaged in ''predominately'' in federal waters. Likewise, § 600.305(c) includes ''predominately'' based on efficacy considerations.

NMFS notes that, even if a stock is not required to be included in an FMP (*i.e.,* stock is not overfishing/overfished and predominately caught in Federal

waters), a Council may still determine that a stock requires conservation and management based on consideration of one or more of the factors in paragraphs § 600.305(c)(1)(i) through (x). *See* response to comment 8 for further explanation of use of the factors when adding a stock to an FMP.

*Comment 7:* NMFS received numerous comments regarding the specific factors included in paragraphs § 600.305(c)(1)(i) through (x) of the proposed action. One commenter argued that factor (i)—whether the species plays an important role in the ecosystem—should be modified to focus on whether the species' role in the ecosystem is potentially affected by fishing. Additionally, many commenters believed that factors iv–vi, which took into consideration economic or social implications of management decisions were inappropriate because they improperly brought those considerations into a matter that should be solely focused on the conservation needs of a stock based on the best available science. Factor iv—the stock is a target of a fishery—was particularly polarizing with some commenters expressing that it should be the primary factor considered by Councils while others were urging that it be removed from the list as irrelevant. NMFS also received mixed reactions to factor (x)—the extent to which the fishery could be or is already adequately managed. Some called for factor (x) to be removed and, in particular, the phrase ''industry self-regulation'' to be removed because, for example, no other management regime has proven as effective as Federal management under the MSA and there is no description of what ''adequate management'' under industry self-regulation would entail. Other commenters stressed the importance of factor (x).

*Response:* NMFS disagrees that the first nine factors require revision. Potential effects on a species from a fishery is addressed in factor (ii) and, beyond the factors, a Council may take into account any additional considerations that may be relevant to the particular stock. Whether a fishery targets a stock (factor (iv)) is a relevant consideration: If a fishery is targeting a stock in federal waters, it is likely that the stock will be vulnerable to the impacts of fishing mortality and that there may be conflicts over the allocation of that stock. With regard to factors (iv) through (vi), the definition of ''conservation and management'' indicates that whether a stock requires measures to rebuild, restore, or maintain any fishery resource and the marine environment is as important to consider as whether measures are needed to ensure a multiplicity of options available with respect to future uses of these resources. 16 U.S.C.1802(5). Many of the factors that commenters objected to are intended to prompt consideration of the necessity and appropriateness of Federal management. 16 U.S.C. 1853(a)(1)(A). NMFS believes that the factors, as written, allow significant discretion for the Councils to evaluate the specific facts presented by a wide variety of stocks and fisheries to determine the necessity and utility of federal management.

With respect to factor (x), NMFS continues to believe that MSA section 302(h)(1) does not require preparation of FMPs for all fisheries in the EEZ. Among other things, the MSA recognizes the authority of a State to regulate fisheries within its boundaries and authorizes a State under certain circumstances to regulate its vessels outside state boundaries. Furthermore, the MSA mandates that the conservation and management measures for stocks under an FMP, where practicable, minimize costs and avoid unnecessary duplication. 16 U.S.C. 1851(a)(7) (National Standard 7) and 1856(a)(3) (state jurisdiction); *see* also 80 FR 2786, 2788–2789, January 20, 2015 (discussing these and other provisions in preamble to proposed action). Thus, if a Council determines (and the Secretary concurs) that a particular industry self-regulation structure constitutes an adequate management structure consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law, an industry self-regulation structure that minimizes costs and avoids unnecessary duplication of management measures is a relevant consideration under § 600.305(c). Therefore, NMFS retains factor (x) in this final action. However, in response to public comment, NMFS is revising factor (x) to delete the words ''could be or'' from ''[t]he extent to which the fishery is already adequately managed . . .'' NMFS agrees with commenters that the mere possibility of other management regimes should not be considered as a relevant factor when determining whether federal management is required.

*Comment 8:* Commenters requested further guidance in applying the factors under § 600.305(c)(1). Some commenters requested that the final guidelines make clear which factors weighed in favor of inclusion, but should not be used to justify exclusion. Other commenters suggested that NMFS provide greater guidance on how to weigh the factors relative to each other, for example ''tiering'' the factors based on their relative specificity and significance.

*Response:* Section 600.305(c)(2) of the proposed action explained that, when considering adding a new stock to an FMP or keeping a stock within an FMP, Councils should prepare an analysis of the factors to assist in determining which stocks require conservation and management. NMFS has modified this text in the final action to clarify the process for adding and removing stocks from an FMP (final § 600.305(c)(3) and (4), respectively). In § 600.305(c)(3), NMFS explains that, when considering adding a stock to an FMP, no single factor is dispositive or required. An analysis of all ten factors is not required to add a stock to an FMP. One or more of the factors, and any additional considerations that may be relevant to the particular stock, may provide the basis for determining that a stock requires conservation and management.

For clarity, NMFS revised the phrase ''keeping an existing stock within an FMP'' (proposed § 600.305(c)(2)) to ''removing a stock from, or continuing to include a stock in, an FMP'' (final § 600.305(c)(4)). The final action explains that, when considering such action, Councils should analyze all ten factors. Factors (i) through (ix) are all factors that counsel for inclusion of stocks, and factor (x) counsels against inclusion. *See* Section VI of this preamble for more details on changes to § 600.305(c). A Council's analysis should clearly demonstrate why, on balance, the factors considered (which may include factors beyond the list included in the final action if relevant to the particular situation) support the ultimate conclusion to remove a stock from an FMP. Given the wide range of potential scenarios that Councils may face when evaluating the conservation and management needs of various fisheries, NMFS does not believe that it would be advisable to offer more prescriptive guidance on how to balance the factors against each other. In some cases a particular factor may have more significance than in another case, depending on the circumstances of the fishery.

*Comment 9:* Some commenters raised concerns regarding application of the factors listed in § 600.305(c)(1) of the proposed action within the context of data limited situations. One commenter recommended that NMFS include guidance regarding how to address the factors in a data limited situation. Another commenter suggested that NMFS allow Councils to categorize all data poor stocks as EC species and therefore exempt from ACLs.

*Response:* The MSA does not distinguish between requirements for stocks that have robust data available and those for which data is lacking—accordingly, NMFS and the Councils cannot exempt stocks from ACLs and other mandatory requirements solely due to the availability of data for those stocks. As discussed in response to comment 5, all stocks that require conservation and management must be included in an FMP. This is true regardless of the data available for those stocks. NMFS notes that National Standard 2 requires that all conservation and management measures must be based on the best scientific information available. 16 U.S.C. 1851(a)(2). Recognizing the challenges posed by data limited situations, NMFS has adopted several measures (*see* §§ 600.310(e)(2)(ii); 600.310(h)(2) of the final action) that are intended to provide additional flexibility in applying the NS1 guidelines in data limited situations.

*Comment 10:* Some commenters sought additional guidance on how to deal with management of stocks that either straddle multiple areas of Council jurisdiction or shift from one jurisdiction to another, for example due to the impacts of climate change.

*Response:* The proposed guideline revisions moved language discussing management of stocks that straddle multiple Council jurisdictions from the National Standard 1 guidelines to the General section, but did not propose any substantive changes to that provision. *See* § 600.305(c)(6). This provision is based on MSA section 304(f), which provides that for fisheries that occur in the geographical area of authority of more than one Council, the Secretary may either designate a lead Council to prepare an FMP or require joint preparation of such an FMP. 16 U.S.C. 1854(f). The guideline provision is designed to complement this statutory requirement by explaining that the primary FMP should contain reference points for stocks. In addition to this guidance, the newly revised guidance for reassessing an FMP's management objectives can also potentially provide an avenue for a Council to address a shift in occurrence of a stock, or the previous designation of a lead FMP. *See* § 600.305(b)(2). NMFS does not believe that any further revisions are necessary at this time.

*Comment 11:* Several commenters sought clarification on the impact of the proposed provisions on stocks in need of conservation and management and the concept of EC species. NMFS received several comments on the revised discussions of EC species, in particular expressing concern about the proposed deletion of the 2009 NS1 guideline definition of EC species and non-target species. Commenters sought additional guidance on the proper criteria for designating an EC species and the management and monitoring requirements for EC species.

*Response:* NMFS introduced the concept of EC species in the 2009 revisions to the NS1 guidelines. In those guidelines, NMFS explained that the ''in the fishery'' and ''EC species'' classifications address the fact that while FMPs typically include target species (and some non-target species that require conservation and management), other FMPs include hundreds of species which may or may not require conservation and management in an effort to advance ecosystem management in the fishery. *See* 74 FR 3179, January 16, 2009. By adopting the ''EC species'' classification, NMFS sought to encourage Councils to continue to pursue ecosystem approaches to management. Even when a species does not require ''conservation and management,'' a Council may include it as an EC species in an FMP. Unlike stocks in the fishery, EC species designation does not trigger all of the mandatory provisions of the Magnuson-Stevens Act, such as FMP requirements under section 303(a).

In this final action, NMFS is providing further guidance on the question of what stocks require conservation and management. Nothing in these proposed provisions changes previous guidance on the optional usage of EC species. To make clear this intent, NMFS has made minor modifications in this final action to more closely follow the language discussing EC species in the 2009 action. Additionally, NMFS has re-inserted a definition of EC species. *See* § 600.305(d)(13) of final action. This definition, however, does not rely on the previously established criteria for designation. The criteria included in the 2009 guidelines were intended to prevent stocks that were in need of conservation and management from being re-designated as EC species. *See, e.g.,* response to comment 17, 74 FR 3186, January 16, 2009. There is no need to retain the 2009 criteria, because the final action provides factors for determining whether a stock is in need of conservation and management, and includes clarifying language that makes clear that stocks in need of conservation and management cannot be designated as EC species. In response to numerous comments, NMFS has reinserted a definition for ''non-target stocks,'' with minor modifications from the definition in the 2009 guidelines, to ensure consistency with the remainder of the NS1 guidelines. *See* § 600.305(d)(12) of final action.

Because the designation of EC species is discretionary and may be done to accomplish several different goals, NMFS is not providing further specific guidance on EC species. Determining whether the EC species designation is appropriate requires a case-specific look at stocks or stock complexes in light of § 600.305(c) as well as the broader mandates and requirements of the MSA. NMFS has worked closely with Councils who have decided to pursue EC species designation and will continue to provide support and guidance going forward.

*Data Limited Stocks*

*Comment 12:* While many commenters supported the clarification that, when it is not possible to specify MSY or MSY proxies for a data limited stock, a Council may use alternative types of SDCs, other commenters requested additional technical guidance on using alternative types of SDCs. *See* § 600.310(e)(2)(ii). Some commenters also provided suggestions to improve the provision, including: acknowledging the limitations of alternative types of SDCs (particularly with regard to addressing stocks with ''model uncertainty''); addressing circumstances when reference points such as MSY and OY cannot be determined; requiring an analysis of the regional applicability of different data limited methodologies; acknowledging that the alternative SDCs listed in the guidelines are not the only alternatives available; and including a definition for ''data limited stocks'' within the guidelines. Some comments stated that § 600.310(h) of the proposed action improperly exempted Councils from setting annual ACLs for data limited stocks and requested the guidelines clarify that all reference points required by the MSA are required to be established for data limited stocks that require conservation and management.

*Response:* The list of examples of alternative SDCs within § 600.310(e)(2)(ii) is not exclusive, and Councils may explore other alternate types of SDCs. Any alternative approach adopted by a Council, in consultation with their SSC, must be based on the best scientific information available and identify overfishing and overfished thresholds. *See* § 600.310(b)(2)(v) (describing SSC role in providing scientific advice to the Council). Section 600.310(e)(2)(ii) provides that, when specifying SDCs, a Council must provide an analysis of how the SDCs were chosen, how they relate to the

reproductive potential of the stock within the fishery, and how the alternate type of SDCs will promote the sustainability of the stock on a long-term basis. Thus, NMFS believes that the guidelines provide sufficient guidance on the use of alternate types of SDCs for data limited stocks while retaining adequate flexibility to allow Councils to determine the most appropriate alternate type of SDCs on a case-by-case basis.

With regard to the comments proposing improvements to alternative SDC text, NMFS notes that specification of MSY and OY are statutory requirements (16 U.S.C. 1853 (a)(3)), and the intent of § 600.310(e)(2)(ii) is to help address circumstances where data are not available to specify SDCs based on MSY or MSY based proxies. Because stock assessment models are used to set reference points within the ACL framework, model uncertainty is best addressed when accounting for scientific uncertainty within the ABC reference point. While an analysis of the regional applicability of different data limited methodologies may be useful to a Council, it may not always be necessary or informative and NMFS does not believe such an analysis needs to be prescribed as part of the NS1 guidelines. With regard to defining ''data limited stocks,'' the characteristics of such stocks are so wide-ranging that a definition would not be meaningful and could lead to additional confusion when applying the NS1 guidelines. Finally, as discussed in the preamble to the proposed action, § 600.310(h)(2) does not provide an exemption from any statutory requirements, including the requirement to establish ACLs. *See* 80 FR 2790, January 20, 2015. NMFS discussed data limited stocks under § 600.310(h)(2) in order to ensure consistency with the revisions made under § 600.310(e)(2)(ii).

*Comment 13:* One commenter requested that the guidelines be edited to ensure that alternate types of SDCs are appropriately referenced throughout the guidelines. For example, proposed § 600.310(e)(2)(ii)(B) states that MSST or reasonable proxy must be expressed in terms of spawning biomass or other measures of reproductive potential. The commenter suggested that language should be added to the description of SDC to determine overfished status (§ 600.310(e)(2)(ii)(B)) to clarify how Councils should accommodate alternative types of SDCs.

*Response:* NMFS does not agree that revisions are needed. A Council must provide an analysis of how its SDCs relate to the reproductive potential of the stock. If an alternate type of SDC is adopted, the alternate SDC is considered a reasonable proxy to determine overfished status within the context of § 600.310(e)(2)(ii)(B) and will be expressed in terms of the stock's reproductive potential.

*Stock Complexes & Indicator Stocks*

*Comment 14:* Some commenters opposed the proposed changes to the guidelines that encourage the use of indicator stocks within stock complexes, and recommended removing the changes. Commenters expressed concern that, if species with disparate vulnerabilities are grouped together within a stock complex, the risk of overfishing on weaker stocks would increase while others advised NMFS against using overly precautionary indicator stocks that may prevent OY from being achieved. Other commenters requested additional technical guidance and recommended that Councils consider the current status of each stock as well as the costs and benefits of stock complex-based management when establishing stock complexes. NMFS also received numerous suggestions to strengthen the language on stock complexes and indicator stocks, including explicitly requiring the use of indicator stocks within stock complexes; using ''must'' instead of ''should'' in § 600.310(d)(2)(C) in order to require that Councils, in consultation with their SSC, choose the most vulnerable stock within a complex as the indicator stock; and requiring that all Councils take additional precaution when establishing stock complexes where high levels of scientific uncertainty exist.

*Response:* NMFS believes the guidelines are clear that, if an indicator stock is used in a stock complex, it should be representative of the typical vulnerability of the stocks within the complex. In cases where stocks within a stock complex have a wide range of vulnerabilities, the guidelines are also clear that, either the stocks should be reorganized into different stock complexes that have similar vulnerabilities or the indicator stock should represent the more vulnerable stocks within the complex. *See* § 600.310(d)(2)(ii)(C) of final action. Thus, NMFS believes the use of indicator stocks in a stock complex will not increase the risk of overfishing other stocks within the complex and, in cases where the status of the stocks within a complex is generally unknown, the use of an indicator will likely reduce the probability that stocks within the complex experience overfishing. NMFS believes the use of SDCs and ACLs for indicator stocks and/or stock complexes will ensure the dual requirements of NS1 are met: preventing overfishing while achieving, on a continuing basis, OY. *See* § 600.310(e)(2)(ii); 600.310(f)(4).

NMFS also believes that the guidelines give sufficient guidance on using stock complexes and indicator stocks, and give Councils the flexibility to weigh the costs and benefits of utilizing these management tools. While the MSA does not address management of stock complexes, NMFS believes the use of stock complexes and indicator stocks in accordance with the guidelines can serve a useful role in managing data poor stocks and/or stocks that cannot be targeted independently of one another. Finally, NMFS recommends the use of indicator stocks in order to reduce the likelihood of overfishing in cases of high scientific uncertainty among stocks within a complex (*see* 80 FR 2790, January 20, 2015) and also recommends Councils use more conservative management measures in cases where it is not possible to use the most vulnerable stock within a complex as an indicator. Given that the MSA is silent on the issue of stock complex management, NMFS does not believe that the use of the term ''must'' rather than ''should'' is justified.

*Comment 15:* NMFS received comments expressing concern that relying on indicator stocks can lead to a false sense of security and recommending that ACLs are set for each individual stock within a stock complex instead. Others expressed concern that monitoring available qualitative and quantitative information for each stock within a complex may not be sufficient to monitor each stock's overfishing status and recommended that Councils consider each stock's vulnerability in addition to considering whether each stock is being sustainably managed. NMFS also received recommendations that the guidelines require SSCs to review monitoring data on each stock within a complex and that the guidelines encourage $B_{msy}$ values for stocks within each stock complex to be calculated to reflect its productivity within the current ecological context.

*Response:* NMFS disagrees that stock-by-stock management is preferable to stock complex management in all cases. Stocks with insufficient data to measure a stock's status relative to SDCs or stocks that cannot be targeted independently of one another may be best managed as a stock complex in order to base management on informed reference points. NMFS does agree that monitoring the status of each stock within a complex based on the best scientific information available is important. However, a stock within a

stock complex may not have sufficient information available to determine its status relative to SDCs, and thus, in these cases, the Councils should monitor the stock to determine whether it is being sustainably managed and to look for any indications that the stock might be subject to overfishing. The guidelines are clear that a Council must consider the vulnerability of each stock within a stock complex when establishing or reorganizing stock complexes. *See* § 600.310(d)(2)(i). Furthermore, each SSC shall provide its Council ongoing scientific advice for fishery management decisions, including reports on stock status and health. 16 U.S.C. 1852(g)(1)(B). Thus, the SSC must give scientific advice on the ongoing management of stocks within a stock complex and NMFS does not believe that the NS1 guidelines need to specifically address this issue. Finally, NMFS agrees that current ecological conditions and ecosystem factors need to be taken into account when specifying MSY for both stocks and stock complexes and believes the current language within the definition of MSY (''prevailing ecological, environmental conditions'') adequately reflects this need. *See* § 600.310(e)(1)(i)(A).

*Comment 16:* Several commenters expressed concern regarding the term ''where practicable'' within § 600.310(d)(2)(i). Commenters stated that the modified definition of stock complexes is not necessary or justified and the term ''where practicable'' conflicts with the intention of the modified definition while weakening the standard for stock complexes. Some commenters also expressed concern that the modified definition could allow Councils to ''hide'' stocks that are undergoing overfishing within a complex or avoid managing ''choke'' stocks in a multi-species fishery. Therefore, several commenters recommended removing the ''where practicable'' language from the provision. Other commenters recommended that, if a Council uses stock complexes, they must complete a comprehensive analysis showing how overfishing will be prevented.

*Response:* As addressed in response to comment 78, the term practicable (*i.e.,* reasonably capable of being accomplished; feasible) is used appropriately within § 600.310(d)(2)(i). The MSA does not mandate a particular method for establishing stock complexes, and thus, NMFS has provided guidance on this issue, based on the agency's expertise. The term ''where practicable'' within this provision does not conflict with or weaken the intended use of stock complexes. The guidelines are clear that, where practicable, stock complexes should consist of stocks with similar geographic distribution, life history characteristics, and vulnerabilities to fishing pressure and that the most vulnerable stock should be used as the indicator stock within a complex in order to fulfill the requirements of the MSA. As emphasized in comment 15, it is important that Councils monitor the status of all individual stocks within a complex to ensure they are sustainably managed and to look for indications of overfishing. While there may be insufficient data to ascertain whether some stocks within a complex are subject to overfishing on an individual basis, if a stock within a complex *is* found to be subject to overfishing, further overfishing on the stock must be prevented. Furthermore, such a finding that overfishing is occurring does not require prior specification of SDC, but can be based on the best scientific information available. If NMFS determines that a stock within a complex appears to be subject to overfishing, the agency notifies the appropriate Council. Finally, as described in § 600.310(d)(2)(i), a Council should consider the vulnerabilities of individual stocks and provide a ''full and explicit description of the proportional composition of each stock in the stock complex'' when establishing a stock complex within a FMP. Thus, the guidelines are clear that the establishment of stock complexes within FMPs should be adequately documented based on a thorough analysis of stock vulnerabilities.

*Aggregate MSY*

*Comment 17:* Commenters requested additional clarification on the intended use of aggregate MSY estimates, in particular requesting further clarification on the relationship between the aggregate MSY approach and the ACL framework and rebuilding targets. Several commenters requested that NMFS provide additional technical guidance on the use of aggregate MSY to specify OY, and, in the absence of such guidance, recommended that NMFS remove the option to use aggregate MSY from the guidelines. Commenters were concerned that without such guidance, aggregate MSY could be used in a way that would increase the risk that individual stocks would be subject to overfishing. In addition, one commenter suggested that the guidelines be revised to clarify that the aggregate MSY estimates could be used as a substitute for stock (or stock complex)-specific MSY estimates. Further explanation was also sought with respect to the intended meaning of the word ''common'' in proposed § 600.310(e)(1)(iv). Finally, two comments pointed out that using aggregate MSY to track-long term environmental changes may be difficult as it can be difficult to distinguish between long-term and temporary environmental changes.

*Response:* Aggregate MSY is an optional tool that Councils can use at their discretion to specify fishery-level OYs and further facilitate the Councils' use of EBFM. Aggregate MSY estimates are not an appropriate substitute for stock-specific MSY estimates that are necessary to inform the development of the required stock-specific reference points in the ACL framework. Fundamentally, aggregate MSY is an additional limit on the management system that encourages more conservative EBFM-based measures. Even when aggregate level MSY is estimated, stock-specific MSY must still be used to inform single stock management. Other annual reference points (within the ACL framework) must also be specified in order to prevent overfishing from occurring in single stocks. In light of the above, and because aggregate MSY is merely an optional tool that can be used in addition to stock-specific reference points, the final guidelines retain the aggregate MSY provision.

The term ''common'' in § 600.310(e)(1)(iv) was intended to provide further context as to how aggregate MSY can be estimated using multi-species, aggregated, and ecosystem modeling. Upon further consideration, the phrase ''common biomass (energy) flow'' is not considered a widely used phrase within relevant scientific fields, and thus the term ''common'' is not included within the final action to avoid confusion. However, the final action retains the phrase ''biomass (energy) flow'' to clarify that the models used for estimating aggregate MSY should account for the flow of energy through the aggregate group of stocks under consideration. A Council's SSC should assist a Council using an aggregate MSY to use the best scientific information available with regards to biomass (energy) flows.

Finally, aggregate MSY is not intended to be used to track long-term environmental or ecological conditions. Instead, aggregate MSY is intended to ensure that fishery management measures are reflecting how environmental variability within the ecosystem is impacting fisheries as a whole.

*Definition for ''Depleted'' Stocks*

*Comment 18:* While NMFS received some comments supporting the proposed definition for ''depleted'' stocks, the majority of comments received opposed the proposed definition and/or requested additional technical guidance on its use. Commenters expressed a wide-array of concerns, including that: The proposed definition is overly restrictive, especially with regard to long-lived species; and the definition would not adequately distinguish between stocks that are depleted due to environmental factors and stocks that are overfished due to fishing pressure. NMFS also received many suggestions to improve the proposed definition.

*Response:* In light of public comment, NMFS agrees that further consideration is needed regarding how to distinguish between stocks whose current poor status is due to fishing pressure and stocks that have been negatively affected by environmental factors. Thus, NMFS has deleted the definition for ''depleted'' stocks in the final action. The final action retains the existing requirements within the guidelines that all Councils define stocks whose biomass has declined below its MSST as overfished. Even though the guidelines do not include ''depleted stocks,'' a Council may use the term to further describe the status of an overfished stock that has been impacted to some extent by environmental factors in addition to (or in the absence of) fishing pressure.

*MSST*

*Comment 19:* NMFS received a number of comments expressing concern about two revisions connected to the terms overfished and MSST (maximum stock size threshold). The proposed action revised the definition of overfished to state that a stock or stock complex is considered 'overfished' when its biomass has declined below MSST. *See* § 600.310(e)(2)(i)(E). MSST was in turn defined as the level of biomass below which the capacity of the stock or stock complex to produce MSY on a continuing basis has been jeopardized. *See* § 600.310(e)(2)(i)(F). In addition, the proposed guidelines also included revised language regarding the specification of MSST, which stated that MSST should be specified between ½ $B_{msy}$ and $B_{msy.}$ To inform this decision, the proposed guidelines provided a list of potential considerations, including the life history of the stock, the natural fluctuations in biomass associated with fishing at MFMT over the long-term, the time needed to rebuild to $B_{msy}$ and associated social and/or economic impacts on the fishery, the requirements of internationally-managed stocks, and other considerations. *See* § 600.310(e)(ii)(B).

Some commenters objected to the proposed changes to the definitions of overfished and MSST, arguing that NMFS improperly replaced the pre-existing, statutory-based definition with a new, less supportable definition. Commenters expressed concern with linking a determination that a stock is overfished with a Council-specified MSST because, according to commenters, MSSTs are not always properly specified or updated. Other commenters believed that connecting MSST to ''overfished'' was too restrictive and that a preferable definition would connect the ability of a stock to return to its $B_{msy}$ level in the absence of a rebuilding plan (rather than linking to the ability of the stock to produce MSY on a continuing basis).

Other commenters took issue with the proposed change to the provision regarding the specification of MSST. Some commenters felt that the language from the 2009 action set a clearer standard and that the proposed language made the MSST specification depend on criteria that are not easily quantifiable. Especially concerning for some were the ''social and/or economic'' considerations. Commenters argued that the proposed revisions increase the likelihood that stocks declared overfished will not be able to rebuild within ten years. Others felt that the factors in the proposed revisions provided needed additional flexibility to the Councils should they wish to revisit MSST specifications.

*Response:* As NMFS explained in the preamble to the proposed action, the changes to the definitions of ''overfished'' and ''MSST'' are minor changes intended to improve clarity and reduce redundancy with no resulting changes in how the terms overfished and MSST are used. *See* 80 FR 2791, January 20, 2015. While definitions for both overfished and MSST were provided within the 1998 guidelines, the 2009 guidelines established that a stock or stock complex is considered overfished when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce MSY on a continuing basis. The 2009 action then defined MSST as the level of biomass below which the stock or stock complex is considered to be overfished. Read together, these provisions relied on MSST as the determining threshold of whether a stock was overfished. MSST was, and continues to be in this final action, the threshold by which an overfished determination is made. The revisions eliminate ambiguity by referring directly to MSST in the definition of overfished. This final action is consistent with the MSA as it incorporates the statutory definition of ''overfished'' (*i.e.,* level of biomass that ''jeopardizes the capacity of a fishery to produce [MSY] on a continuing basis'') into the definition of MSST. *See* 16 U.S.C. 1802(34) and § 600.310(e)(2)(i)(A) (clarifying that MSA ''overfished'' definition relates to biomass). NMFS does not believe the suggestion to link the definition of MSST to the ability of a stock to return to its $B_{msy}$ level in the absence of a rebuilding plan would be consistent with the statutory definition of ''overfished.''

NMFS disagrees that the revisions to the MSST specification provision would prevent stocks from being classified as overfished. The 2009 guidelines provided two options for specifying MSST: one-half the MSY stock size, or the minimum stock size at which the stock could rebuild to the MSY level within 10 years if the stock was fished at MFMT. The guidelines stated that MSST should be set equal to the greater of the two options. *See* § 600.310(e)(2)(ii)(B) (2009). NMFS revised the provision to set a clearer standard for MSST specifications, allow for a broader range of considerations, and allow Councils increased flexibility to re-visit and update MSST specifications, based on the changing conditions of a fishery. By providing that MSST should be between ½ $B_{msy}$ and $B_{msy,}$ this final action affords Councils the ability to adopt an MSST consistent with overfished thresholds used by some regional fishery management organizations for stocks that are internationally-and Federally-managed. The revisions also allow Councils to retain MSST definitions in existing FMPs that were based on the 1998 NS1 Technical Guidance, but were not reflected within the 2009 guidelines (Restrepo et al., 1998). NMFS believes that MSST definitions based on the 1998 Technical Guidance continue to be sound from a scientific perspective and consistent with the MSA and approaches under the NS1 guidelines. Finally, the increased flexibility within the proposed changes to MSST specifications increases the probability that MSST thresholds are utilized for data limited stocks.

NMFS also disagrees that the MSST specification provision will decrease the likelihood that overfished stocks will be able to rebuild within 10 years. Although the provision no longer includes a reference to 10 years in the

formulaic calculation of MSST, this does not alter the MSA's requirement that a rebuilding period shall ''not exceed 10 years,'' subject to certain exceptions. 16 U.S.C. 1854(e)(4)(A)(ii).

Furthermore, based on public comment, NMFS has removed the phrase ''social and/or economic impacts on the fishery,'' from the list of factors that could inform MSST. MSST is a biological reference point and is based on the level of biomass below which the capacity of the stock to produce MSY on a continuing basis is jeopardized. Thus, it is not appropriate to consider social and economic impacts when determining MSST.

Finally, NMFS disagrees that reliance upon quantitative data invariably yield more accurate or precautionary MSST values. Councils should consult with their SSCs to ensure that the information used to specify MSST, whether quantitative or qualitative, is the best scientific information available.

*Comment 20:* Some commenters asserted that the definition of MSST is inconsistent in the guidelines. As an example, when explaining the relationship of SDCs to environmental and habitat change, the guidelines assume that there are cases where environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential. *See* § 600.310(e)(2)(iii)(A). One commenter stated that this section is inconsistent with the revised definition of MSST, which refers to a level below which the capacity of the stock to reproduce MSY has been jeopardized.

*Response:* NMFS disagrees that there is any inconsistency in § 600.310(e)(2)(iii)(A). That section is unchanged in this action, and as explained in the response to comment 19, the definition of MSST fundamentally has not changed. MSST means the level of biomass below which the capacity of the stock or stock complex to produce MSY on a *continuing basis* has been jeopardized. Thus, the focus is on producing MSY in the long-term. The purpose of § 600.310(e)(2)(iii)(A) is to address the reality that there may be short-term, environmental changes, but recognize that such changes do not normally jeopardize the ability of a stock to produce MSY on a continuing basis. For example, El Niño increases mortalities and reduces growth within certain stocks, but after the short El Niño period ends, stocks should regain their health and ability to produce MSY on a continuing basis.

*Multi-Year Overfishing Stock Status Determinations*

*Comment 21:* NMFS received many comments on the multi-year approach to determining the overfishing status of a stock or stock complex. Many commenters expressed concern that the method may delay action and allow an overfishing trend to go unaddressed. Comments also requested the final action include technical guidance on how to apply this method. Other commenters asked whether the provision allows stock status determinations to be completed every 3 years, and whether using a multi-year approach for overfishing status determinations could impact reference points for future catch levels. Other commenters suggested: emphasizing the multi-year approach as an optional tool; endorsing the use of the catch to OFL method over the F to MFMT method; replacing the proposal with more support for the annual catch specification process and adequate AMs; allowing the SSC to determine an appropriate multi-year time period; and encouraging other overfishing determination methods that reduce lag time.

*Response:* The existing NS1 guidelines provide for two methods for specifying SDCs to determine overfishing status: F rate exceeds MFMT or catch exceeds OFL. *See* § 600.310(e)(2)(ii)(A)(*1*)-(*2*). As discussed in the proposed action preamble (*see* 80 FR 2791, January 20, 2015), the multi-year approach in § 600.310(e)(2)(ii)(A)(*3*) is an optional method for specifying overfishing SDCs that is intended to allow consideration of ''the extent to which F exceeded the MFMT or catch exceeded the OFL.'' Small amounts of excess effort or catch in a single year may not jeopardize a stock's ability to produce MSY over the long term, and an overfishing stock status determination based on that single year's data point may not be the most appropriate characterization of stock status. To further clarify how to apply the multi-year approach, the final action clarifies the relationship between subparagraphs § 600.310(e)(2)(ii)(A)*(1)–(3)* and includes further detail on the circumstances in which the multi-year approach should be used. Section 600.310(e)(2)(ii)(A)*(3)* of the final action explains that, while an FMP should specify which of the methods established in § 600.310(e)(2)(ii)(A)*(1)* and (2) will be used to determine overfishing status, a Council may utilize a multi-year approach to determine overfishing status in certain circumstances. If a Council should develop a multi-year approach to determine overfishing status, the Council should identify in its FMP or FMP amendment, the circumstances when a multi-year approach is appropriate and will be used. Such circumstances may include situations where there is high uncertainty in the estimate of F in the most recent year, cases where stock abundance fluctuations are high and assessments are not timely enough to forecast such changes, or other circumstances where the most recent catch or F data does not reflect the overall status of the stock. *See* § 600.310(e)(2)(ii)(A)(*3*) of the final action.

Regardless of which SDC specification method is used, the MSA requires that NMFS report annually to Congress on the status of stocks. 16 U.S.C. 1854(e)(1). Thus, a multi-year approach to overfishing stock status determinations would not allow Councils to ignore available information and wait for additional years' information before evaluating stock status, nor would it allow an overfishing trend to go unaddressed or impact the timeliness of a Council and/or agency response to overfishing.

NMFS acknowledges that wording in proposed § 600.310(e)(2)(ii)(A)(*3*) may have caused confusion regarding whether this provision may impact reference points for future catch levels. Thus, NMFS revised § 600.310(e)(2)(ii)(A)(*3*) to emphasize that a Council may only use a multi-year approach to ''retrospectively determine overfishing status.'' Stock status determinations are relevant to NMFS' annual reporting requirement under 16 U.S.C. 1854(e)(1), mentioned above. The multi-year approach may not be used in establishing ACLs and ABCs, because annual reference points must be designed to prevent overfishing and cannot exceed the OFL in any year. For example, if the catch of a stock in a single year was well below its ACL, a Council may not anticipate using a multi-year approach to overfishing status determinations in order to justify allowing next year's catch levels to be set above the OFL. To further clarify this point, NMFS has added language within § 600.310(e)(2)(ii)(A)(*3*) explaining that the multi-year approach to determine overfishing status may not be used to specify future annual catch limits at levels that do not prevent overfishing. In addition, NMFS has reinserted the term ''annual basis'' within the definition of MFMT. *See* § 600.310(e)(2)(i)(C) of the final action. NMFS notes that, if the catch of a stock in a single year was well below its ACL, a Council could consider

using a carry-over ABC control rule. *See* comment 34 for further discussion.

In this final action, NMFS adds in § 600.310(e)(2)(ii)(A)(*3*) that: ''A multi-year approach must compare fishing mortality rate to MFMT or catch to OFL.'' In that same subparagraph, NMFS has also deleted reference to a comprehensive analysis to determine whether a multi-year approach will jeopardize the capacity of the fishery to produce MSY on a continuing basis. As the multi-year approach may only be applied to *retrospective* stock status determinations, the proposed comprehensive analysis needed to use a multi-year approach is not necessary.

NMFS disagrees that one method for specifying SDCs to determine overfishing status is invariably superior to another. Councils should select a method using the best scientific information available. NMFS agrees that robust annual catch specification processes and accountability measures can reduce the likelihood of overfishing. However, there are circumstances where NMFS believes a multi-year approach is a useful tool to protect a stock while providing stability to the fishery. In addition, NMFS believes the proposed action preamble (*see* 80 FR 2792, January 20, 2015) provides sufficient rationale for choosing 3 years as a maximum time period for multi-year approaches to overfishing status determinations. Finally, the existing guidelines recommend Councils take action to allow SDCs to be ''quickly updated'' and reduce lag time in § 600.310(e)(2)(ii).

*Comment 22:* Several commenters asked how phase-in provisions will interact with the multi-year overfishing stock status determinations.

*Response:* As detailed in comment 21, a multi-year approach to determining a stock's overfishing status cannot be used to influence future annual catch reference points, such as ABCs, ACLs, etc. Thus, a multi-year approach to determining a stock's overfishing status would not influence a Council setting an ABC based on a phase-in ABC control rule. For instance, a Council may not anticipate the use of a multi-year approach to overfishing status determinations to rationalize a phase-in ABC control rule designed to allow overfishing in some years and underages in others.

*OY & Catch Accounting*

*Comment 23:* While several commenters supported the addition of a paragraph clarifying the relationship between OY and the ACL framework, *see* § 600.310(f)(4)(iv) of the proposed and final action, some believed the proposed language could be clarified and strengthened. One comment stated that the OY concept is redundant when management is based on the ACL framework. Others stated that additional guidance is needed in order to address OY factors within the ACL-setting process. One comment reflected confusion regarding whether ACLs can be set above the $F_{msy}$ in order to achieve a long-term average OY. Commenters also requested that the guidelines define the ACL in relation to OY and encourage the use of ABC to generate OY values.

*Response:* NMFS disagrees that managing under an ACL framework renders the OY concept redundant. National Standard 1 requires that conservation and management measures prevent overfishing ''while achieving, on a continuing basis, the optimum yield from each fishery.'' 16 U.S.C. 1851(a)(1). When the MSA was amended to introduce ACLs, this OY requirement remained unchanged. NMFS believes that guidance in § 600.310(f)(4)(iv) on addressing OY factors within the ACL framework is sufficient. As described in that section, ACLs (or ACTs if used) can be reduced from the ABC based upon the OY-based ecological, economic, and/or social (EES) considerations (as described in § 600.310(e)(3)(iii)(B)) in addition to reductions accounting for management uncertainty. Furthermore, EES trade-offs could also be evaluated when determining the risk policy for an ABC control rule. Thus, the ACL framework can support achieving OY.

ACLs and other annual reference points are annual limits and cannot be defined in terms of OY, which is a long-term average. While the ACL framework supports achieving OY, OY (as well as annualized OY values) and the ACL framework are two separate concepts which cannot be defined in terms of one another. Thus, an ACL may not be set to exceed the stock's ABC/OFL reference points in order to achieve OY and correspondingly, annual catch reference points such as ABC cannot be used to specify OY.

*Comment 24:* One commenter stated that the second and sixth sentences within proposed § 600.310(f)(4)(iv) conflict and suggested a revision to the second sentence to clarify the relationship between the need for the ABC to prevent overfishing while also taking into account the ABC control rule's risk policy.

*Response:* NMFS disagrees that the second and sixth sentences within proposed § 600.310(f)(4)(iv) directly conflict, however, NMFS has made the suggested clarifying revision in this final action.

*Comment 25:* Some commenters opposed the concept of annualized OY values and stated that having both annual and long-term average OY values is confusing. Some commenters requested clarification on whether annualized OY values can exceed MSY in order to achieve long-term OYs and how annualized OYs can address tradeoffs associated with mixed stock fisheries. Other commenters recommended the use of a control rule to ensure that relevant OY factors and management uncertainty are being considered when using the ACL or ACT as an annualized OY.

*Response:* Annualized OY values are an optional tool for managers to use if it benefits the conservation and management needs of a stock, stock complex, or fishery, including as an example, a mixed stock fishery. A stock, stock complex, and/or fishery thus can have both an OY and an annualized OY value. MSY is a long term average with a corresponding annual value: The OFL. While an annualized OY could be higher than the MSY if stock biomass is high, it cannot exceed the OFL. NMFS also notes that, while ACLs (or ACTs) can be conceptually compared to annualized OY values, they have different definitions and cannot be automatically equated to each other (*see* response to comment 23). Finally, the 1998 NS1 guidelines permitted the use of an OY control rule (*see* 63 FR 24232, May 1, 1998), and the current NS1 guidelines in the final action do not exclude the possibility of using an OY control rule. However, if an OY control rule is used, the annual catch of a stock must still be constrained through the application of the ACL framework.

*Comment 26:* Two commenters suggested that, in addition to specifying OY at the stock, stock complex, or fishery level, managers should also be able to specify OY at the ''FMP level.''

*Response:* NMFS does not believe that the proposed revision is appropriate or needed. OY is supposed to be specified for the ''fishery.'' 16 U.S.C. 1851(a)(1) and 1853(a)(3). In addition, the MSA defines the term ''fishery'' broadly, thus providing flexibility to the Councils in how they describe fisheries in their FMPs.

*Comment 27:* Commenters requested additional guidance on EES factors, especially the social and ecological effects of management actions. One commenter stated that it is inconceivable to imagine how social and economic factors could lead to a reduction from MSY. Other commenters recommended that the guidance clarify

that if OY is set very close to MSY, the Secretary may presume that the Council failed to adequately consider OY factors. Commenters also recommended that the guidelines be updated to include additional examples of ecosystem, climate change, protected species, and forage fish considerations within § 600.310(e)(3)(iii)(B). One commenter suggested nesting the list of potential EES factors under § 600.310(e)(3)(iii)(A) instead of (B). Other commenters suggested legislative action to allow OY to be the result of either reductions or *additions* from MSY based on EES factors and opposed the use of the term ''trade-offs'' when referring to EES factors.

*Response:* NMFS received extensive public comment on the use of EES factors during the development of the 2009 guidelines and thus, because NMFS did not propose any substantive changes to the guidance on EES factors in the proposed action, NMFS continues to believe that the NS1 guidelines set forth examples that provide sufficient guidance on using EES factors. The guidelines include examples of factors that clearly relate to ecosystems, climate change, and forage fish, as well as social and economic factors that may lead to a reduction in MSY. NMFS disagrees that it is ''inconceivable'' for OY to be reduced from MSY based on social and economic factors. For example, OY could be lowered from MSY to match a limited market demand or to provide more stability in annual catches within a fishery over the long-term. While a Council must address each factor (ecological, economic, and social), the exact method that a Council uses to consider EES factors and the amount the OY is reduced from the MSY is at the Council's discretion. With regard to OY and MSY, NMFS disagrees that setting OY close to MSY means that OY factors were not adequately considered. If estimates of MFMT and current biomass are known with a high level of certainty, if management controls can accurately limit catch, and if no reductions are necessary for EES factors, it is possible to set an OY very close to MSY. *See* § 600.310(e)(3)(iv). NMFS is keeping text at § 600.310(e)(3)(iii)(B)(*1*)–(*3*) under subparagraph (B), because subparagraph (B) clarifies the process for assessing and specifying OY based on EES factors. In order for the EES factors to be used to increase OY from MSY, a legislative change would be needed, as OY is defined based on MSY ''as reduced by any relevant economic, social, or ecological factor.'' 16 U.S.C. 1802 (33)(B). Finally, as stated in § 600.305(b)(1), trade-offs among EES factors are an expected component of fishery management objectives.

*Comment 28:* One commenter stated that the OY concept does not appear to consider subsistence uses for U.S. fisheries.

*Response:* NMFS disagrees. Subsistence fishing is explicitly mentioned in the list of potential social factors to be considered when specifying OY. *See* § 600.310(e)(3)(iii)(B)(*1*).

*Comment 29:* Commenters expressed concern that the guidelines provide too much room for interpretation of what might constitute an acceptable qualitative description of OY and requested additional technical guidance, as well as increased data collection efforts to increase the availability of quantitative data. Other commenters recommended restoring language that recommends OY should be considered quantitatively when possible and adding language recommending the use of proxies when quantitative, stock-specific information on EES factors is not available.

*Response:* As discussed in the proposed action, NMFS believes one impediment to Councils addressing EES factors when specifying OY is the perception that the Councils must quantify their analysis of these factors. *See* 80 FR 2792, January 20, 2015. Thus, NMFS clarified in the proposed revisions to the guidelines that a Council may provide a qualitative description of OY. NMFS clearly indicated that qualitatively describing OY is only acceptable when it is not possible to specify OY quantitatively. *See* § 600.310(e)(3)(iv)(A). NMFS believes that the guidelines provide sufficient guidance on what constitutes an acceptable qualitative description of OY. Section 600.310(e)(3)(iii) requires that an FMP assess and specify OY, and that the assessment include, among other things, an explanation of how the OY specification will produce the greatest benefits to the nation and prevent overfishing, consistent with the MSA and taking into consideration the EES factors relevant to the particular stock, stock complex, or fishery. Councils may specify OY based on MSY proxy values as provided under § 600.310(e)(3)(iv)(B)), and NMFS believes that when insufficient information is available to consider stock-specific EES factors, proxy values may be used if they are considered the best scientific information available. Finally, NMFS agrees that more quantitative data would improve OY specifications. *See e.g.,* 74 FR 3199, January 16, 2009 (addressing similar comments regarding data collection in response to comment 80 of 2009 NS1 guidelines).

*Comment 30:* NMFS received several comments on the revisions to § 600.310(e)(3)(iii) that clarify how Councils account for their OY specifications within their FMPs. Comments included recommendations to revise the guidelines to reflect that specification of OY is an MSA requirement, to add language to require the identification of all relevant EES factors considered in setting OY, and to articulate the influence of the factors on setting OY within FMPs. Another commenter expressed concern that the proposed changes would require Councils to ''document'' as opposed to ''summarize'' (as prescribed within the MSA) OY specifications within FMPs, creating a regulatory burden that may not be appropriate if the technical documentation spans many pages. The commenter suggested the guidelines be revised to allow documentation either in the FMP itself or within other documents such as environmental assessments or regulatory impact reviews. Another commenter recommended that the language be revised to acknowledge changing circumstances of not just targeted fish stocks, but other components of the ecosystem (*e.g.,* protected species) as well.

*Response:* In accordance with MSA section 303(a)(3), all FMPs must contain an assessment and specification of OY and summaries of the information utilized in making the specification. However, the MSA does not prescribe what types of information or factors should be taken into consideration. NMFS agrees that the proposed language may be interpreted as an additional requirement to provide a thorough technical documentation of OY specifications within an FMP. Thus, in the final action, NMFS has deleted references to documentation while retaining the requirement that OY specifications and assessments are adequately summarized within FMPs. NMFS believes that the section is worded broadly enough to encompass consideration of changes to other components of the ecosystem, such as protected species, in addition to targeted stocks.

*Comment 31:* NMFS received several comments regarding the definition of OY, including: Requests for clarification on the meaning of term ''near $B_{msy}$'' within the definition of OY and whether or not the term ''near'' implies maintaining the stock above MSST; and a request that the production of bait from our fishery resources be included within the definition of OY. Another

commenter recommended removing the definition of OY entirely.

*Response:* Achieving OY on a continuing basis is required under National Standard 1, thus, a definition of OY within the NS1 guidelines is appropriate and helpful. One of the characteristics used to describe OY in the guidelines is ''maintains the long-term average biomass near or above $B_{msy}$.'' *See* § 600.310(e)(3)(i)(B). The term ''near'' is used to emphasize, that while the biomass of a stock, stock complex, or fishery may be above or below the desired long-term average in any given year, a Council should rely on its SSC's advice to determine the level at which a stock's biomass is sufficiently ''near'' $B_{msy}$ to ensure the desired long-term average biomass can be achieved. With regards to whether the term ''near'' $B_{msy}$ implies maintaining a stock above MSST, NMFS notes that OY and MSST are not directly comparable. OY is a long term desired amount of yield (catch) from the fishery that corresponds to a desired level of long-term average biomass of a stock. MSST is a stock abundance reference point. If a stock's biomass is below its MSST, a stock is determined to be overfished and a rebuilding plan must be initiated to rebuild the stock from below its MSST to its $B_{msy.}$ In contrast, as stated above, the biomass of a stock may be above or below the desired long-term average in any given year, as long as the Council relies on its SSC's advice on whether the stock's biomass is sufficiently ''near'' $B_{msy}$. Additionally, NMFS believes that the definition of OY given within the guidelines is sufficiently broad to cover the production of bait and other considerations.

*Comment 32:* Some commenters supported the deletion and replacement of text on accounting for catch against OY (previously at § 600.310(e)(3)(v)(C)) with the addition of text on accounting for all sources of mortality (where practicable) in the SDC section (§ 600.310(e)(2)(ii)(C)). Other commenters stated that moving the text created inconsistent guidance and, because OY is defined in the MSA as an ''amount of fish,'' the only reasonable interpretation of the statute is to specify OY based on catch. Others requested additional guidance on catch accounting in general. Another commenter believed the change indicates that bycatch does not need to be measured or counted against OY, which the commenter characterized as the ''the total amount of catch permitted in a fishery.'' Other commenters believed that all sources of mortality must be accounted for when setting SDCs and thus, the proposed ''where practicable'' language should be removed and recommended changing ''should'' to ''must'' within § 600.310(e)(2)(ii)(C). One commenter did not believe that mortality resulting from scientific research should be included. Others recommended that the Councils must consider catch accounting when determining the status of the stock, setting catch levels, and determining OY.

*Response:* Section 600.310(e)(3)(v)(C) of the 2009 guidelines stated that all catch must be counted against OY, including that resulting from bycatch, scientific research, and all fishing activities. NMFS proposed deleting this text and inserting text on accounting for all sources of mortality (where practicable) in § 600.310(e)(2)(ii)(C) (SDC specification), because in practice, mortality (including fishing-related catch) is typically accounted for when evaluating stock status with respect to reference points. NMFS believes that accounting for all fishing activities while evaluating stock status with respect to reference points (*i.e.* ACLs) is more informative to managers. NMFS agrees that OY must be specified as an amount of fish and that, because stock status is based upon a consideration of all sources of fishing mortality, OY specifications (which include considerations of stock status) will be influenced by catch accounted for at the SDC level. NMFS disagrees with the comment that stated that § 600.310(e)(2)(ii)(C) indicates that bycatch does not need to be measured or counted against OY and that characterized OY as the total amount of catch permitted in a fishery. First, NMFS notes that the ''total amount of catch permitted in a fishery'' is an inaccurate characterization of OY, which is described within the guidelines as the long-term average amount of desired yield from a stock, stock complex, or fishery. *See* § 600.310(e)(3)(ii). Second, § 600.310(e)(2)(ii)(C) states that Councils should consider all sources of fishing mortality when evaluating stock status with respect to reference points, which will impact annual catch reference points and may influence OY specifications. NMFS believes that language in § 600.310(e)(2)(ii)(C) sufficiently explains that, where practicable, all sources of mortality should be accounted for; this would include fish that are retained for any purposes, mortality of fish that have been discarded, mortality of fish resulting from scientific research, and mortality from any other fishing activity. Further, NMFS believes that use of the term ''where practicable'' is appropriate, because as explained in the proposed rule preamble (*see* 80 FR 2793, January 20, 2015), the term recognizes that data on scientific research catch may not always be available. *See* response to comment 78 for further discussion of ''where practicable.'' Thus, NMFS believes that additional guidance on accounting for all sources of mortality (where practicable) in the SDC section (§ 600.310(e)(2)(ii)(C)) is not necessary within the guidelines.

*Carry-Over & Phase-In ABC Control Rules*

*Comment 33:* Many commenters supported including phase-in and/or carry-over provisions within ABC control rules (*see* § 600.310(f)(2)(ii) of proposed action), but requested that the guidelines specify explicit criteria to be considered within the comprehensive analysis required to use these provisions. Commenters expressed concerns that, without explicit technical guidance and criteria guiding Councils on how to use these provisions, phase-in and/or carry-over provisions would increase the risk of overfishing for some stocks. Commenters also requested that more research on the impacts of these approaches be conducted and that the guidelines clarify that the Councils should complete a comprehensive analysis each time one of the provisions is used. Other commenters requested clarification on the SSC's role in the decision-making process for phase-in/carry-over provisions. Finally, several commenters suggested that phase-in and carry-over provisions be addressed in the ACL setting process rather than in the ABC control rule.

*Response:* This action clarifies that all ABC control rules must be based on a comprehensive analysis that shows how the control rule prevents overfishing. *See* § 600.310(f)(2)(i) of this final action. This action also emphasizes that the comprehensive analysis of the ABC control rule includes examining—if there is a carry-over and/or phase-in provision in the ABC control rule—when the carry-over and phase-in provisions can and cannot be used and how those provisions prevent overfishing. *See* § 600.310(f)(2)(ii) of this final action. For instance, a Council may decide that, due to a stock's life history, characteristics, and/or other vulnerabilities, phase-in/carry-over provisions will not be used if the stock is under a rebuilding plan. NMFS does not believe that research is needed on phase-in and carry-over approaches before including them in the NS1 guidelines, but future research on both

approaches (*e.g.,* stock-specific best practices) would inform the best scientific information available for such control rules. As explained above, the guidelines require a comprehensive analysis, based on the best scientific information available and SSC advice, that phase-in or carry-over provisions will prevent overfishing. Given the above-described guidance, NMFS does not believe that further guidance and criteria for the comprehensive analysis of ABC control rules are necessary.

With regard to the SSC, the 2009 NS1 Guidelines explained that ''[t]he Council should use the advice of its science advisors in developing [the ABC] control rule,'' (*see* 74 FR 3178, 3192, January 16, 2009), and this final action continues to support that statement. The definition of ''control rule'' explicitly provides that a control rule is ''. . . established by the Council in consultation with its SSC.'' *See* § 600.310(f)(1)(iv). In addition, NMFS is re-inserting into § 600.310(f)(3) of this final action language from the 2009 guidelines that states that ''[t]he SSC must recommend the ABC to the Council.'' NMFS does not believe further clarification regarding the role of the SSC is needed.

Finally, NMFS disagrees that phase-in and carry-over provisions should be addressed through the ACL setting process, rather than ABC control rules. ACLs cannot exceed ABCs, and are the level of annual catch based on management uncertainty that serve as the basis for invoking AMs. In contrast, the ABC control rule is an established policy for establishing an ABC that accounts for scientific uncertainty in the OFL and for the Council's risk policy. NMFS believes that scientific uncertainty and the Council's risk policy are the two factors that are most relevant to the decision of whether to use phase-in and/or carry-over provisions. It should be noted that, carry-over can impact ACL specifications, as explained in response to comment 34 and in the final action. However, NMFS maintains that carry-over provisions are most appropriately addressed through ABC control rules that are based on scientific uncertainty and the Council's risk policy because carry-over ABC control rules instruct Councils on how to account for increased stock abundance resulting from the fishery harvesting less than the full ACL as well as articulate when the carry-over provision can and cannot be used and how it prevents overfishing.

*Comment 34:* Several comments were received related to the use of carry-over provisions. Some commenters expressed concern that carry-over provisions are not appropriate when a stock is overfished and/or in a rebuilding plan or when stock abundance is over-estimated. One commenter suggested that fisheries that are primarily prosecuted through recreational effort may not be appropriate candidates for carry-over provisions. One commenter stated a preference for lower, guaranteed carry-over amounts. Another commenter asked whether catch that is currently subject to a phase-in provision is eligible for use within a carry-over provision. Finally, one comment stated that the last sentence within proposed § 600.310(f)(2)(ii)(B) created confusion regarding how a carry-over provision could be used in cases where the ACL has been reduced from the ABC.

*Response:* NMFS agrees that, in addition to preventing overfishing, the Councils should consider the vulnerability of stocks that are overfished and/or in rebuilding plans when considering using a carry-over provision. NMFS has added in this final action that Councils should evaluate the appropriateness of carry-over provisions for stocks that are overfished and/or rebuilding. *See* § 600.310(f)(2)(ii)(B) of the final action. NMFS also agrees that the cause (*e.g.,* management inaccuracy or scientific uncertainty) for an ACL underage should be considered when using carry-over provisions. For instance, if a fishery is closed early in anticipation of an ACL exceedance but, once the data is finalized, the results show the fishery's ACL was never exceeded, carry-over provisions may be appropriate. In contrast, if managers believe that ACL underages are linked to low abundance and there is uncertainty in data collection, then carry-over provisions may not be appropriate. As such, NMFS has added additional clarifying language to § 600.310(f)(2)(ii)(B) of the final action.

Carry-over provisions are intended to allow the fishery to catch unused portions of the previous year's ACL while preventing overfishing. They may be appropriate if the ACL for the second year was established based on an analysis that assumes the full ACL for the first year is caught. If in reality the full ACL in year one is not caught, then more fish may be available in year two, and it may be appropriate to adjust the ACL in year two upwards. NMFS acknowledges that the wording in the last sentence of proposed § 600.310(f)(2)(ii)(B) may have caused confusion and clarifies within the final action on this section that carry-over provisions could allow an ACL to be adjusted upwards as long as the revised ACL does not exceed the specified ABC.

Regarding ''guaranteed carry-over provisions,'' the final action explains that a Council must articulate within its FMP when carry-over provisions of the control rule can and cannot be used and how the provision prevents overfishing, based on a comprehensive analysis. *See* § 600.310(f)(2)(ii) of final action. Finally, some portion of unused catch from ACLs that are currently subject to a phase-in provision could be carried over, as long as the Council demonstrates that overfishing will be prevented.

*Comment 35:* Commenters raised several questions about how to use carry-over provisions when new information leads the OFL and/or ABC to change. One commenter believed that, in order to ensure that carry-over provisions would not result in overfishing, the amount of allowed carry-over should be calculated based on the OFL from the first year (*i.e.,* the year of the ACL underage). However, another commenter believed that carry-over should not be allowed when new information is available that indicates a change in stock condition. Another commenter asked whether or not any further carry-over is justified if the catch in the second year equaled the original ACL, but fell below the revised ACL due to prior carry-over. Commenters also requested that the guidelines establish a naming convention for reference points associated with carry-over provisions.

*Response:* If new information results in a revised ABC, carry-over provisions can be used as long as overfishing is prevented and the approach used is consistent with the provisions established within the FMP. If a stock's current reference points (*e.g.,* ABC, ACL) were revised based on carry-over from the previous year and catch fell below the revised ACL, the Council may apply another carry-over provision for the next year. However, as is the case for all carry-over provisions, the resulting ABC recommended by the SSC must prevent overfishing, and must consider the scientific uncertainty associated with the Council's risk policy and take into account other considerations under § 600.310(f)(2)(ii)(B) of the final action. Finally, Councils may establish naming conventions for reference points associated with carry-over provisions at their discretion.

*Comment 36:* Several comments were received related to phase-in provisions. Commenters requested that the guidelines explicitly prohibit practices of using phase-in provisions to ''front-load'' high catch levels in the first year when increases are appropriate; or, delay decreases in catch levels for two years without taking any real action (*i.e.,*

back-loading). Commenters also expressed concern that phase-in provisions could be used to delay action when new information suggests the health of the fish population has changed. Two commenters stated that the phase-in provision was not worth the trouble of implementing because it can only apply to the difference between the OFL and ABC. One commenter asked how the phase-in tool is applicable to the interim measures under § 600.310(j)(4) of proposed action. One commenter asked if a Council could theoretically use the 2-year time period allowed to develop a rebuilding plan (16 U.S.C. 1854(e)(3)) in addition to a 3-year phase-in approach to delay reducing catches to at or below the ABC for 5 years. Two commenters expressed concern regarding how the use of phase-in would affect the evaluation of adequate progress within a rebuilding plan. 16 U.S.C. 1854(e)(7). Finally, one commenter felt that market impacts should not be considered when deciding whether to use phase-in provisions while another commenter requested that ecosystem factors be considered.

*Response:* NMFS believes that the guidelines address the ''front-loading'' and ''back-loading'' concern, and do not require further revision in this regard. As discussed in comment 33, the Councils are required to specify in the FMP, based on a comprehensive analysis, when a phase-in provision can and cannot be used, and how it prevents overfishing. The Councils must provide an adequate record that supports how each application of the phase-in provision is consistent with the FMP. Arbitrary ''front-loading'' or ''back-loading'' approaches will not satisfy these requirements. Furthermore, phase-in provisions cannot be used to allow for overfishing. NMFS has added language to the final action that explicitly states that the phased-in catch level cannot exceed the OFL in any year. See § 600.310(f)(2)(ii)(A) of the final action. In accordance with MSA section 304(e)(3), if a stock is determined to be undergoing overfishing, whether or not subject to a phase-in provision, new catch limits must be set to end overfishing immediately, unless MSA section 304(e)(6) is applied. Additionally, a Council may designate other indicators of stock health in its ABC control rule to be considered when applying a phase-in provision.

NMFS believes that there are benefits to using phase-in provisions, particularly for stocks with large degrees of scientific uncertainty (which accordingly should have large buffers between the OFL and ABC). Such stocks are most likely to experience a dramatic shift in reference points from one assessment to another, and thus, NMFS believes that phase-in provisions will give managers additional flexibility and increase stability within fisheries.

Section 600.310(j)(4) of the final action is based on MSA section 304(e)(6), which authorizes NMFS to take interim measures to reduce, but not necessarily end, overfishing during the development of an FMP or FMP amendment needed to rebuild overfished stocks. 16 U.S.C. 1854(e)(6) (authorizing interim measures for 180 days plus an additional 186 days). As such measures likely would deviate from the ABC control rule in an existing FMP, or from a new ABC control rule that is developed, the interim measures would not be included as part of any phase-in that might be adopted in an ABC control rule in a new FMP or FMP amendment.

The guidelines do not preclude a Council from considering the use of a phase-in provision for stocks under a rebuilding plan. However, in addition to preventing overfishing, the Councils should consider the vulnerability of stocks that are overfished and/or in rebuilding plans when considering using a phase-in provision. NMFS has added in this final action that Councils should evaluate the appropriateness of phase-in provisions for stocks that are overfished and/or rebuilding. See § 600.310(f)(2)(ii)(A) of the final action. A Council may determine that certain stocks subject to rebuilding plans are particularly vulnerable and should not have phase-in provisions within their ABC control rules. If a Council makes use of a phase-in provision, the provision must allow a stock to meet its specified timeframe for rebuilding (16 U.S.C. 1854(e)(4)). Thus, a rebuilding ABC must be set to reflect the amount of catch consistent with the designated fishing mortality rate (*i.e.,* $F_{rebuild}$) in the rebuilding plan. See § 600.310(f)(3)(ii). If a phase-in approach is used for a stock under a rebuilding plan, it would not impact the evaluation of whether the stock has made adequate progress toward rebuilding.

Finally, under § 600.310(f)(2)(ii)(A), a Council may consider the short-term effects of a phase-in ABC control rule on a fishing industry, as well as long-term ecosystem effects. NMFS believes that economic, social, and ecological trade-offs are all relevant considerations when determining an ABC control rule risk policy. The fact that these considerations are important in fishery management is reflected in the National Standards and other MSA provisions.

*Comment 37:* Several commenters offered suggestions for improvements to the phase-in provision. For example, one commenter suggested that NMFS consider alternative timeframes for using a phase-in ABC control rule based on the life history characteristics of the stock. Another commenter recommended NMFS replace the phase-in provision with a provision allowing, in the case of stocks subject to overfishing, the phase-in of catch levels below the OFL to end overfishing. Other commenters recommended that NMFS limit the use of the phase-in provision to the ''slow up/full down'' approach described in the preamble to the proposed rule. *See* 80 FR 2794, January 20, 2015. One commenter suggested that having frequent stock assessments would eliminate the need for phase-in provisions. Finally, another commenter suggested revising the guidelines to explicitly state that phase-in provisions apply to both increases and decreases in catch limits.

*Response:* NMFS limited the use of the phase-in provision to three years (instead of a stock-specific time period based on life history) because a shorter time frame may not be that helpful in stabilizing catches, while a longer time frame that spans multiple stock assessments may prevent necessary changes to catch levels from occurring in a timely manner. *See* 80 FR 2792, 2794, January 20, 2015 (referring to explanation in Section IX of proposed action preamble that many stocks are assessed every 1, 2 or 3 years). A three year time period is enough time to smooth out dramatic changes in annual catch levels while avoiding delays to address needed changes in catch levels. *See* 80 FR 2794, January 20, 2015. Additionally, NMFS believes it is more appropriate to base the allowable time period for phase-in provisions on the flow of new information, rather than the stock's life history characteristics because phase-in provisions are used to mediate management responses to new information.

The OFL is the threshold above which a stock is determined to be subject to overfishing. Thus, NMFS does not believe that phasing-in changes to the OFL is appropriate, given that any catch level above the OFL would subject the stock to overfishing and the MSA requires preventing overfishing. While NMFS supports the use of the ''slow up/full down'' approach as an appropriate option to consider for phase-in provisions, NMFS believes that the Councils should have the flexibility to design their own phase-in provisions, based on a comprehensive analysis that prevents overfishing.

NMFS agrees that having frequent stock assessments may reduce the need for phase-in provisions. However, the phase-in provision will address the current levels of uncertainty and accommodate reduced uncertainty in the future, as improvements in the stock assessment process are made. Finally, NMFS does not believe that revisions are needed to the language on phase-in provisions to explicitly refer to increases and decreases in catch levels. The text refers generally to ''changes to ABC,'' thus allowing for potential application of phase-in provisions in both directions.

*ABC Control Rules—Risk Policy and Role of SSC*

*Comment 38:* NMFS received several comments regarding a Council's risk policy for ABC control rules. Several commenters requested that the guidelines define risk policies, require their use, and provide more specific and transparent technical guidance on establishing risk policies. Commenters also expressed concern that the term ''at least 50 percent'' within § 600.310(f)(2)(i) of the proposed action could be interpreted as a recommendation of the level of acceptable probability that overfishing will be prevented, rather than a lower bound and sought additional guidance on how much overfishing risk is prudent and legal. Other commenters recommended that the agency formally evaluate risk policies; that ABC control rules must lower fishing mortality as stock size declines (not just consider doing so); and that risk policies only consider biological and ecological factors. One commenter also opposed risk policies that utilize the ''P* approach'' to set buffers that account for scientific uncertainty, stating the approach provides a mechanism for Councils to ''reverse engineer'' their risk policies to obtain desirable catch levels.

*Response:* NMFS believes sufficient guidance is given within the NS1 guidelines to allow Councils to establish well-documented ABC control rules and risk policies, as supported by a comprehensive analysis (*see* response to comment 33). NMFS strongly recommends the use of risk policies in order to properly establish measures (*i.e.,* ABCs) that are consistent with the dual mandates of NS1 (preventing overfishing while achieving, on a continuing basis, OY) and other MSA provisions. As described in the preamble to the final 2009 NS1 Guidelines, a 50 percent probability that the catch equal to the stock's ABC will not result in overfishing is a lower bound, not a default value. *See* response to comment 63, 74 FR 3195–96, January 16, 2009. ABC control rules that are more risk adverse may be prudent, depending on the OY considerations (*i.e.* ecological, economic, and social trade-offs) that a Council may consider. *See* § 600.310(f)(4)(iv) of final action.

The Secretary reviews ABC control rules and the Council's risk policy when conducting its review of FMPs or FMP amendments, as required under MSA section 304(a). A risk policy for ABC control rules is a policy decision made by the Council, based on the fishery management objectives (ecological, economic, and social) identified within the FMP. NMFS believes that social and economic factors, as well as biological and ecological ones, are relevant when developing risk policies in light of a Council's fishery management objectives. The fact that these considerations are important in fishery management is reflected in the National Standards and other MSA provisions.

While the guidelines recommend Councils consider reducing fishing mortality as stock size declines below $B_{msy}$ and as scientific uncertainty increases, that action may not be appropriate in every case. Finally, as described in § 600.310(f)(2)(i) and discussed in comment 40, the SSC applies the Council's ABC control rule and risk policy (which are established within its FMP) when recommending an ABC to the Council. Thus, the guidelines are clear that risk policies are established within FMPs and are not capable of being modified to attain a desirable ABC recommendation for a single year.

*Comment 39:* Several commenters supported the addition of definitions for scientific and management uncertainty. *See* § 600.310(f)(1)(v)–(vi) of proposed action. In addition, NMFS received several comments requesting additional guidance on how to set appropriate, transparent, and quantifiable scientific and management uncertainty buffers to reduce the risk of overfishing and/or achieve OY. Some commenters recommended that the guidelines require all sources of scientific and management uncertainty be described and considered. Some commenters requested the guidelines require scientific uncertainty buffers to account for uncertainty in the relationship between environmental factors (including protected resources) and stock biomass, while others expressed that accounting for those types of uncertainty is overly precautionary. Commenters also requested the guidelines: Clarify the definition of ABC; cross-reference the definitions of scientific and management uncertainty throughout § 600.310(f); and require proxies to be used to account for types of uncertainty that are known to exist but not typically accounted for in standard error values.

*Response:* NMFS believes that § 600.310(f) of the final action provides sufficient guidance to the Councils on appropriately accounting for scientific and management uncertainty to meet the requirements of NS1 while providing Councils with adequate flexibility to address the particular levels of uncertainty for their stocks. While all sources of scientific and management uncertainty should be considered, NMFS acknowledges that consideration and quantification of uncertainty is limited by data availability. As stated in § 600.310(f)(1)(vi), uncertainty regarding the relationship between environmental factors (including protected resources) and stock biomass can be accounted for through the consideration of ''longer-term uncertainties due to potential ecosystem and environmental effects.'' Potential sources of scientific and management uncertainty are listed in § 600.310(f)(1)(v) and (vi) of the final action. The extent to which those sources of uncertainty are considered is at the discretion of the Council, thus NMFS believes the guidelines are not overly prescriptive or overly precautionary.

Furthermore, the definitions for ABC, scientific uncertainty, and management uncertainty are clearly established within the guidelines and do not need to be cross-referenced. Finally, the guidelines clearly state that when scientific uncertainty cannot be directly calculated, a proxy for uncertainty itself should be established based on the best scientific information available. *See* § 600.310(f)(2)(ii).

*Comment 40:* NMFS received several comments expressing concern that proposed revisions to § 610.310(f) will minimize the SSC's role in setting the ABC and ABC control rules. Commenters stated that the proposed definition of ''control rule,'' in combination with the deletion of the phrases ''The SSC must recommend the ABC to the Council'' and ''based on scientific advice from its SSC'' from § 600.310(f)(3) of the proposed action will weaken the requirement that Councils cannot exceed the SSC's fishing level recommendations and are inconsistent with NS2. Commenters recommended restoring the existing language related to the SSC's role in setting ABCs and ABC control rules, revising the definition of ''control rule,'' and adding additional plain language guidance on the relationship between

the SSC and the ABC, as well as other parts of the ACL framework. Another commenter requested clarification on whether an SSC can recommend an ABC that exceeds the catch that results from the application of the control rule.

*Response:* As discussed in the 2009 final action (*see* 74 FR 3181, January 16, 2009), the statute is clear that the SSC is required to recommend the ABC to the Council. 16 U.S.C. 302(g)(1)(B), 302(h)(6). However, NMFS agrees that this statutory requirement should be clearly stated within the NS1 guidelines and NMFS has re-instated the phrase ''The SSC must recommend the ABC to the Council'' within § 600.310(f)(3) of the final action. The role of the SSC in the establishment of ABC control rules is accurately described within § 600.310(f)(1)(iv), and the guidelines clearly emphasize using the best scientific information available (NS2) in the specification of the ABC within § 600.310(f)(3). Thus, NMFS believes the NS1 guidelines provide sufficient guidance on the role of the SSC within the ABC-setting process. Finally, the SSC may recommend an ABC that differs from the result of the application of the ABC control rule, based on factors such as data uncertainty, recruitment variability, declining trends in population variables, and other factors. However, if a different value is recommended, the SSC must provide a well-documented and adequate record for the deviation.

*Comment 41:* NMFS received requests for additional plain-language descriptions of the relationships between ABC, ACL, and OFL. One commenter recommended clarifying that ABC and ACL should be set in terms of catch, rather than landings.

*Response:* The relationships between ABC, ACL, and OFL were clearly described in the 2009 action. *See* 74 FR 3180, January 16, 2009. NMFS agrees that, wherever practical in the management context, ABC and ACL should be set in terms of catch, rather than landings. However, there are fisheries for which data on bycatch (discards) is not available in the same time-frame as data on landed catch. In these cases, Councils may express an ABC (and, correspondingly, ACL) in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC. *See* § 600.310(f)(3)(i).

*Accountability Measures*

*Comment 42:* One commenter suggested adding ''or functional equivalent'' to the discussion of annual catch targets (ACTs) in § 600.310(f)(4)(i) and § 600.310(g)(4).

*Response:* NMFS agrees and has included the suggested language in § 600.310(f)(4)(i) of the final action and the phrase ''or the functional equivalent'' in § 600.310(g)(4) of the final action.

*Comment 43:* NMFS received many comments on the relationship between ACLs and AMs. Some commenters requested the guidelines recommend applying AMs with increasing severity as catch overages approach the OFL while others emphasized that Councils should be given deference in deciding how to implement AMs. Other comments included: Suggested revisions to require AMs to prevent overfishing (as opposed to preventing ACL overages); confusion regarding how to implement AMs based on multi-year averaging; recommendations to encourage the use of overage adjustments to counter the biological consequences of ACL overages; recommendations to require overage adjustments for rebuilding stocks unless the overage is due to higher than expected recruitment and abundance; and recommendations that the guidelines include examples of SDCs and AMs that address habitat-based criteria. Finally, one commenter suggested that in cases where an ACL is exceeded due to higher than expected recruitment, the corresponding ABC should be revised based on the higher observed recruitment and ACLs should be reset accordingly.

*Response:* AMs are management controls to prevent ACLs from being exceeded and to correct or mitigate overages of the ACL if they occur. The proposed action did not make any substantive changes to the guidance on the relationship between AMs and ACLs. Based on experience in implementing §§ 600.310(f)(4); 600.310(g), and after taking into consideration public comments, NMFS does not believe that any further revisions to the guidelines are required. As discussed in the 2009 final action, the decision of how to establish and implement AMs for each fishery is at the discretion of the Council. Also as discussed in the 2009 final action, NMFS interprets the MSA as requiring AMs to prevent the ACL from being exceeded (as opposed to preventing the ABC or OFL from being exceeded). *See e.g.,* response to comment 59, 74 FR 3194, January 16, 2009 (addressing similar comments). Consistent with that, NMFS recommends that, whenever possible, Councils establish AMs that allow in-season monitoring and adjustment to the management of the fishery. Section 600.310(g)(5) of the final action allows Councils, in cases where fisheries lack timely and/or consistent data, to establish AMs based on comparisons of average catch to average ACL. *See e.g.,* response to comment 65, 74 FR 3196, January 16, 2009 (addressing similar comments).

The guidelines clearly state within § 600.310(g)(3) that biological consequences on the status of the stock (*i.e.,* its ability to produce MSY or achieve rebuilding goals) must be accounted for when designing and implementing AMs. While NMFS encourages Councils to use overage paybacks when appropriate to compensate for ACL overages, NMFS believes that Councils should design and implement AMs based on the particular conditions and needs of the fishery. In addition, AMs are controls to prevent ACLs from being exceeded, and do not consider non-fishing factors that affect stock health, such as habitat-based criteria. Such considerations should be accounted for in OY specifications. Finally, as described in the preamble to the proposed action, a Council may consider if higher than expected recruitment played a role in catches exceeding the ACL when deciding on the appropriate AM to implement. *See* 80 FR 2795, January 20, 2015. The ABC is not a type of inseason AM and may not be revised during a fishing season based on catches that exceed the ACL. Nevertheless, data showing higher than expected recruitment may be accounted for by a Council's SSC when specifying the ABC for subsequent fishing seasons based on the Council's ABC control rule.

*Comment 44:* One comment suggested that NMFS, as opposed to the Councils, should be responsible for inseason management. The commenter also expressed concern that § 600.310(g)(3) expands the purpose of AMs into a punishment for overages by requiring an automatic reduction of ACLs in the case of overages. The commenter asked whether the provision provides a similar exception for stocks that are not in rebuilding plans as stocks that are in rebuilding plans.

*Response:* Councils must establish appropriate AMs within their FMPs, which are subject to review and approval by NMFS. 16 U.S.C. 1853 (a)(15); 1854(a). Based on the AMs established by a Council's FMP, NMFS may have implementation responsibilities. For example, NMFS may provide data to the Councils in support of inseason monitoring and adjustment for each fishery, as well as implement any necessary inseason AMs (*e.g.,* fishery closures) should certain

conditions be met. Furthermore, if an ACL is exceeded, the existing guidelines do not require that the ACL be automatically reduced in the following year. The guidelines explain that Councils may determine the most appropriate AM to use in response to an ACL overage based on a variety of factors. While NMFS strongly recommends that full overage adjustments should be applied to stocks in rebuilding plans (due to their increased vulnerability), the guidelines acknowledge that there may be cases where the best scientific information available shows that a reduced overage adjustment (or no adjustment) is needed to mitigate the effects of overages for a rebuilding stock. Such cases are expected to be rare. Councils have the flexibility to determine the most appropriate AM for stocks. Because overage adjustments are not required for stocks that are not in rebuilding plans, it is not necessary to add additional exceptions into the guidelines. *See* § 600.310(g)(3). Section 600.310(g)(3) was adopted in the 2009 NS1 Guidelines, and this action did not propose any revisions to the text. Based on experience in implementing § 600.310(g)(3), and after taking into consideration public comments, NMFS does not believe that further revisions to the section are required.

*Comment 45:* One commenter asserted that § 600.310(g)(6) of the proposed action, which states that fisheries that have harvest in state or Federal waters must have AMs for the portion of the fishery in Federal waters, is in conflict with § 600.310(g)(1), which states that AMs must prevent the ACL from being exceeded.

*Response:* Federal management authority is limited to the portion of the fishery under Federal jurisdiction. Therefore, the 2009 NS1 guidelines only require AMs for the Federal fishery, and this approach is unchanged in this final action. NMFS continues to strongly recommend collaboration with state managers (and other applicable managers) to develop ACLs and AMs that prevent overfishing of the stock as a whole. *See e.g.,* response to comment 71, 74 FR 3197, January 16, 2009 (addressing similar comments).

*Comment 46:* NMFS received many comments on the proposed revision within § 600.310(g)(3) that clarifies that no additional AMs are necessary for stocks whose ACL is zero and the AM for the fishery is a closure. Commenters expressed concern that stocks with ACLs equal to zero are particularly vulnerable and the provision could be construed to exempt a Council from implementing adequate AMs that prevent the ACL from being exceeded as well as exempt the fishery from the requirements of NS9 and NS1 guidelines catch accounting requirements (§ 600.310(e)(2)(ii)(C)). Commenters also stated that the provision is in conflict with the decision in *Oceana* v. *Locke,* 831 F. Supp. 2d 95 (D.D.C. 2011). Finally, commenters requested additional clarification on the meaning of the term ''small'' within the phrase ''only small amounts of catch or bycatch'' within § 600.310(g)(3).

*Response:* The final action retains the clarification within § 600.310(g)(3) that, if an ACL is set equal to zero and the AM for the fishery is a closure of the fishery, additional AMs are not required if (1) only small amounts of catch or bycatch occur, and (2) that catch or bycatch is unlikely to result in overfishing. The provision is an optional tool that will only apply to a limited set of cases where there is no way to account for the small amounts of bycatch occurring and, therefore, it is not pragmatic to establish AMs to try to account for such small amounts of bycatch that are unlikely to result in overfishing. In order to utilize this provision, Councils must provide a well-documented record supporting that the stock meets both of the above-mentioned criteria. Additional AMs are not required when the catch or bycatch is unlikely to result in overfishing and is at such a low level that it is not practicable to require additional AMs. *See* response to comment 78 for further discussion of the term ''practicable''.

NMFS disagrees that the provision is contrary to § 600.310(e)(2)(ii)(C) of the NS1 guidelines or NS9. Section 600.310(e)(2)(ii)(C) provides for accounting for all sources of mortality ''where practicable,'' when evaluating stock status with respect to reference points. *See* response to comments 32 and 78 for further discussion of that section and the term ''practicable.'' NS9 is a separate statutory requirement (16 U.S.C. 1851(a)(9)) from the ACL/AM requirement (16 U.S.C. 1853(a)(15)), and in any event, NS9 requires that measures, ''to the extent practicable,'' minimize bycatch and bycatch mortality. 16 U.S.C. 1851(a)(9).

NMFS also disagrees that the provision conflicts with *Oceana* v. *Locke.* In that decision, the court held that when sector-specific sub-ACLs are established, sector-specific sub-AMs may be necessary. The court found that NMFS could not demonstrate that overfishing would be prevented when there were no sub-AMs specified that could address overages of specified sub-ACLs. Sector-ACLs are not required under the NS1 guidelines. However, as explained in the response to comment 80, § 600.310(f)(4)(ii) now provides that, if sector-ACLs are used, then sector-AMs should also be specified. That section emphasizes that ''ACLs in coordination with AMs must prevent overfishing.'' *See* § 600.310(f)(4)(i). Section 600.310(g)(3) reinforces the requirement to prevent overfishing by clarifying that, in cases where an ACL is set equal to zero and the AM for the fishery is a closure, additional AMs are not required if catch or bycatch is unlikely to result in overfishing. Thus, the approach under § 600.310(g)(3) is consistent with *Oceana* v. *Locke.*

*Comment 47:* NMFS received several suggestions to modify the language in both § 600.310(f)(4)(i) and § 600.310(g)(4). Comments included: The agency should be required to provide catch data within 60 days of the end of the fishing year; revise the use of the word ''should'' from the description of in-season AMs; replace ''for the next year'' with ''as soon as possible'' within § 600.310(f)(4)(i); and repeat that management uncertainty should be accounted for at the ACL level if an ACT is not used in § 600.310(g)(4). Finally, while some commenters requested that the guidelines clarify that sector-AMs should be applied when sector-ACLs are used, others opposed sector-ACLs and AMs and recommended that the guidelines replace ''sector-AMs should also be specified'' with ''sector-AMs may also be specified.''

*Response:* First, while NMFS aims to provide catch data to the Councils as soon as possible, a specific deadline to provide catch data for all fisheries is not realistic, given the various mitigating circumstances that arise. As discussed within § 600.310(g)(2), Councils should plan to make appropriate use of preliminary data, if needed to implement inseason AMs. Second, while NMFS strongly recommends the use of inseason AMs, NMFS is not requiring them to be used (*i.e.,* not changing ''should'' to a ''must'' in the description of inseason AMs), because inseason AMs are not a statutory requirement, and NMFS believes that Councils should have discretion to consider different types of AMs. Third, ACLs are set on an annual basis and, because AMs are management measures to help prevent fisheries from exceeding ACLs, AMs should be applied on an annual basis as well. Lastly, NMFS believes that the guidance adopted in the 2009 NS1 Guidelines regarding accounting for management uncertainty within the ACL-setting process and using sector-AMs is sufficient. After considering public comments, NMFS

has determined that no additional guidance on these topics is necessary in the NS1 guidelines.

*ACL & AM Mechanisms—Life Cycle Exemption*

*Comment 48:* Several comments were received regarding NMFS' proposal to revise the life cycle exception to apply to ''a stock for which the average age of spawners in the population is approximately 1 year or less.'' *See* § 600.310(h)(1)(i) of proposed action. Some commenters felt this modification to the exception was still too restrictive. One commenter proposed that the exception should apply to stocks for which the average age of spawners is 2 or 3 years. Others felt the exception was not restrictive enough. One commenter said that the life cycle exception should only apply to an ''unfished population.'' They expressed concern that excessive fishing could truncate the life cycle of the stock to the point that it qualifies for the exception. Another recommended expanding the life cycle exception in the MSA to include species with life cycles of 1–2 years but then limiting it to those species that also experience a rate of natural mortality that far exceeds the effects of fishing mortality. Finally, one commenter asked for more guidance on how to apply the exception.

*Response:* The MSA provides a statutory exception to the requirements for ACLs and AMs for ''a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species.'' 16 U.S.C. 1853 note (Pub. L. 109–479 104(b)). The 2009 NS1 guidelines explained that this statutory exemption applies to a stock for which the average length of time it takes for an individual to produce a reproductively active offspring is approximately 1 year and that the individual has only one breeding season in its lifetime. *See* 74 FR 3210, January 16, 2009. In this action, NMFS is revising the exception to apply to ''a stock for which the average age of spawners in the population is approximately 1 year or less,'' as this is a more scientifically correct description of a species that has a life cycle of approximately 1 year. As explained in the preamble to the proposed action, NMFS believes that the 2009 NS1 guidelines' reference to one breeding season in a lifetime was overly restrictive, because some short lived species have multiple breeding cycles in a lifetime. NMFS cannot change the reference to 1 year in the NS1 guidelines, because that is based on the statutory text for the exception, which is quoted above.

NMFS does not agree with limiting the exception to ''unfished populations'' or to stocks that experience a rate of natural mortality that far exceeds the effects of fishing morality. The exception itself does not include these limitations, and NMFS does not believe that they are necessary, given that the exception will not apply if ''the Secretary has determined the fishery is subject to overfishing of that species.'' 16 U.S.C. 1853 note.

NMFS continues to believe that the National Standard 1 guidelines should not include overly prescriptive guidance as to which stocks meet the criteria for the exception; this is a decision that is best made by the Councils, subject to Secretarial review and approval under MSA section 304(a). To the extent that questions arise as to the application of the exemption, NMFS will provide case-specific guidance to the Councils as necessary.

*ACL & AM Mechanisms—Flexibility in Application of NS1 Guidelines*

*Comment 49:* Some commenters expressed support for the proposal to add additional examples of circumstances that might call for flexibility in the application of the NS1 guidelines. *See* § 600.310(h)(2) of proposed action. Others felt that the proposal could be improved. For instance, one commenter felt that the Pacific salmon example in the proposed action mischaracterizes the spawning potential of Pacific salmon. The commenter recommended keeping the original language or inserting the phrase ''of each run'' after ''potential.'' Another commenter suggested relocating the provision to make it clear that it applies to the complete set of NS1 guidelines and is not limited to only flexibility in establishing ACL mechanisms and AMs in FMPs.

*Response:* NMFS agrees with the commenter about the proposed language regarding Pacific salmon spawning potential, thus the sentence in this final action reverts back to as it was written in the 2009 NS1 guidelines: ''(*e.g.,* Pacific salmon, where the spawning potential for a stock is spread over a multi-year period).''

NMFS disagrees with the suggestion to relocate the flexibility provision in § 600.310(h)(2). NMFS believes the guidance in § 600.310(h)(2) is clear and that further revision is not necessary. Section § 600.310(h)(2) is meant to only provide flexibility in establishing ACLs and AMs. The revisions to § 600.310(h)(2) were not meant to expand what it applies to but rather to connect the proposed change in § 600.310(e)(2)(ii) to the requirement to specify ACLs and AMs because a Council specifying SDC in a manner that deviates from the standard NS1 guidelines approach will also likely need to deviate from the standard approach to setting ACLs and AMs.

*Calculating $T_{max}$*

*Comment 50:* NMFS received many comments supporting the inclusion of two additional methods to calculate $T_{max}$ within the NS1 guidelines. Other commenters expressed concern that providing additional options for calculating $T_{max}$ would incentivize Councils to merely pick the longest $T_{max}$, which would result in a rebuilding plan that is ineffective and/or fails to meet the statutory requirement that rebuilding plans rebuild a stock in as short a time as possible. Similarly, many commenters sought additional guidance from NMFS as to how to pick between the three different $T_{max}$ calculations. Several commenters also requested additional technical guidance on whether factors discussed in § 600.310(j)(3)(i) can be used to justify the method used for calculating $T_{max}$, and additional guidance on the preferred methodology to calculate mean generation time. Several commenters provided suggestions to either improve the proposed $T_{max}$ calculation methods or include other alternate $T_{max}$ calculation methods within the guidelines. Commenters also recommended that the guidelines encourage setting $T_{target}$ as close to $T_{min}$ as possible and encourage the use of management measures that adhere to $T_{target}$ as opposed to $T_{max}$.

*Response:* As the preamble to the proposed rule discussed, while NMFS does not anticipate that the proposed alternative approaches to calculate $T_{max}$ will produce drastically different values, NMFS has added these methods to give Councils the flexibility to calculate $T_{max}$ in light of variable information and data availability. *See* 80 FR 2795–96, January 20, 2015. NMFS expects these additional methods will help Councils avoid using overly conservative or exaggerated $T_{max}$ values in cases where there is a lack of available data to calculate mean generation time as required under the only available approach under the previous guidelines (*i.e.,* $T_{min}$ plus one mean generation time). However, NMFS revised the final action to provide additional guidance on decisions regarding which $T_{max}$ calculation method to use. NMFS emphasized that, in cases where $T_{min}$ exceeds 10 years, $T_{max}$ is a biological calculation. Because $T_{max}$ is a biological calculation, the calculation methods provided in the

guidelines do not include other factors such as those outlined in § 600.310(j)(3)(i). NMFS also clarified in the final action that the determination of which $T_{max}$ calculation method to use should be made by the Councils in consultation with their SSCs (or agency scientists or peer review processes in the case of Secretarial actions) and should be based on the best scientific information available. *See* § 600.310(j)(3)(i)(B)(*3*).To this end, NMFS has also added language to the final action emphasizing that a Council and its SSC should consider the relevant biological data and scientific uncertainty of that data when deciding which calculation method to use. Finally, NMFS also provided examples of cases where, given data availability and the life history characteristics of a stock, one of the alternative methods may be more appropriate than the status quo calculation method ($T_{min}$ plus one mean generation time).

As noted in the 2009 final action, $T_{max}$ is an upper bound on the duration of rebuilding time periods and is a limit that should be avoided. *See* 74 FR 3200, January 16, 2009. When developing and implementing an effective rebuilding plan, Councils must determine $T_{target,}$ which is the shortest rebuilding time period possible based on the factors in § 600.310(j)(3)(i). Thus, Councils must demonstrate that their adopted $T_{target}$ is the shortest time possible for rebuilding and Council action addressing an overfished fishery should be based on $T_{target}$ (16 U.S.C. 1854(e)(4)(A); *NRDC* v. *NMFS,* 421 F.3d 872, 882 (9th Cir. 2005)). NMFS believes the methods given for $T_{max}$ calculations in the final guidelines are sufficient to produce appropriate $T_{max}$ values and there is no need for additional guidance within the NS1 guidelines.

Finally, NMFS has already developed technical guidance on calculating mean generation time for use in rebuilding plans, which includes a definition for mean generation time (Restrepo et al., 1998). NMFS believes this technical guidance document is sufficient and does not believe an exact method should be specified in the NS1 guidance.

*Comment 51:* NMFS received several comments on the requirement within MSA section 304(e)(4)(A)(ii) to specify a time period for rebuilding overfished stocks that does not exceed 10 years (henceforth referred to as the ''10 year rebuilding requirement''). Comments reflected disappointment that the proposed changes to the guidelines do not address the issue of ''discontinuity'' among rebuilding plans: Where Councils with stocks that have a $T_{min}$ greater than 10 years are able to adopt rebuilding plans significantly longer than 10 years while stocks with a $T_{min}$ of 10 years or less are required to rebuild within 10 years. Comments included suggestions to remove the 10 year rebuilding requirement and replace it with alternative rebuilding requirements. Another commenter suggested that socio-economic considerations should be included when assessing a stock's ability to rebuild in 10 years. One commenter recommended revising the language in § 600.310(j)(3)(i)(B)(*1*) to clarify that, because fishing mortality cannot be guaranteed to equal zero, the 10 year rebuilding requirement should apply to stocks with a $T_{min}$ of less than 10 years, rather than less than or equal to 10 years. Finally, other commenters suggested legislative action to modify the 10 year rebuilding requirement within the MSA.

*Response:* While NMFS acknowledges that the 10 year requirement under MSA section 304(e)(4)(A)(ii) can lead to disparate outcomes for different stocks, action by Congress would be required to change that statutory requirement. *See* 74 FR 3200–01, January 16, 2009. Under the 2009 NS1 Guidelines and this action, NMFS does not include socio-economic considerations with regard to the 10 year rebuilding requirement, because MSA section 304(e)(4)(A)(ii) does not provide for this. 16 U.S.C. 1854(e)(4)(A)(i) and (ii) (requiring under (ii) that rebuilding period not exceed 10 years, except under certain circumstances which do not include socio-economic considerations, but providing under (i) that ''needs of fishing communities'' may be considered when determining if period is as short as possible). NMFS reiterated in the 2009 final NS1 Guidelines that the needs of fishing communities are not part of the criteria for determining whether a rebuilding period can or cannot exceed 10 years, but are an important factor in establishing $T_{target}$. *See* 74 FR 3200, January 16, 2009.

Finally, NMFS acknowledges that hypothetically, there could be a situation where $T_{min}$ for a stock is equal to 10 years and $T_{max}$ is equal to 10 years, in which case a fishery may need to be closed in order to meet the 10 year rebuilding requirement. However, a Federally-managed stock has yet to be determined to be overfished and present the aforementioned situation, and NMFS believes such an extreme situation is unlikely.

*Comment 52:* Some commenters regarded the proposed language in § 600.310(j)(3)(i)(A), which clarifies that the starting year for the $T_{min}$ calculation should be the first year the rebuilding plan is implemented, as a loophole that encourages Councils to delay the implementation of a rebuilding plan and set the starting date for $T_{min}$ later than is appropriate. One commenter recommended re-instating ''whichever is sooner'' in subsection § 600.310(j)(3)(i)(B) of the existing guidelines in addition to retaining the proposed ''expected to be'' language.

*Response:* NMFS disagrees that guidance on the starting year for the calculation of $T_{min}$ creates an incentive to delay implementation of rebuilding plans. MSA section 304(e)(3) requires that following notification that a fishery is overfished or approaching a condition of being overfished, a Council prepare and implement an FMP, FMP amendment, or proposed regulations within 2 years. This provision does not require that the starting year for a reference point for rebuilding plans (*i.e.,* $T_{min}$) be set prior to the first year the rebuilding plan is expected to be implemented. Because MSA section 304(e)(4) addresses reference points in the context of the rebuilding measures that the Council will be adopting, NMFS believes that the starting year reference point should be the same year as the implementation of those measures. Additionally, the MSA required that, by fishing year 2010/2011, FMPs establish mechanisms to specify ACLs to prevent overfishing, which means that during the period of rebuilding plan development, ACLs will be in place that end overfishing. Therefore, catch of stocks in poor shape (*i.e.,* overfished stocks undergoing overfishing) will be constrained immediately in order to end overfishing, regardless of when the rebuilding plan is implemented.

*Adequate Progress & Extending Rebuilding Timelines*

*Comment 53:* While NMFS received some comments in support of the proposed guidance on adequate progress determinations, some comments opposed the proposed changes and expressed that they are unnecessary, ineffective, and likely to decrease the odds of a stock being rebuilt. Many commenters expressed concern that the proposed criteria for adequate progress determinations in § 600.310(j)(3)(iv) of the proposed action were too vague, required additional guidance, and would allow stock biomass levels to be ignored. Many commenters emphasized that the criteria for adequate progress determinations should include some consideration of biomass trends to help identify when changing conditions render original $F_{rebuild}$ and/or biomass targets no longer appropriate. NMFS

also received many suggestions on how to significantly modify the guidance on adequate progress determinations.

*Response:* While NMFS agrees that a stock's biomass is a relevant factor when making adequate progress determinations, NMFS also emphasizes that there is a strong relationship between $F_{rebuild}$ and biomass trends. Stocks that consistently experience fishing mortality above $F_{rebuild}$ generally experience declining or little increases in biomass, while stocks that consistently experience fishing mortality equal to or below $F_{rebuild}$ generally experience increasing biomass. NMFS plans to work with Councils to actively review available biomass estimates for stocks in rebuilding plans and monitor whether rebuilding stocks are experiencing the expected relationship between $F_{rebuild}$ and biomass. Cases where a stock's biomass is not increasing, despite catch levels being maintained at or below $F_{rebuild}$ would be unexpected. Such cases would likely trigger the second criteria listed in § 600.310(j)(3)(iv) (*i.e.,* new and unexpected information has significantly changed the rebuilding expectations of the stock). *See* 80 FR 2796, January 20, 2015. Thus, NMFS is confident that the criteria for adequate progress determinations (see § 600.310(j)(3)(iv) of the final action) address and cover situations where a rebuilding plan fails to properly constrain fishing mortality rates as well as situations where a rebuilding stock's biomass is failing to increase. NMFS believes that further prescriptive guidance on adequate progress determinations is not needed in the NS1 guidelines.

*Comment 54:* Some commenters opposed § 600.310(j)(3)(v) of the proposed action. Commenters felt it would allow the same rebuilding parameters to be used for an indefinite period of time past the original rebuilding timeframes as long as adequate progress is not found. Commenters stated that the provision is a ''set it and forget it'' policy that gives no incentive to revisit a stock's $F_{rebuild}$ even if $F_{rebuild}$ was initially overestimated and/or the stock's biomass is not making progress toward reaching $B_{msy}$ due to environmental stressors or other factors. Commenters recommended several revisions that encourage Councils to periodically assess whether their rebuilding plan parameters are adequate to rebuild the stock in the length of time mandated by Congress.

*Response:* As highlighted in the National Research Council report on rebuilding (NRC 2013), the primary objective of a rebuilding plan should be to maintain fishing mortality at or below $F_{rebuild.}$ By doing so, managers can avoid issues with updating timelines that are based on biomass milestones, which are subject to uncertainty and changing environmental conditions that are outside the control of fishery managers. Thus, the final action includes language to clarify that the NS1 guidelines recommend Councils maintain F rates at $F_{rebuild}$ when implementing a rebuilding plan, unless the Secretary finds that adequate progress is not being made. NMFS disagrees that § 600.310(j)(3)(v) allows original rebuilding timeframes to be used indefinitely. The final action gives the Secretary specific criteria to use when evaluating rebuilding plans for adequate progress every 2 years, which prevents rebuilding timeframes from continuing indefinitely without adequate progress towards rebuilding. Councils must develop and implement a new or revised rebuilding plan within two years of a determination that adequate progress is not being made. 16 U.S.C. 1854(e)(7).

*Comment 55:* Commenters requested more stringent guidance for Councils with stocks that have not been rebuilt by $T_{max.}$ Some commenters recommended NMFS replace ''$T_{max}$'' with ''$T_{target}$'' in § 600.310(j)(3)(vi) of the proposed action because $T_{target}$ is the specified time period for rebuilding a stock that is considered to be in as short a time as possible and therefore is the reference point that is required to be met by the MSA. Commenters also recommended that the guidelines require F to be lowered in situations where a stock reaches $T_{max}$ (or $T_{target}$) without having been rebuilt. Commenters suggested that the guidance contained in § 600.310(j)(3)(vi) should also apply to stocks where the Secretary finds that adequate progress is not being made. Two commenters recommended striking ''or the Secretary finds that adequate progress is not being made'' from the provision to avoid ''resetting the clock'' and potentially relaxing rebuilding parameters.

*Response:* NMFS believes that use of $T_{max}$ in § 600.310(j)(3)(vi) gives Councils appropriate guidance in cases where a stock is not rebuilt by $T_{max.}$ As explained in response to comment 54, the primary objective of a rebuilding plan is to maintain $F_{rebuild}$. Thus, NMFS believes that requiring that F does not exceed $F_{rebuild}$ or 75 percent of the MFMT, whichever is lower, is an appropriate approach. *See e.g.,* response to comment 85, 74 FR 3200, January 16, 2009 (addressing similar comments). However, Councils should consider a lower mortality rate in light of the MSA's goal to rebuild stocks in as short a time as possible (*i.e.* $T_{target}$). Finally, MSA section 304(e)(7)(B) requires the Secretary, upon notifying a Council that adequate progress is not being made, ''to recommend further conservation and management measures which the Council should consider . . .'' Such recommendations may include, but are not limited to, rebuilding measures similar to those in § 600.310(j)(3)(vi) (*e.g.,* maintaining $F_{rebuild}$ or 75 percent of MFMT, whichever is lower). The phrase within § 600.310(j)(3)(vi)—''or the Secretary finds that adequate progress is not being made''—is appropriate because MSA section 304(e)(7) requires a Secretarial review of rebuilding plans at least every two years to determine adequate progress. Even if a stock or stock complex has not rebuilt by $T_{max}$, a rebuilding plan is still in place, and if the Secretary finds that adequate progress is not being made, further action may be required to revise the plan.

*Emergency Actions and Interim Measures*

*Comment 56:* Several commenters expressed concern with the proposed deletions and revisions in § 600.310(j)(4) addressing emergency rules and interim measures that are authorized under MSA sections 304(e)(6) and 305(c). Some interpreted the proposed deletions as limiting NMFS' authority under MSA section 305(c). Others were concerned that the limitations imposed on the use of the authority under MSA section 304(e)(6) to reduce, but not end, overfishing were overly restrictive. Finally, one commenter requested that NMFS' final guidance allow for interim measures or emergency rules that are 2, rather than 1 year in duration to better align with time lines under MSA section 304(e).

*Response:* For streamlining purposes, as discussed in the preamble to the proposed action, NMFS is deleting text under § 600.310(j)(4) that simply repeats language in MSA section 305(c). The deletions have no effect on authority set forth in MSA section 305(c). NMFS notes that it has a separate policy on emergency rules (*see* NMFS Policy Directive 01–101–07, Policy Guidelines on the Use of Emergency Rules, 62 FR 44421, August 21, 1997). Because the NS1 guidelines include extensive guidance on rebuilding plans and the implementation of MSA section 304(e), NMFS believes it is appropriate to provide guidance in the NS1 guidelines regarding MSA section 304(e)(6), which authorizes the Secretary to implement interim measures to reduce, but not necessarily end, overfishing.

The limitations imposed by this final action on the Secretary's use of MSA section 304(e)(6) were adopted as a means of reconciling the new mandate in the 2007 revisions to the MSA to ''end overfishing immediately,'' 16 U.S.C. 1854(e)(3)(A), and the provision in MSA section 304(e)(6) that allows for some reduced level of overfishing while a rebuilding plan is developed. Noting the tension between these two provisions, NMFS strove to find a way to give effect to 304(e)(6) without undermining Congress's explicit direction in 304(e)(3)(A). Because 304(e)(6) grants discretionary authority, NMFS is well within its authority to adopt limitations on its application in order to avoid undermining the agency's other competing obligations under the statute.

The final action requires three conditions before the Secretary uses section 304(e)(6) authority to allow overfishing to occur. First, interim measures taken under section 304(e)(6) must be necessary to address an unanticipated and significantly changed understanding of the status of the stock or stock complex. This ensures that action is taken to address either (1) a new overfished determination or (2) a failure of a rebuilding plan that has resulted, not from clear management failures (*i.e.,* overfishing), but from an unanticipated change in understanding of the stock that has rendered the existing management plan inadequate. Second, ending overfishing immediately must be expected to result in severe social and/or economic impacts to a fishery. This condition ensures that overfishing is only permitted in order to prevent serious negative consequences for the fishery. Third, interim measures must ensure that the stock or stock complex will increase its current biomass through the duration of those measures. In the context of the rebuilding provisions as a whole, MSA section 304(e)(6) suggests that the Secretary's obligation is to take action that would permit the Council time to develop measures that will rebuild the fishery. 16 U.S.C. 1854(e)(6) (allowing action ''[d]uring the development of a [rebuilding plan]''). Inherent in that provision is the assumption that the Secretary's actions will not worsen the current situation for the fishery, and will be a part of rebuilding the fishery. Thus, it was appropriate to require that any actions taken under this provision ensure that the fishery will increase its current biomass through the duration of the interim measures.

Finally, NMFS cannot extend the effective length of emergency rules and interim measures to 2 years. While MSA section 304(e)(3) provides 2 years to develop or revise a rebuilding plan, MSA section 305(c) specifies that an emergency rule or interim measure shall remain in effect for not more than 180 days after publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 186 days. 16 U.S.C. 1855(c)(3)(B). Section 304(e)(6) does not change the duration of actions under section 305(c), and in fact, explicitly requires that action taken under 304(e)(6) be done ''under section 305(c).'' *Id.* 1854(e)(6).

*Discontinuing Rebuilding Plans*

*Comment 57:* Many commenters supported the additional provision in § 600.310(j)(5) that allows rebuilding plans to be discontinued for stocks that are later determined to have not been overfished in the year of the original overfished determination (but are not yet above $B_{msy}$). Commenters recommended that the discontinuation of rebuilding plans that meet the criteria within § 600.310(j)(5) should be mandatory and that Management Strategy Evaluations (MSEs) should be used to prevent establishment of unnecessary rebuilding plans.

In contrast, some commenters expressed concern that this provision would move away from a precautionary approach to rebuilding stocks and achieving OY. Specifically, commenters expressed concerns that this provision will encourage assumptions in a stock assessment model to be changed in order to achieve a desired outcome (*e.g.,* that the stock was never overfished and meets the criteria within § 600.310(j)(5)). Other commenters opposed the provision because the rebuilding plan might still be useful to achieving OY even if the stock is not technically overfished, ''especially if the stock is in limbo between 51 percent of $B_{msy}$ and 100 percent of $B_{msy}$.''

*Response:* Discontinuing a rebuilding plan based on new information is an option a Council may choose to use in order to alleviate negative impacts on fishery participants due to reduced landings of a stock (or reduced landings of other stocks in mixed-stock fisheries) where new information has shown that the stock was not overfished in the year it was determined to be overfished, nor in subsequent years. NMFS highlights that the provision does not *require* discontinuing a rebuilding plan that meets the criteria within § 600.310(j)(5), and NMFS does not believe it is appropriate to mandate discontinuation. As discussed in the preamble to the proposed action, a Council may always opt to continue following the rebuilding plan to further the conservation and management needs of a stock or stock complex that remains below $B_{msy}$, because such action is consistent with the MSA's objective that fisheries produce MSY on a continuing basis. *See* 80 FR 2796–98, January 20, 2015. Furthermore, NMFS agrees that additional decision-making tools that increase the accuracy of stock status determinations, such as MSEs, are beneficial. However, NMFS believes that, while the implementation of these tools is feasible within the current NS1 guidelines, the benefits of using such tools should be evaluated on a case-by-case basis and, therefore no further guidance on such decision-making tools is necessary.

Section 600.310(j)(5) allows Councils to be responsive to the best scientific information available while managing stocks to meet MSA mandates, including NS1's requirement to prevent overfishing while achieving OY on a continuing basis. The provision does not interfere or conflict with MSA conservation mandates because a Council may only discontinue a plan when new information shows the stock was not overfished in the year it was originally determined to be overfished, nor in subsequent years. NMFS disagrees that management action under this provision will encourage assumptions in stock assessment models to be changed, because assumptions within a stock assessment model are based on the best scientific information available. *See* § 600.315.

*Comment 58:* Commenters expressed concern that the proposed criteria in § 600.310(j)(5) only requires a stock to have not been overfished in the year the overfished determination was based on. If the stock was—in light of new information—overfished not in the year of the original overfished determination, but rather a year just prior to or just after that year, commenters argued that rebuilding plans would still be necessary and discontinuing the rebuilding plan would be inappropriate. Commenters suggested changes to the guidelines to prevent discontinuation of rebuilding plans for stocks that are shown not to have been overfished in the year of the original overfished determination, but are shown to have been overfished in subsequent years. One commenter also expanded this suggestion to include ''any of the five years prior to the original overfished determination.''

*Response:* NMFS agrees that new information in support of discontinuing a rebuilding plan must demonstrate that the stock is currently not below its MSST, was not overfished in the year of

the original determination, and was not overfished in subsequent years. NMFS has revised the guidelines accordingly. *See* § 600.310 (j)(5) of final action. The final action deletes proposed text that states that the ''biomass of the stock is not currently below the MSST,'' as this consideration is covered in the revised text. If new information demonstrates that a stock was not overfished in the year of the original overfished determination, but instead overfished in a subsequent year, a rebuilding plan is still necessary and the rebuilding timeframes should be adjusted accordingly.

NMFS disagrees with the suggestion that the provision should also include ''any of the five years prior to the original overfished determination.'' NMFS does not believe it has a scientific basis to specify a particular number of years prior to an original overfished determination where the discontinuation of a rebuilding plan would be inappropriate in all cases and for all Federally-managed stocks and stock complexes. Discontinuing a rebuilding plan based on new information for a stock that was not overfished in the original year of the overfished determination, but was overfished in a subsequent year would not have the same repercussions on a stock as stocks that have not been overfished in subsequent years. *See* 600.310(j)(5) of the final action. In the latter case, the stock is unlikely to be experiencing an overfished trend (*i.e.,* the stock was not overfished in the original determination year, nor in any of the subsequent years and is not currently overfished). Furthermore, as described in comment 57, the discontinuation of a rebuilding plan is an optional tool for managers. A Council may always opt to continue following rebuilding plans, in light of the conservation and management needs of the stock and FMP objectives.

*Other Comments on Rebuilding*

*Comment 59:* NMFS received several comments on rebuilding plans in general. One commenter requested that the guidelines explicitly encourage Councils to use rebuilding measures beyond catch limits if they are appropriate (*e.g.,* gear and effort limits). Other commenters expressed concern that the guidelines retain a minimum acceptable probability of 50 percent that management measures will rebuild the stock within the ''maximum allowable rebuilding time'' and recommended that the guidelines increase this threshold. NMFS also received requests for additional guidance on how to evaluate and incorporate consideration of environmental conditions within rebuilding timeframes.

*Response:* Councils must specify ACLs and AMs for all federally managed stocks, including stocks within rebuilding plans. 16 U.S.C. 1853(a)(15). As described in § 600.310(g), Councils may use accountability measures other than catch limits at their discretion (*e.g.,* gear restrictions, spatial and/or temporal restrictions, bag limits). As discussed in the preamble to the final 2009 NS1 Guidelines (*see* 74 FR 3196, January 16, 2009), NMFS stated at that time that the 50 percent probability is a lower bound and not a default value. Thus, if the management measures within a rebuilding plan have a 50 percent probability of achieving rebuilding by $T_{target,}$ the probability that the management measures will achieve rebuilding by $T_{max}$ is greater than 50 percent. When selecting management measures within a rebuilding plan, Councils should analyze a range of alternatives and select from among the measures that have an appropriate probability of rebuilding by $T_{target}$. After considering public comment, NMFS does not believe that prescribing a specific probability greater than 50 percent is appropriate for several reasons. *See, e.g.,* response to comment 86, 74 FR 3200, January 16, 2009 (addressing similar comments). One reason is that fisheries are diverse and the ecological, social, and economic impacts of managing at a specific probability will differ depending on the characteristics of the fishery. Finally, when specifying a $T_{target}$ that is as short as possible, the guidelines clearly state that Councils may take the ''interaction of the stock within the marine ecosystem'' into account, thus allowing Councils to account for environmental conditions within rebuilding timeframes. *See* § 600.310(j)(3)(i).

*Recreational Fisheries*

*Comment 60:* Commenters encouraged providing flexibility to consider the objectives of the recreational and commercial sectors differently. Additionally, some commenters requested that if NMFS emphasizes recreational objectives in FMPs, that formal, specific, and separate definitions are provided for the private angler and for hire sectors as those sectors have different objectives. Commenters also cautioned that NMFS must control the impacts of recreational fishing and stressed that the same scrutiny and accountability must be applied to both the commercial and recreational sectors.

Other commenters raised concerns about the impact of limited data availability on management of the recreational sector, noting a disconnect between the state of recreational fisheries data collection and management. One commenter suggested that NMFS develop a methodology for calculating the mortality on all forage fish attributable to the recreational sector and develop a better understanding of the role of forage fisheries that supply bait for the recreational fishing industry.

*Response:* NMFS agrees that flexibility should be afforded to Councils to take actions that reflect the differences between the commercial and recreational sectors and that all sectors should be adequately controlled to prevent overfishing. NMFS in § 600.305(b) directs Councils to reassess the objectives of the fishery on a regular basis so that all impacted sectors—recreational and commercial—can work with the Councils to ensure that their sector-specific objectives are adequately reflected in the FMPs.

NMFS does not believe that it is necessary to formally define the private angler and for hire sectors as the specific composition, needs, and objectives of recreational sectors will differ across regions. NMFS does not state in this final action what specific objectives of fishing sectors to consider; instead NMFS merely requires that Councils consider and incorporate the objectives of sectors that are impacted by their FMPs.

As discussed in the preamble to the proposed action, NMFS did not propose recreational-specific provisions in the guidelines. Instead, NMFS chose to highlight how various flexibility provisions that were proposed could be used to address needs raised by the recreational community. These flexibility provisions, such as conditional AMs, are universally applicable and not limited to the recreational sector. Also, in the 2009 revisions to the guidelines, the use of sector-ACLs and corresponding AMs and ACTs were discussed as an option for Councils should they decide that fishing sectors require different types of management strategies and measures.

NOAA's Marine Recreational Information Program is continuously working to improve how it collects, analyzes, and reports information. Recent improvements include the 2013 implementation of the Access Point Angler Intercept Survey that removes sources of potential bias from the sampling process. More information about data collection improvements is located at *http://www.st.nmfs.noaa.gov/recreational-fisheries/MRIP/making-improvement.* NMFS continues to

support research on the needs of the recreational fishery industry, including the need for enough forage fish to provide for healthy recreational fish species, and believes the NS1 guidelines provide adequate flexibility to reflect the results of such research as appropriate.

*National Standard 3*

*Comment 61:* One commenter suggested that NMFS require that the analysis discussed in § 600.320(e) be specified in the documents that support the FMP (Environmental Assessments, Regulatory Impact Reviews, etc.) rather than in the FMP itself to avoid excessively long FMPs. Another commenter felt that the proposal to delete language stating that the aforementioned analysis is required to document that an FMP ''is as comprehensive as practicable'' (*see* § 600.320(e) of proposed action) weakens the NS3 guidelines and contravenes the precautionary approach to management contained in the MSA. The commenter suggested keeping the language and replacing ''practicable'' with ''possible'' as a way to strengthen it.

The same commenter, while acknowledging that the purpose of NMFS' proposed deletion of the list of factors in § 600.320(d)(1) was for streamlining purposes, requested that the ecological factor be retained because it is important to manage species that are associated with the same ecosystem or dependent on similar habitat.

Another commenter opposed the proposed change to § 600.320(d) that used the phrase ''stocks in the fishery management unit'' because the issue of stocks in need of conservation and management is addressed with different language in § 600.305 of the proposed action.

*Response:* NMFS agrees that FMPs should not be excessively long but believes it is important that the analysis required in § 600.320(e) be contained in the FMP. This analysis enables both NMFS and the public to understand decisions made by a Council to implement NS3. The specific requirements of § 600.320(e) are all necessary steps in an analysis to determine how to manage an individual stock of fish as a unit (*e.g.,* range and distribution of stocks, management activities of adjacent states, etc.). Without providing this analysis, NMFS would be unable to determine under MSA 304(a) whether the FMP is consistent with NS3.

NMFS does not agree with the need to retain the ''as comprehensive as practicable'' language in § 600.320(e). The deletion of this language from the guidance does not change the requirements of the guidelines; Councils still ''should include'' the information contained in § 600.320(e)(1)–(4).

Although NMFS agrees that ecological similarity is an important factor in determining an appropriate management unit, retaining the specific language that slightly expands on the ecosystem factor is not necessary. The final action retains language that establishes that biological, geographic, economic, technical, social, and ecological perspectives are all valid considerations when organizing a management unit based on the FMP's objectives. *See* § 600.320(d)(1). NMFS does not believe that the deleted text (explaining that ecological perspectives could be based on species that are associated in the ecosystem or are dependent on a particular habitat) adds much value or guidance.

NMFS agrees that the issue of whether a stock requires conservation and management is adequately addressed in § 600.305 and thus, NMFS has deleted the last sentence of § 600.320(d) to avoid any potential confusion. *See* § 600.320(d) of final action. As NMFS explained in the proposed action, a Council, by determining that a stock should be included in a management unit, has determined that said stock is in need of conservation and management. *See* 80 FR 2789, January 20, 2015.

*National Standard 7*

*Comment 62:* Some commenters suggested retaining the text that NMFS proposed deleting at § 600.340(b). They argued that the text: Speaks to the need to weigh the benefits and costs of management; acknowledges the reality that management resources are limited and must be prioritized; and made it clear that management is not always necessary. One commenter felt the deletion of the language required all species to be under an FMP even if there is little benefit, high costs, and federal management would fail to serve a useful purpose. Other commenters felt that the deletion of the section was warranted because the relevant factors in the section have been incorporated into the new conservation and management framework in § 600.305(c) of the proposed action.

Another commenter recommended that § 600.340(c) of the proposed action be revised so that an evaluation of benefits and costs is limited to situations where alternative management measures are being considered, as opposed to FMPs justifying their own existence.

Other commenters requested that NMFS add language to the guidelines to note the value of engaging with enforcement agencies to solicit feedback when considering an action's costs, as directed under NS7.

*Response:* NMFS believes that § 600.305(c) of the final action (regarding stocks that require conservation and management) eliminates the need for the language that was deleted in § 600.340(b). Its deletion does not mean that all species, regardless of costs and benefits, must be included in an FMP—in fact § 600.305(c)(1) explicitly states that ''[n]ot every fishery requires federal management.'' MSA section 302(h)(1) only requires a Council to prepare an FMP for each fishery under its authority that requires (or in other words, is in need of) conservation and management.

National Standard 7 requires that for those stocks determined to be in need of conservation and management and therefore included in an FMP, Councils should develop conservation and management measures that, where practicable, minimize costs and avoid unnecessary duplication. 16 U.S.C. 1851(7). The language retained in the final NS7 guidelines, which was not changed by this action, explains how to implement this requirement through supporting analyses for FMPs. Such analyses should demonstrate ''real and substantial'' benefits of fishery regulation, taking into account the added research, administrative, and enforcement costs, as well as costs to the industry for compliance. *See* § 600.340(c). NS7 applies to all stocks determined to be in need of Federal management. Thus, the supporting analysis described in § 600.340(c) is needed for all stocks that require Federal management, not just for stocks that are managed using alternative measures.

NMFS agrees that enforcement costs are an important consideration, which is why they are noted for consideration several times in the NS7 guidelines. Certainly one way to acquire information about these costs would be to engage directly with enforcement agencies, but NMFS does not believe that the guidelines should mandate such engagement.

*Forage Fish and Other Ecosystem Considerations*

*Comment 63:* NMFS received many comments that the proposed action missed an opportunity to take a more transparent and comprehensive approach to incorporating EBFM into the NS1 guidelines, especially within the context of OY. One commenter

requested additional guidance on how to incorporate ecological factors into OY and ACL specifications.

*Response:* NMFS supports the implementation of EBFM. In that vein, NMFS proposed several revisions to the NS1 guidelines to facilitate the incorporation of EBFM into U.S. federal fisheries management, including the concept of using aggregate MSY estimates. EBFM is a developing scientific field, and NMFS believes that implementation of EBFM management strategies is feasible within the current NS1 guidelines framework, especially in light of the revisions NMFS has made. *See* 80 FR 2790, January 20, 2015.

Pursuant to MSA section (3)(33), OY is prescribed on the basis of MSY as reduced by ecological, economic, and social (''EES'') factors. The NS1 guidelines set forth examples of different considerations for each factor, and NMFS believes the examples provide sufficient guidance on how to apply these factors when setting OY. *See* § 600.310(e)(3)(iii)(B) of the final action. NMFS agrees with the commenter that clarification of the relationship between OY and ACL is necessary, and for that reason added a new section (§ 600.310(f)(4)(iv) of the final action) to the guidelines, which explains that ACLs (or ACTs) can be reduced from the ABC based on OY considerations. Section 600.310(f)(4)(iv) of the final action also clarifies that EES trade-offs may be evaluated when determining the risk policy for an ABC control rule. NMFS does not believe that further guidance on this issue is necessary.

*Comment 64:* One commenter requested more guidance on how ''prevailing'' is meant to be interpreted in the context of the environmental and ecological conditions that are taken into account when specifying a stock's MSY. *See* § 600.310(e)(1)(i)(A).

*Response:* The MSY definition is unchanged from the 2009 NS1 Guidelines. As explained in the preamble to the final 2009 guidelines, NMFS believes that ecological conditions and ecosystem factors should be taken into account when specifying MSY. *See e.g.,* response to comment 24, 74 FR 3187, January 16, 2009 (addressing similar comments). Accordingly, the definition of MSY refers to the ''prevailing ecological, environmental conditions,'' which requires Councils to consider what the existing ecological and environmental conditions of the fishery are at the time that MSY is specified, as those conditions may impact the level of catch or yield specified.

*Comment 65:* NMFS received many comments requesting additional guidance on the management of forage fish. One commenter opposed alternative management strategies for forage fish and instead called for more robust stock assessments for forage fish so that the existing framework for adaptive management can be used. Another commenter opposed the discussion of maintaining forage fish biomass higher than $B_{msy}$ in the section of the guidelines that discuss considerations for specifying OY. *See* § 600.310 (e)(3)(iii)(B)(*3*) of proposed action.

*Response:* NMFS agrees that forage fish are important to both fisheries and the marine ecosystem. However, as stated in the proposed action, NMFS did not propose any new revisions to the NS1 guidelines related to forage fish, as the importance of forage fish to fisheries and the marine ecosystem was adequately highlighted in the 2009 revisions to the NS1 guidelines. *See* 80 FR 2798, January 20, 2015. For example, in § 600.310(e)(3)(iii)(A)(*3*), NMFS notes that maintaining adequate forage for all components of the ecosystem is one consideration that should be weighed and given serious attention when determining the greatest benefit to the Nation, and accordingly, determining the EES factors used to obtain OY. Additionally, the current guidelines state that, consideration should also be given to managing forage stocks for a higher biomass than $B_{msy}$ to enhance and protect the marine ecosystem when specifying OY. NMFS did not change these concepts within the guidelines.

With regard to the comment requesting that ''alternative management strategies'' for forage stocks (*i.e.,* maintaining forage above $B_{msy}$) be removed, NMFS notes that the text is only a suggested consideration as part of the ecological factors a Council may consider when specifying OY. Councils are free to manage forage fish species under status quo management strategies, as long as those strategies are consistent with the National Standards and other applicable provisions of the MSA. Furthermore, NMFS disagrees that the discussion of forage fish biomass is misplaced in the discussion of OY specifications. Managing forage stocks for higher biomass than $B_{msy}$ to enhance and protect the marine ecosystem is a valid ecological consideration for determining OY.

*Comment 66:* Several commenters requested that the guidelines give additional guidance on how Councils should use an ecosystem-based approach to manage stocks impacted by environmental stressors such as climate change, ocean acidification, pollution, etc. Some also provided suggestions to address these issues within the guidelines. One specific example was a request for more guidance on how Councils should manage a fish stock that moves from one Council's jurisdiction to another due to the impacts of climate change.

*Response:* NMFS believes that the existing NS1 guidelines support an adaptive, science-based approach to responding to changes in environmental conditions. Furthermore, as stated in § 600.305(b)(2) of the final action, NMFS has instructed Councils to manage their fish stocks according to the changing needs of the fishery, which would encompass necessary management adjustments in response to changing environmental conditions.

Finally, the National Standard 3 guidelines address the case where a stock moves between Council jurisdictions. The guidelines state that the entities involved should coordinate during the development of an FMP and, if a stock's range covers multiple Council areas, the preferred approach is to establish one FMP that covers the stock's entire range. *See* § 600.320(c) of the final action.

*Other Comments*

*Comment 67:* One commenter felt that the phrase ''including section 304(e) of the Magnuson-Stevens Act'' in § 600.310(k) should be deleted because it is directing Councils to consider a section of the MSA (*i.e.,* MSA section 304(e)—rebuilding overfished fisheries) that is expressly excluded from the MSA 304(i) process.

*Response:* NMFS did not propose changes to § 600.310(k), as adopted in the 2009 NS1 Guidelines, because NMFS believes that it is valid and valuable to consider MSA 304(e) when developing recommendations to the Secretary of State for international actions that will end overfishing. MSA section 304(i) was added in the 2007 reauthorization of the MSA as part of several significant new requirements regarding international fisheries. Consideration of the principles that guide domestic rebuilding does not mean that NMFS will seek to impose those requirements on fisheries that are not subject to MSA 304(e). NMFS believes that the experience gained domestically in applying MSA section 304(e) may be valuable when addressing rebuilding of stocks that experience international fishing pressure. Thus, the guidelines merely direct Councils to consider section 304(e) and other relevant MSA provisions. NMFS notes that, for highly migratory species, MSA

section 102(c) provides for promotion of MSA provisions in international or regional fisheries organizations, when such organizations do not have a process for developing rebuilding plans.

*Comment 68:* One commenter suggested that § 600.305 of the proposed action include language that identifies differences in application of the guidelines to internationally managed stocks and that identifies management entities under the umbrella of the term ''Secretary'' other than Regional Fishery Management Councils. This language would help clarify how the NS guidelines are applied. They felt that this would help clarify that the Highly Migratory Species Management Division does not establish SSCs and that Regional Fishery Management Councils must establish SSCs.

*Response:* The statute is clear as to what provisions apply to internationally- or Secretarially-managed stocks and what provisions pertain specifically to the Councils. For example, sections 302 and 304(a)–(b) address the Council process and Secretarial review of Council-adopted FMPs and proposed regulations. Section 304(g) sets forth the requirements for Secretarial development of an FMP for Atlantic highly migratory species, and section 304(c) provides for Secretarial development of FMPs under other circumstances. Section 304(i) details actions the Secretary is required to take when the Secretary determines a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure. NS1 and other MSA requirements apply to all FMPs whether developed by the Council or Secretary. Moreover, this final action (which is unchanged from the 2009 NS1 Guidelines) explicitly states that the Secretary is included within the term ''Council'' when the term is used in the context of section 304(c) and (g) of the Magnuson-Stevens Act (where applicable). *See* § 600.305(d)(10).

*Comment 69:* Many commenters expressed concern regarding the deletion of what they considered ''plain-language guidance'' without adequate rationale. They believe the ''plain-language guidance'' provides useful guidance to managers and more certainty in the complicated area of fishery management with the result being greater compliance with the MSA. Several examples were cited. Some commenters felt that deletions of the phrase ''based on the best science available'' throughout the proposed action creates ambiguity and decreases the importance of sound science in decision-making. One commenter specifically pointed to the removal of the reference to the best scientific information available in § 600.310(e)(1)(v) of the proposed action, remarking that NMFS provided no explanation for deleting the reference to this statutory requirement when specifying MSY. Another commenter did not agree with the deletion in § 600.310(b)(3) of the proposed action of the phrase ''intended to avoid overfishing and achieve sustainable fisheries'' within the description of ACLs and AMs. The commenter felt that no reason was provided for deleting this language. One commenter said ''the most glaring example'' of deleting plain-language guidance is the removal of the last sentence of § 600.310(j)(2)(ii) regarding rebuilding plan requirements for stocks that are overfished and for which overfishing is occurring. The commenter felt this language was important because it ensures compliance with the Act and clearly states the mandate in 16 U.S.C. 1854(e)(3)(A) to end overfishing ''immediately.''

*Response:* NMFS agrees with the commenters that providing guidance in a clear fashion is important, and eliminating unnecessary repetition and streamlining the text of the guidelines facilitates that. NMFS proposed to delete the phrase ''based on the best scientific information available'' in § 600.310(e)(1)(v) to avoid unnecessary repetition, as this is a statutory requirement under NS2. Furthermore, the point is made in § 600.305(e)(1) of the final action, which establishes that NS2 applies directly to the management measures and reference points that are needed to implement NS1. However, this final action will retain the text in § 600.310(e)(1)(v) to emphasize the importance of using the best scientific information available in calculating MSY. Although several commenters noted that the phrase ''based on the best scientific information available'' was deleted ''throughout the proposed rule,'' the other deletions occurred in sections that were either replaced in new sections or were not substantive.

The deletion in § 600.310(b)(3) of the language ''intended to avoid overfishing and achieve sustainable fisheries'' was proposed to streamline the text. NS1 requires preventing overfishing and achieving OY, so the limits and accountability measures being discussed in § 600.310(b)(3) logically pertain to avoiding overfishing and achieving sustainable fisheries. NMFS does not believe that the deletion will lead to any confusion or change the intended meaning of this section.

The deletion of the last sentence from § 600.310(j)(2)(ii) was also proposed to avoid repetition and because it was not pertinent given the purpose of this subsection. As the commenter noted, this sentence is repeating what 16 U.S.C. 1854(e)(3)(A) already commands—to end overfishing immediately and rebuild affected stocks. Furthermore, § 600.310(j)(2) addresses the ''Timing of actions'' with regards to an overfished fishery. Thus, this subsection is mainly about when the Councils must take certain actions. The last sentence that was deleted from § 600.310(j)(2)(ii) was not pertinent to the purpose of this subsection because it prescribed the actions to take to address an overfished fishery. Due to the focus of this subsection on timing and because the language to be deleted is stated clearly in the statute, this final action deletes the text from the end of § 600.310(j)(2)(ii), as proposed.

*Comment 70:* One commenter expressed concern that the proposed change to § 600.310(b)(1)(ii) and the proposed addition of § 600.305(c)(1) result in a circular logic when the two are read together. The commenter asked, if a determination that a stock is overfished or undergoing overfishing is relevant to the determination that a stock requires conservation and management, how can the guidelines limit the application of SDCs to only stocks that have already been determined to require conservation and management?

*Response:* NMFS does not agree that there is a ''circular logic'' concern with the two provisions. First, a stock may be found to be overfished or subject to overfishing based on the best scientific information available, despite no prior specification of SDCs for the stock. *See* comment 16 (addressing similar comments). In such case, if the stock was predominantly caught in Federal waters, it must be included in an FMP. *See* § 600.305(c)(1). Second, as discussed in response to comment 5, stocks that require conservation and management are not limited under § 600.305(c)(1) to stocks that are overfished, subject to overfishing, or likely to become so. Thus, a Council may determine that a stock is in need of conservation and management, even if it is not overfished or subject to overfishing, based on consideration of one or more of the factors under § 600.305(c)(3). Furthermore, while SDCs are required to monitor the status of stocks or stock complexes in an FMP (*see* § 600.310(e)(2)(ii)), Councils may monitor other stocks (*e.g.,* EC species) for a variety of reasons. Through monitoring, a non-managed stock may

be found to be overfished or subject to overfishing based on the best scientific information available, despite no prior specification of SDCs for the stock. In such case, a Council would take appropriate action per § 600.305(c).

*Comment 71:* One commenter felt that the guidance on how to address short-term versus long-term environmental changes should be revised given the uncertainty surrounding the cause/effect relationship between environmental factors and fish stock abundance. This commenter said that § 600.310(e)(2)(iii)(B) is too rigid in requiring a re-specification of SDC, given that the magnitude and interconnectedness of the relationship between environmental factors and fish stock abundance is so uncertain. Also, the commenter states that the addition of ''ecosystem or habitat'' to § 600.310(e)(2)(iii)(B) increases the ways that a Council could misinterpret this subsection and justify not lowering fishing mortality as long as the effects are long-term, regardless of how uncertain the cause/effect relationship. The commenter also believes that the language in § 600.310(e)(2)(iii)(B) is redundant because existing MSY guidance already suggests re-estimating SDC when conditions change or there is new information.

Another commenter appreciated the attention given to environmental and ecological considerations but believed differentiating between short-term and long-term effects will take too long given the time sensitive economic realities of a fishery. The commenter suggested defining what are ''prevailing ecological, environmental conditions'' in the definition of MSY, and how and in what specific time frame those conditions are to be accounted.

*Response:* Section 600.310(e)(2)(iii) is a longstanding provision of the NS1 guidelines. *See* 74 FR 3178, January 16, 2009 (discussing provision in response to comment 30 in the final 2009 NS1 Guidelines). The requirements of NS2, that conservation and management measures be based on the best scientific information available, apply to the establishment of SDC. Therefore, in cases where changing environmental conditions alter the long-term reproductive potential of a stock, the SDC must be modified. As stocks and stock complexes are routinely assessed, long-term trends are updated with current environmental, ecological, and biological data to estimate SDCs. NMFS believes § 600.310(e)(2)(iii) continues to allow for accounting for variability in both environmental changes and variation in a stock's biological reaction to the environment.

The guidelines include language requiring a high standard for changing SDC that is consistent with NMFS technical guidance (Restrepo et al. 1998). NMFS outlines the relationship of SDC to environmental and habitat change in both the short and long-term in § 600.310(e)(2)(iii) of the final action. Total mortality of fish includes many factors other than fishing mortality. Short-term environmental changes may alter the size of a stock or complex, for instance, by episodic recruitment failures, but these events are not likely to change the reproductive biology or reproductive potential of the stock over the long-term. Thus, in such cases, a Council should not change the SDC. Other environmental, ecosystem, or habitat changes, such as some changes in ocean conditions, can alter both a stock's short-term size, and alter long-term reproductive biology. To respecify the SDC, Councils should indicate how such changes impact the stock's long-term reproductive potential and must provide an analysis, based on the best scientific information available, of how the SDC were chosen and how changes to the SDC impact the stock's long-term reproductive potential. *See* § 600.310(e)(2)(ii), (iii)(B), (iv). In all cases, fishing mortality must be controlled so that overfishing is prevented.

The language in § 600.310(e)(2)(iii)(B) is not redundant because it clarifies how to treat different kinds of environmental and habitat change when considering whether to respecify the SDC. Furthermore, NMFS believes distinguishing between short-term and long-term environmental changes is needed in order to determine whether respecifying the SDC is necessary. Finally, while ''prevailing'' in the context of § 600.310(e)(1)(i)(A) indicates the existing ecological and environmental conditions of the fishery at the time MSY is specified, the guidance also clarifies that MSY should be re-estimated as required by changes in long-term environmental or ecological conditions (§ 600.310(e)(1)(v)(A) of the final action). *See* response to comment 64 for further explanation of ''prevailing . . . conditions.''

*Comment 72:* One commenter asked if the guidelines could recommend a multi-year definition of overfished where, if stock biomass falls below MSST, a second stock assessment is required within a set number of years, and other risk-averse management measures are required in the interim. The commenter also stated that the commitment to rebuild overfished stocks to 100 percent of $B_{msy}$ does not make biological sense.

*Response:* The NS1 guidelines currently define an overfished stock as a stock whose biomass has declined below MSST. *See* § 600.310(e)(2)(i)(E). If a stock is determined to be overfished, the MSA mandates that a Council prepare an FMP or amendment to end overfishing immediately and rebuild the overfished stock to a level consistent with producing MSY. 16 U.S.C. 304(e)(3). In light of this, NMFS does not believe that a second stock assessment to reaffirm a stock's overfished status, as recommended by the commenter, would be appropriate. However, NMFS acknowledges that, due to scientific uncertainty in biomass estimates of fish stocks, occasionally a stock that is identified as overfished is later determined to have never been overfished (NRC, 2013). NMFS addresses this issue by allowing a Council to discontinue a rebuilding plan that meets specific criteria. *See* § 600.310(j)(5). Finally, the long-standing requirement to rebuild overfished stocks to 100 percent of $B_{msy}$ is consistent with the MSA. The MSA defines ''overfished'' with reference to ''the capacity of the fishery to produce the maximum sustainable yield on a continuing basis,'' 16 U.S.C. 1802(34), and the NS1 Guidelines have long clarified that ''overfished'' relates to the biomass of a stock or stock complex. *See* § 600.310(e)(2)(i). $B_{msy}$ is defined in the guidelines as the long-term average size of a stock measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at $F_{msy}$. *See* § 600.310(e)(1)(i)(C). Because ''overfished'' is defined in reference to MSY, rebuilding to 100 percent of $B_{msy}$—which is itself defined with reference to MSY—is appropriate and consistent with the MSA.

*Comment 73:* A number of commenters included discussions on the possible reauthorization of the MSA. Some commenters asked that NMFS delay final action on revisions to the NS1 guidelines until after any MSA reauthorization since NMFS will have to again revise and revisit the guidelines based on potential legislative changes. A number of commenters said generally that NMFS' proposed revisions do not preclude the need to reauthorize the MSA. Commenters also suggested what they would like to see included in the MSA reauthorization and their thoughts on current proposals.

*Response:* While NMFS appreciates the importance of MSA reauthorization and the many valid viewpoints on what should be included, this revision to the

NS1 guidelines is separate from MSA reauthorization. The NS1 guidelines do not change the law as these guidelines do not have the force and effect of law (16 U.S.C. 1851(b)).

NMFS does not intend to delay these revisions to the NS1 guidelines because it is unclear when any Congressional revisions to the MSA will be finalized. It is important that the clarity and adjustments that this final action provides is in place as soon as possible to improve fisheries management decisions. When MSA reauthorization is concluded and if it contains changes pertaining to the provisions in these guidelines, NMFS will make any necessary revisions. Comments related to what should be included in the MSA reauthorization and thoughts on current legislative proposals before Congress are outside the scope of these NS1 guidelines.

*Comment 74:* NMFS received a number of comments on § 600.310(m), a provision commonly known as the ''mixed stock exception.'' NMFS did not include any proposed changes to this provision in the notice of proposed rulemaking. Most of the comments were advocating for one of two positions: (1) Removal of the mixed stock exception because it is contrary to the MSA or (2) revision of the mixed stock exception to make it a more useful management tool. Several commenters said that this exception to overfishing is contrary to the MSA mandate to prevent overfishing. Further, since the MSA does not contain any exceptions to overfishing, NMFS cannot create one in its guidance. Other commenters stated that the exception should provide a similar level of flexibility as the proposed phase-in ABC control rules and multi-year overfishing determinations. Some commenters asked for an expansion of the exception to avoid the ''choke stock'' scenario, whereby a stock in a mixed fishery with low population levels leads to closure or a reduction in catch of another healthier stock to avoid overfishing of the weaker stock. One commenter also proposed returning to NMFS' earlier definition that merely required that permitted overfishing would not cause any species to require protection under the Endangered Species Act (ESA). *See* 63 FR 24231, May 1, 1998.

*Response:* While NMFS has chosen in the NS1 guidelines to emphasize the importance of stock-level analyses, NS1 and other MSA provisions refer to preventing overfishing in a ''fishery'' (16 U.S.C. 1851(a)(1)) and provide for flexibility in terms of the specific mechanisms and measures used to achieve this goal. Thus, the 2009 guidelines retained the mixed stock exception—with some revisions—to provide Councils with needed flexibility for managing fisheries, while ensuring that all stocks in the fishery continue to be subject to strong conservation and management. NMFS continues to believe that the exception should be applied with a great deal of caution, taking into consideration the 2007 revisions to the MSA and other provisions in the NS1 guidelines regarding stock complexes and indicator species. NMFS also believes that Councils should work to improve selectivity of fishing gear and practices in their mixed stock fisheries so that the need to apply the mixed stock exception is reduced in the future.

For the above reasons, NMFS does not believe the exception should be expanded. In addition, NMFS does not agree that flexibility similar to the approach taken for phase-in ABC control rules and multi-year overfishing determinations is appropriate. Those provisions address a different issue than the mixed stock exception, specifically, data limitation issues that make it difficult to set overfishing thresholds and determine with certainty if overfishing has occurred.

As discussed in the preamble to the final 2009 guidelines, NMFS believes that ESA listing is an inappropriate threshold for application of the mixed stock exception and that stocks should be managed so that they retain their potential to achieve MSY. *See* 80 FR 3201, January 16, 2009. Accordingly, the guidelines as refined in 2009 and retained in this final action include a higher threshold that limits F to a level that will not lead to the stock becoming overfished in the long term. In addition, if any stock, including those under the mixed stock exception, were to drop below its MSST, it would be subject to the rebuilding requirements of the MSA, which require that the Council take action to ''end overfishing immediately in the fishery'' and ''rebuild affected stocks of fish.'' 16 U.S.C. 1854(e)(3)(A).

*Comment 75:* One commenter suggested that EBFM be used to distinguish between ''low-value'' fish species and ''high-value'' fish species in order to avoid having to apply the same conservation and management standards to both types of species. The commenter stated that OY is more likely to be attained if the same conservation and management standards do not apply to both types of species.

*Response:* Once stocks are determined to require conservation and management, and thus preparation of an FMP, the measures developed for those stocks under the FMP must comply with applicable MSA requirements and standards. Neither the MSA nor the NS1 guidelines sets forth different conservation and management standards for low- or high-value fish. 16 U.S.C. 1802(5) (defining conservation and management broadly). It would be up to the appropriate Council to determine what the conservation and management needs and objectives are for the particular stocks and to develop measures accordingly, consistent with MSA requirements including NS1's mandate to prevent overfishing while achieving OY on a continuing basis. 16 U.S.C. 1851(a)(1). NMFS notes that § 600.305(c) of the final action does include consideration of a stock's economic and ecological value to the fishery (as discussed in comments 5 & 7).

*Comment 76:* Many commenters asked for clarity regarding the relationship of NS1 to the other national standards. The proposed changes to the NS1 guidelines remove the language from § 600.310(l) that the other national standards ''do not alter the requirement to prevent overfishing and rebuild overfished stocks.'' Commenters felt that this deletion creates ambiguity about the primacy of conservation and cited to *NRDC* v. *Daley,* 209 F.3d 747 (D.C. Cir. 2000) and *NRDC* v. *NMFS,* 421 F.3d 872 (9th Cir. 2005) as supporting the precedence of NS1. Several commenters included lengthy proposed language for this subsection that emphasizes that conservation supersedes all other requirements in the national standards. Some commenters also felt that the addition, in several sections, of a reference to ''trade-offs'' could undermine the primacy of conservation.

A number of commenters also suggested moving § 600.310(l) to § 600.305 (General section), as that would introduce the national standards at the outset rather than at the end of the NS1 section. Some commenters also suggested modifying subsection § 600.310(l) to state that SSCs ''shall'' rather than ''should'' advise their Councils regarding the best scientific information available for fishery management decisions. Finally, several commenters also recommended a change to § 600.305(b) to clarify that fishery management plans resolve conflicting objectives by giving NS1 priority.

*Response:* NMFS agrees with moving the text at § 600.310(l) to the General Section, and has added the text to the new § 600.305(e) in the final action. The ''but do not alter the requirement to prevent overfishing and rebuild overfished stocks.'' language was deleted because it is already clear from

the MSA, and case law interpreting its requirements, that the other national standards cannot be cited as a reason for failing to prevent overfishing or rebuild stocks. However, NMFS is re-inserting clarifying text to emphasize that National Standard 1 addresses preventing overfishing and achieving optimum yield.

NMFS disagrees with the need to eliminate references to ''trade-offs.'' The references to ''trade-offs'' properly reflects the delicate balance that Councils must perform in deciding what fishery management practices to implement so that there is compliance with all ten national standards and other MSA requirements. When considering the different means by which the conservation goals of the MSA can be achieved, Councils can consider the potential trade-offs between the national standards.

NMFS does not agree with the proposed change from ''should'' to ''shall'' with respect to SSC advice to Councils. The MSA specifies at 16 U.S.C. 1852(g)(1)(B) the scientific advice that the SSC ''shall'' provide to the Councils, and best scientific information available is not explicitly referenced there. *See* § 600.305(d)(2) (explaining that ''shall'' is used in the NS guidelines when quoting statutory language directly). There are diverse processes in place throughout the various regions, Councils, and SSCs for determining the best scientific information available, and the NS2 guidelines are the appropriate place to address specific roles of the SSC, as was noted in the response to comment 41 in the final 2009 guidelines. *See* 74 FR 3191, January 16, 2009. NMFS notes that the NS2 Guidelines provide that the SSC is required to base its scientific advice and recommendations on what the SSC determines, according to the guidelines in § 600.315(a), is the best scientific information available. *See* § 600.315(c)(1).

*Comment 77:* Several commenters asked the agency to revisit the guidelines' discussion of the MSA's ACL international exception. Some commented that the exception only pertains to the 2010/2011 timing requirement for establishing ACL/AM mechanisms. Several commenters recommended that the interpretation of what qualifies as an international agreement be broadened. One commenter suggested broadening the definition to include instances: (1) Where there is an informal agreement in a given fishery; and (2) where the fishing activities of another country(s) affect the ability of U.S. fishermen to achieve rebuilding and conservation, such as in the Atlantic mackerel fishery. One commenter asked for an express statement in § 600.310(h)(1)(ii) clarifying that § 600.310(f) and § 600.310(g) do not apply to stocks and stock complexes to which the international exception applies. Others said that internationally managed species are not excluded from the MSA's ACL requirement and thus the interpretation of the international exception at § 600.310(h)(2)(ii) is unreasonable and outside NMFS' authority.

*Response:* This final action does not change the international exception as adopted in the 2009 NS1 Guidelines. The response to comment 78 in the final 2009 guidelines (*see* 74 FR 3198–99, January 16, 2009) discussed the exception at length, and the reasoning behind the agency's response is still valid and reasonable. As explained in that response, the text of the exception is vague, thus NMFS considered and took public comment on different possible interpretations, including specifically looking at the interpretation advanced by some commenters that the exception only pertains to the 2010/2011 timing requirements. Having considered the text of the exception and other relevant MSA provisions, NMFS decided in 2009 not to interpret the exception as applying only to the timing of ACL/AM requirements. Based on public comments received here, NMFS has identified no new considerations or issues that warrant re-examination of the approach it adopted in 2009.

NMFS also addressed broadening the definition of ''international agreement'' in its response to comment 78 in the final 2009 guidelines. *See* 74 FR 3199, January 16, 2009. When considering what qualifies as an ''international agreement,'' for the purpose of Public Law 109–479 104(b), NMFS considers if the arrangement or understanding qualifies as an ''international agreement'' as understood under MSA section 3(24) (defining ''international fishery agreement'') and as generally understood in international negotiations. The Case-Zablocki Act, 1 U.S.C. 112b, and its implementing regulations also provide helpful guidance on interpreting the term ''international agreement.'' NMFS believes applying the exception to all fisheries where there is any kind of informal agreement and where the fishing activities of another country affect in any way the ability of U.S. fishermen to achieve rebuilding and conservation would be beyond what Congress prescribed.

NMFS believes there is no need to add language to § 600.310(h)(1)(ii) clarifying that § 600.310(f) and § 600.310(g) do not apply to stocks and stock complexes to which the international exception applies because § 600.310(h)(2)(ii) is clear that stocks or stock complexes subject to an international agreement are exempt from ACL and AM requirements. ACLs are detailed in § 600.310(f) and AMs are detailed in § 600.310(g). The title of § 600.310(h)(2) is ''Exceptions from ACL and AM requirements'' and includes ''International fishery agreements'' as one of the exceptions at § 600.310(h)(2)(ii).

*Comment 78:* A number of commenters noted the use of the word ''practicable'' in several parts of the proposed guidelines. Some simply wanted clarification on the word's intended definition. Others felt that the use of the word weakens statutory requirements. Another commenter felt that identifying the degree of uncertainty ''when practicable'' instead of ''when possible'' would reduce the importance of the requirement to account for uncertainty. Other commenters felt ''practicable'' was proper since it provides greater flexibility in dealing with the difficult weighing of options that is inherent in fisheries management decisions.

*Response:* NMFS believes that use of ''practicable'' in the NS1 guidelines is consistent with the MSA, and is intended to be understood based on the basic dictionary definition of that term. Black's Law Dictionary, for one, defines ''practicable'' as ''(of a thing) reasonably capable of being accomplished; feasible in a particular situation.'' *See* Black's Law Dictionary (10th ed. 2014). NMFS notes that ''practicable'' is used several times in the MSA, including in sections 302(b)(2)(B)–(C), 303(a)(7) & (11)–(13), and 304(g), and may have a different definition or interpretation specific to those provisions. NMFS does not believe that use of the term ''practicable'' in the NS1 guidelines weakens any statutory requirements. Of the six instances where NMFS uses ''practicable'' in the NS1 guidelines, none involve mandatory duties under the MSA.

*Comment 79:* One commenter felt that the requirement to describe data methods was an unnecessary burden. This requirement is in both § 600.310(c) and § 600.310(i) of the current regulations and remains basically unchanged in the proposed revisions. The commenter said that the data collection methods are under the control of NMFS rather than the Councils, some of this information is reported via the standardized bycatch reporting methodology, and the statute

does not list describing data collection methods as something that needs to be in the FMP.

*Response:* NMFS believes, as it also stated in the final 2009 NS1 Guidelines, that detailing the sources of data for the fishery and how they are used to account for all sources of fishing mortality in the annual catch limit system will be beneficial. *See* 74 FR 3199, January 16, 2009. These sections, which are essentially unchanged in this revision, only ask that the Councils provide documentation of the fisheries data and data collection methods they are already utilizing in either their FMPs or associated public documents such as Stock Assessment and Fishery Evaluation (SAFE) Reports.

*Comment 80:* One commenter suggested that in proposed § 600.310(f)(4)(ii), NMFS retain the language clarifying that sector-ACLs can be used for set-asides for research and bycatch. The commenter asserted that these set-asides are important management tools to account for all sources of mortality in the catch-setting process.

*Response:* NMFS believes the commenter is referring to the deletion of the language in § 600.310(h)(1)(ii) that refers to set-asides for research or bycatch as possible examples of sector-ACLs. The proposed § 600.310(f)(4)(ii) left unchanged § 600.310(f)(5)(ii) of the current regulations except for adding a sentence stating that if sector-ACLs are used, then sector-AMs should also be specified. NMFS does not believe that § 600.310(f)(4)(ii) limits the Council's ability to use a sector-ACL for set-asides for research and bycatch. While sector-ACLs can be used to account for set-asides for research and bycatch, NMFS does not believe that it is necessary to offer prescriptive guidance to Councils as to how best to account for that mortality.

*Comment 81:* One commenter requested that NMFS explore an alternative management strategy under which a ''sweet spot'' for catch is identified based on a long-term evaluation of stock biomass performance relative to catch, and annual catch limits could be exceeded if they fell below the ''sweet spot'' catch level.

*Response:* NMFS does not believe the proposed alternative management strategy would meet the requirements of the MSA, which requires the management of stocks based on annual catch reference points that are designed to prevent overfishing. The NS1 guidelines define overfishing in terms of fishing mortality and/or total catch, and Councils must specify catch limits that prevent overfishing on an annual basis. Thus, one ''sweet spot'' level of catch that is not specified on an annual basis, but is instead based on a historical relationship between the stock's biomass and total catch, would not be considered an appropriate reference point that can be used to determine whether overfishing is being prevented.

*Comment 82:* One commenter stated that the definition for target stocks given in § 600.305(d)(11) is not internally consistent within the guidelines because economic discards do not provide any sale or personal use benefits and thus, a fisherman would not target them. Therefore, the commenter suggested that the guidelines define target stocks as stocks or stock complexes that fisheries seek to catch for sale or personal use, or are 'economic discards' as defined under Magnuson-Stevens Act section 3(9).

*Response:* NMFS believes the definition of target stocks is consistent with both the MSA and within the NS1 guidelines. Economic discards are defined within the MSA as fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons. 16 U.S.C. 3(9). Thus, economic discards are, by definition, fish stocks that are targeted by a fishery and are properly characterized within the current definition of target stocks in the NS1 guidelines.

*Comment 83:* One commenter requested additional clarification regarding the use of § 600.310(m) in cases where a stock is found to be overfished after overfishing is allowed under this provision.

*Response:* As explained in the final 2009 NS1 Guidelines, a rebuilding plan is required for any stock (including those under the mixed stock exception) that is determined to be overfished. The MSA requires that rebuilding plans end overfishing immediately and rebuild the affected stock to $B_{msy}$. *See* 74 FR 3201, January 16, 2009.

*Comment 84:* Several commenters expressed concern that the proposed changes to the NS guidelines would require, or at least strongly encourage, amendment to FMPs. One commenter requested that the agency revise the guidelines to explicitly state that modifications to FMPs based on the final action are not required.

*Response:* As emphasized in the preamble to the proposed rule, this action to revise the NS guidelines will not establish any new, specific requirements that would require Councils to revise their FMPs in order to comply with the MSA. The purpose of the final action remains the same as the proposed action—to facilitate compliance with the requirements of the MSA. *See* 80 FR 2786, January 20, 2015. The final action facilitates compliance with the MSA, but does not require modifications to FMPs. NMFS does not believe it is necessary to further emphasize this point within the NS guidelines themselves.

*Comment 85:* Two commenters requested that NMFS undergo an additional public engagement process prior to finalizing the proposed rule.

*Response:* NMFS does not believe that a further public comment or engagement process is needed to finalize this action. As detailed in Section I of the preamble of this final action, there was a robust opportunity for public engagement during the development of this rule, which included opportunities for public comment on an ANPR and proposed rule and opportunities for engagement at Council and other meetings. *See* also 80 FR 2786, January 15, 2015. NMFS has carefully considered the public comments received during the development of this final action, making changes as appropriate based on recommendations from commenters.

## VI. Changes From Proposed Action (80 FR 2786, January 20, 2015)

In the revisions to § 600.305, paragraph (a)(3) was revised to clarify the approval process for FMP and FMP amendments. The last sentence of the paragraph was removed and replaced with a sentence clarifying that FMPs that are not formulated according to the guidelines may not be approved by the Secretary if the FMP or FMP amendment is inconsistent with the MSA or other applicable law (16 U.S.C. 1854(a)(3)).

Section 600.305(b)(2) was revised to clarify the discussion of fishery management objectives.

Section 600.305(c)(1) was revised to reference the MSA definition of ''conservation and management,'' and relevant cross-references. The sentence was also revised to clarify that based on this definition, and other relevant provisions of the Magnuson-Stevens Act, a Council should consider the non-exhaustive list of factors when deciding whether additional stocks require conservation and management.

Paragraph (c)(1)(iii) was revised for clarity by replacing ''stocks'' with ''stock.'' Paragraph (c)(1)(vi) was also revised for clarity by replacing ''and'' with ''or.'' Paragraph (c)(1)(x) was revised by removing the phrase ''could be or'' in order to clarify the conditions in which Councils should consider existing management regimes when

determining whether stocks require conservation and management. The phrase ''policies and standards'' was also removed from paragraph (c)(1)(x) and the paragraph was revised to clarify that factor (x) allows the following considerations to be considered when determining whether a stock requires conservation and management: The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry-self regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.

Paragraph (c)(2) was reorganized into three paragraphs to break out and clarify considerations for adding a stock to an FMP versus removing a stock from an FMP. Paragraph (c)(2) retains the last sentence of proposed paragraph (c)(2) with the addition of a cross-reference and the text ''and should'' after the word ''can.''

Paragraph (c)(3) retains some text from the proposed paragraph (c)(2) and gives further explanation on what the proposed paragraph meant by no single factor being dispositive or required. New paragraph (c)(3) explains that, when considering adding a stock to an FMP, no single factor is dispositive or required. One or more of the above factors, and any additional considerations that may be relevant to the particular stock, may provide the basis for determining that a stock requires conservation and management. Based on the factor in paragraph (c)(1)(iii) of this section, if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of adding a stock to an FMP. However, Councils should consider factor (c)(1)(x) before deciding to include a stock in an FMP. In many circumstances, adequate management of a fishery by states, state/Federal programs, or another Federal FMP would weigh heavily against a Federal FMP action.

Paragraph (c)(4) retains the bulk of the text from proposed paragraph (c)(2), except for sentences broken out into paragraphs (c)(2)–(3) as described above. For clarity, paragraph (c)(4) revises the phrase ''keeping an existing stock within an FMP'' to ''removing a stock from, or continuing to include a stock in, an FMP.'' The second sentence in paragraph (c)(4) was revised to provide further explanation on how to consider stocks whose status is impacted by catch in Federal waters. In addition, the first phrase in the 6th sentence of proposed paragraph (c)(2) was simplified to ''Finally,'' in the 6th sentence of paragraph (c)(4).

Paragraph (c)(5) retains the bulk of the text from proposed paragraph (c)(3). However, the 1st sentence was edited to clarify the circumstances under which a Council may designate stocks as EC species. The phrase ''or for other reasons'' at the end of the last sentence of the paragraph is also replaced with ''and/or to address other ecosystems'' to improve clarity of the paragraph. Other minor clarifying revisions were made to the citations within paragraph (c)(5).

Paragraph (c)(7) retains the text from proposed paragraph (c)(5), except for two instances where ''a FMP'' was corrected to ''an FMP.''

Paragraph (d)(3) was revised to clarify the definition of the term ''SOPP'' and correct ''a FMP'' to ''an FMP.'' Paragraph (d)(11) was revised to clarify that target stocks may include, but are not limited to, economic and regulatory discards. Furthermore, economic discards are, by definition, part of a target stock. On the other hand, regulatory discards may or may not be part of a target stock, depending on the stock in question. Paragraphs (d)(12–13) were added to § 600.305 to further clarify how a Council may refer to certain species. Paragraph (d)(12) explains that 'Non-target species' and 'non-target stocks' are fish caught incidentally during the pursuit of target stocks in a fishery. Non-target stocks may require conservation and management and, if so, must be included in a FMP and be identified at the stock level. If non-target species are not in need of conservation and management, they may be identified in an FMP as ecosystem component species. Paragraph (d)(13) explains that Ecosystem Component Species (*see* 50 CFR 600.305(c)(3) and 600.310(d)(1)) are stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in a FMP in order to achieve ecosystem management objectives.

Section 600.310(l) of the proposed rule was moved to the ''General'' section and designated as § 600.305(e) because the discussion of the relationship of the National Standards to each other is more appropriately discussed in the General section of the NS guidelines. The beginning of the paragraph further clarifies the relationship between NS1 and the other National Standards by reiterating that National Standard 1 addresses preventing overfishing and achieving optimum yield. Other minor clarifying revisions were made to the citations within paragraphs § 600.305(e)(1)-(2). New § 600.310(l)(4) was revised to add the phrase ''and other MSA provisions'' at the end of first sentence to clarify the scope of National Standard 8. Section 600.310(m) was re-designated as paragraph (1).

In the revisions to § 600.310, paragraph (b)(1)(ii) was revised to replace ''that require, or are in need of, conservation and management'' with ''in an FMP'' to simplify the text. To clarify the relationship between the SSC and the peer review process, the 3rd sentence of paragraph (b)(2)(v)(C) now explains that, for Regional Fishery Management Councils, the peer review process is not a substitute for the SSC and both the SSC and peer review process should work in conjunction with each other. Paragraph (b)(4) was also revised to remove ''or overfished'' to restore the original language used in this sentence, prior to the introduction of the proposed depleted definition.

Paragraph (d)(1) was revised to replace ''and'' with ''or'' after the term ''other reference points'' in the last sentence for clarification purposes. Other minor updates were made to the citations within paragraph (d)(1).

Paragraph (e)(1)(iv) was revised to remove the term ''common'' text from the description of aggregate MSY. This text is unnecessary and may cause confusion.

The following phrase was added after ''annually,'' in paragraph (e)(1)(v)(A): ''but it must be based on the best scientific information available (*see* § 600.315)'' for clarification.

To clarify that MFMT and all reference points that stem from it are required to be specified on an annual basis, the words ''on an annual basis,'' were restored to the first sentence of paragraph (e)(2)(i)(C).

Paragraph (e)(2)(ii)(A) was revised to clarify the relationship between paragraphs (e)(2)(ii)(A)(*1*)-(*3*) and (e)(2)(ii). For clarity and consistency, the terms ''describe'' and ''used'' in the first and second sentences were revised as ''specify'' and ''specified.'' Subparagraphs (e)(2)(ii)(A)(*1*) and (*2*) were revised to delete the phrase ''or exceeding a multi-year catch reference point'' to prevent any confusion between a multi-year catch reference point and the multi-year approach in subparagraph (e)(2)(ii)(A)(*3*).

Subparagraph (e)(2)(ii)(A)(*3*) was revised to address confusion reflected in public comments regarding when a multi-year approach to determine overfishing status can be used and whether the provision may impact reference points for future catch levels. Subparagraph (e)(2)(ii)(A)(*3*) clarifies that subparagraphs (e)(2)(ii)(A) *(1)* and

*(2)* establish methods to determine overfishing status based on a period of 1 year. As stated in paragraph (e)(2)(ii)(A), a Council should specify, within the FMP, which of these methods will be used to determine overfishing status. However, in certain circumstances, a Council may utilize a multi-year approach to determine overfishing status based on a period of no more than 3 years. The Council should identify in its FMP or FMP amendment, the circumstances when a multi-year approach is appropriate and will be used. Such circumstances may include situations where there is high uncertainty in the estimate of F in the most recent year, cases where stock abundance fluctuations are high and assessments are not timely enough to forecast such changes, or other circumstances where the most recent catch or F data does not reflect the overall status of the stock. The multi-year approach to determine overfishing status may not be used to specify future annual catch limits at levels that do not prevent overfishing. In addition, the subparagraph deletes text that refers to a comprehensive analysis based on the best scientific information available.

Paragraph (e)(2)(i)(F), which addressed ''depleted'' stocks, was deleted in response to public comment and given the need for further consideration of this issue. A minor grammatical edit was also made in the 6th sentence of paragraph (e)(2)(ii). Finally, the word ''may'' was added after ''Long-term environmental changes'' in paragraph (e)(2)(iii) to clarify the nature of the expected relationship between long-term environmental changes and a stock or stock complex.

Paragraph (e)(2)(ii)(B) was revised to remove the phrase ''social and/or economic impacts on the fishery,'' from the list of factors that could inform MSST to clarify that MSST is a biological reference point and is based on the level of biomass below which the capacity of the stock to produce MSY on a continuing basis is jeopardized.

Paragraph (e)(3)(ii) was revised by removing the last sentence and explaining that if conservation and management measures cannot meet the dual requirements of NS1 (preventing overfishing, while achieving, on a continuing basis, OY), Councils should either modify the measures or reexamine their OY specifications to ensure that the dual NS1 requirements can be met. To clarify how summaries of OY specifications should be included in FMPs, paragraph (e)(3)(iii) was revised by removing the words: ''which documents how the OY will produce the greatest benefits to the nation and prevent overfishing'' from the 1st sentence and combining the 2nd and 3rd sentences to explain that the OY assessment should include: a summary of information utilized in making such specification, an explanation of how the OY specification will produce the greatest benefits to the nation and prevent overfishing and rebuild overfished stocks; and a consideration of the economic, social, and ecological factors relevant to the management of a particular stock, stock complex, or fishery. Finally, paragraph (e)(3)(iv)(D) was revised to clarify the relationship between internationally-managed stocks and specifying OY.

Paragraph (f)(2)(i) was revised to clarify the level of analysis required when establishing ABC control rules by explaining that the Council must provide a comprehensive analysis and articulate within their FMP when the control rule can and cannot be used and how the control rule prevents overfishing.

Paragraph (f)(2)(i) was revised to further explain how to properly establish ABC control rules. The 1st sentence of paragraph (f)(2)(i) explains that Councils must establish an ABC control rule that accounts for scientific uncertainty in the OFL and for the Council's risk policy, and that is based on a comprehensive analysis that shows how the control rule prevents overfishing. Paragraph (f)(2)(ii) was revised by removing ''directed'' from the phrase: ''and may establish a stock abundance level below which directed fishing would not be allowed.'' Finally, the words ''in which case,'' ''provide a comprehensive analysis,'' and ''the control rule'' were removed from the last sentence of the paragraph so the last two sentences of the paragraph.

Paragraph (f)(2)(ii)(A) was revised to clarify that phase-in ABC control rules must be designed to prevent overfishing every year. In addition, the end of the paragraph explains that the Councils should evaluate the appropriateness of phase-in provisions for stocks that are overfished and/or rebuilding, as the overriding goal for such stocks is to rebuild them in as short a time as possible.

Paragraph (f)(2)(ii)(B) was revised to clarify the proper use of carry-over ABC control rules. To explain the meaning of the term ''ACL underage,'' the following words were added after ''unused portion of'' in the first sentence of paragraph (f)(2)(ii)(B): ''an ACL (*i.e.,* ACL underage) . . .'' The word ''must'' was also added before ''consider scientific uncertainty'' in the second sentence of the paragraph. To clarify that revising the ABC may not be necessary if the ACL was set below the ABC in the first place, the last sentence of the paragraph was removed and the third sentence of the paragraph now explains that carry-over provisions could also allow an ACL to be adjusted upwards as long as the revised ACL does not exceed the specified ABC. The end of the paragraph further clarifies the proper use of carry-over ABC control rules by explaining that, when considering whether to use a carry-over provision, Councils should consider the likely reason for the ACL underage. ACL underages that result from management uncertainty (*i.e.,* premature fishery closure) may be appropriate circumstances for considering a carry-over provision. ACL underages that occur as a result of poor or unknown stock status may not be appropriate to consider in a carry-over provision. In addition, the Councils should evaluate the appropriateness of carry-over provisions for stocks that are overfished and/or rebuilding, as the overriding goal for such stocks is to rebuild them in as short a time as possible.

Paragraph (f)(3) was revised to clarify the meaning of the term ''implementation of the ABC control rule.'' The second sentence of the paragraph explains that Councils and their SSCs should develop a process by which the SSC can access the best scientific information available when implementing the ABC control rule (*i.e.,* specifying the ABC). Paragraph (f)(3) was also revised to clarify that, in accordance with MSA section 302(g)(1)(B), specification of the ABC is the responsibility of the SSC.

To clarify that Councils may use varying terms to describe ACTs, the words ''or functional equivalent,'' were added to the third sentence of paragraph (f)(4)(i) that explains that, if an annual catch target (ACT), or functional equivalent, is not used, management uncertainty should be accounted for in the ACL. The words ''or the functional equivalent,'' were also added to paragraph (g)(4) so it reads: ''ACTs, or the functional equivalent, . . .'' for consistency.

Paragraph (f)(4)(iv) was revised to clarify how ABC is set in relation to OY. The words ''and is designed to prevent overfishing'' were removed from the 2nd sentence of paragraph (f)(4)(iv). Minor related revisions were also made to the 4th and 5th sentences of paragraph (f)(4(iv).

Minor revisions were made to the 5th sentence in paragraph (g)(3) to make the language consistent with the MSA.

A minor correction was made to paragraph (h)(1)(i) by replacing ''has''

with ''have'' after the phrase ''for species that.'' Minor updates were made to the citations within paragraphs (h)(1)(i)–(ii). In paragraph (h)(2), clarifications regarding the spawning potential of Pacific salmon were addressed by revising the example within the second sentence to ''*e.g.,* Pacific salmon, where the spawning potential for a stock is spread over a multi-year period.'' The word ''to'' was also added before the words ''manage to reference points based on MSY or MSY proxies.''

Paragraph (i)(2) was revised to replace ''*i.e.,''* with ''*e.g.,''* for clarification purposes.

Paragraph (j)(1) was revised to clarify that, consistent with MSA section 304(e), the Secretary will immediately notify in writing a Regional Fishery Management Council whenever the Secretary determines that one of the circumstances listed in subparagraphs (j)(1)(i)–(iv) is occurring.

Paragraph (j)(3)(i)(B)(*3*) was revised to provide additional guidance on how to determine which calculation method to use when calculating $T_{max.}$ The paragraph now explains that, in situations where $T_{min}$ exceeds 10 years, $T_{max}$ establishes a maximum time for rebuilding that is linked to the biology of the stock. When selecting a method for determining $T_{max}$, a Council, in consultation with its SSC, should consider the relevant biological data and scientific uncertainty of that data, and must provide a rationale for its decision based on the best scientific information available. One of the methods listed in subparagraphs (j)(3)(i)(B)(2)(*ii*) and (*iii*) may be appropriate, for example, if given data availability and the life history characteristics of the stock, there is high uncertainty in the estimate of generation time, or if generation time does not accurately reflect the productivity of the stock.

Minor edits were made to the 1st sentence of paragraph (j)(3)(i)(C) to align the paragraph more closely with the MSA.

Paragraph (j)(3)(iv) was revised so that the word ''are'' was replaced with ''is'' before ''exceeded'' and ''and'' was replaced with ''nor'' before ''caused the overage'' in the 3rd sentence of paragraph (j)(3)(iv). In addition, paragraph (j)(3)(iv) now explains that, for Secretarially-managed fisheries, the Secretary would take immediate action necessary to achieve adequate progress toward rebuilding and ending overfishing.

Paragraph (j)(3)(vi) was revised to explain that the one of the circumstances under which the fishing mortality rate for a stock or stock complex that has not rebuilt by $T_{max}$ can change is when the fishing mortality rate is changed as a result of the Secretary finding that adequate progress is not being made.

Paragraphs (j)(5)(i)–(ii) were removed. Paragraph (j)(5) clarifies the criteria for discontinuing rebuilding plans by explaining that a Council may discontinue a rebuilding plan for a stock or stock complex before it reaches $B_{msy}$ if the Secretary determines that the stock was not overfished in the year that the overfished determination (*see* MSA section 304(e)(3)) was based on and has never been overfished in any subsequent year, including the current year.

Paragraph (j)(6) was deleted because the definition for depleted stocks was removed from the final action.

Paragraph (l)(2) was revised to replace ''characteristic'' with ''characteristics'' for clarification purposes.

In the revisions to § 600.320, the last sentences of paragraphs (b)–(d) were removed to clarify, streamline, and reduce duplication between § 600.320 and § 600.305(c).

## VII. References Cited

A complete list of all the references cited in this final action is available upon request from Stephanie Hunt (*see* **FOR FURTHER INFORMATION CONTACT**).

## VIII. Classification

Pursuant to section 301(b) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be significant for purposes of Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The provision of the Administration Procedure Act (5 U.S.C. 553) requiring a delay in effective date is inapplicable because this rule is a statement of policy. 5 U.S.C. 553(d)(2).

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed action . *See* 80 FR 2799, January 20, 2015). In summary, this action makes technical changes to the general section of the National Standard Guidelines and the guidelines for National Standards 1, 3, and 7 and does not require the Councils or the Secretary to make changes to their FMPs. Furthermore, because the guidelines do not directly regulate any entities, the proposed changes will not directly alter the behavior of any entities operating in federally managed fisheries, and thus no direct economic effects on small entities (as described within the proposed action) are expected to result from this action. Therefore, no small entities will be directly affected by this action and a reduction in profits for a substantial number of small entities is not expected. *See* 80 FR 2800, January 20, 2015. No public comments were received regarding this certification.

NMFS notes that on January 26, 2016, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). The rule increased the size standard for Seafood Product Preparation and Packaging (NAICS code 311710) from 500 to 750 employees. Furthermore, on December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only. *See* 80 FR 81194, December 29, 2015. The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *See* 80 FR 81194, December 29, 2015. Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's size standards prior to February 26, 2016. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standards discussed above and has determined that the new size standards do not affect analyses prepared for this regulatory action. Further, because the guidelines do not directly regulate any entities, any new size standard will not directly alter the behavior of any entities operating in federally managed fisheries, and thus no direct economic effects on commercial harvesting businesses, marinas, seafood dealers/wholesalers, or seafood processors are expected to result from this action. Thus, no small entities will be directly affected by this action and a

reduction in profits for a substantial number of small entities is not expected.

Therefore, the Chief Counsel for Regulation of the Department of Commerce hereby reaffirms that the rule will not have a significant economic impact on a substantial number of small entities. Thus, NMFS has determined that the certification established during the proposed rule stage is still appropriate for this final action and a final regulatory flexibility analysis has not been prepared for this final action.

**List of Subjects in 50 CFR Part 600**

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: October 5, 2016.

**Samuel D. Rauch III,**

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

For the reasons stated in the preamble, 50 CFR part 600 is amended as follows:

## PART 600—MAGNUSON–STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and16 U.S.C. 1801 *et seq.*

■ 2. Section 600.305 is revised to read as follows:

### § 600.305 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act (MSA), and other applicable law. The Secretary has an obligation under section 301(b) of the MSA to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decision-making; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are not formulated according to the guidelines may not be approved by the Secretary if the FMP or FMP amendment is inconsistent with the MSA or other applicable law (16 U.S.C. 1854(a)(3)).

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish (*i.e.,* the management objectives to be attained in regulating the fishery under consideration). In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) To reflect the changing needs of the fishery over time, Councils should reassess the FMP's management objectives on a regular basis.

(3) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

(c) *Stocks that require conservation and management.* (1) Magnuson-Stevens Act section 302(h)(1) requires a Council to prepare an FMP for each fishery under its authority that requires (or in other words, is in need of) conservation and management. 16 U.S.C. 1852(h)(1). Not every fishery requires Federal management. Any stocks that are predominately caught in Federal waters and are overfished or subject to overfishing, or likely to become overfished or subject to overfishing, are considered to require conservation and management. Beyond such stocks, Councils may determine that additional stocks require ''conservation and management.'' (See Magnuson-Stevens Act definition at 16 U.S.C. 1802(5)). Based on this definition of conservation and management, and other relevant provisions of the Magnuson-Stevens Act, a Council should consider the following non-exhaustive list of factors when deciding whether additional stocks require conservation and management:

(i) The stock is an important component of the marine environment.

(ii) The stock is caught by the fishery.

(iii) Whether an FMP can improve or maintain the condition of the stock.

(iv) The stock is a target of a fishery.

(v) The stock is important to commercial, recreational, or subsistence users.

(vi) The fishery is important to the Nation or to the regional economy.

(vii) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(viii) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(ix) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(x) The extent to which the fishery is already adequately managed by states, by state/Federal programs, or by Federal regulations pursuant to other FMPs or international commissions, or by industry self-regulation, consistent with the requirements of the Magnuson-Stevens Act and other applicable law.

(2) In evaluating factors in paragraphs (c)(1)(i) through (x) of this section, a Council should consider the specific circumstances of a fishery, based on the best scientific information available, to determine whether there are biological, economic, social and/or operational concerns that can and should be addressed by Federal management.

(3) When considering adding a stock to an FMP, no single factor is dispositive or required. One or more of the above factors, and any additional considerations that may be relevant to the particular stock, may provide the basis for determining that a stock requires conservation and management. Based on the factor in paragraph (c)(1)(iii) of this section, if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of adding a stock to an FMP. However, Councils should consider the factor in paragraph (c)(1)(x) of this section before deciding to include a stock in an FMP. In many circumstances, adequate management of a fishery by states, state/Federal

programs, or another Federal FMP would weigh heavily against a Federal FMP action. *See, e.g.,* 16 U.S.C. 1851(a)(7) and 1856(a)(3).

(4) When considering removing a stock from, or continuing to include a stock in, an FMP, Councils should prepare a thorough analysis of factors in paragraphs (c)(1)(i) through (x) of this section, and any additional considerations that may be relevant to the particular stock. As mentioned in paragraph (c)(3) of this section, if the amount and/or type of catch that occurs in Federal waters is a significant contributing factor to the stock's status, such information would weigh heavily in favor of continuing to include a stock in an FMP. Councils should consider weighting the factors as follows. Factors in paragraphs (c)(1)(i) through (iii) of this section should be considered first, as they address maintaining a fishery resource and the marine environment. *See* 16 U.S.C. 1802(5)(A). These factors weigh in favor of continuing to include a stock in an FMP. Councils should next consider factors in paragraphs (c)(1)(iv) through (ix) of this section, which set forth key economic, social, and other reasons contained within the MSA for an FMP action. *See* 16 U.S.C. 1802(5)(B). Finally, a Council should consider the factor in paragraph (c)(1)(x) of this section before deciding to remove a stock from, or continue to include a stock in, an FMP. In many circumstances, adequate management of a fishery by states, state/Federal programs, or another Federal FMP would weigh in favor of removing a stock from an FMP. *See e.g.,* 16 U.S.C. 1851(a)(7) and 1856(a)(3).

(5) Councils may choose to identify stocks within their FMPs as ecosystem component (EC) species (*see* § § 600.305(d)(13) and 600.310(d)(1)) if a Council determines that the stocks do not require conservation and management based on the considerations and factors in paragraph (c)(1) of this section. EC species may be identified at the species or stock level, and may be grouped into complexes. Consistent with National Standard 9, MSA section 303(b)(12), and other applicable MSA sections, management measures can be adopted in order to, for example, collect data on the EC species, minimize bycatch or bycatch mortality of EC species, protect the associated role of EC species in the ecosystem, and/or to address other ecosystem issues.

(6) A stock or stock complex may be identified in more than one FMP. In this situation, the relevant Councils should choose which FMP will be the primary FMP in which reference points for the stock or stock complex will be established. In other FMPs, the stock or stock complex may be identified as ''other managed stocks'' and management measures that are consistent with the objectives of the primary FMP can be established.

(7) Councils should periodically review their FMPs and the best scientific information available and determine if the stocks are appropriately identified. As appropriate, stocks should be reclassified within an FMP, added to or removed from an existing FMP, or added to a new FMP, through an FMP amendment that documents the rationale for the decision.

(d) *Word usage within the National Standard Guidelines.* The word usage refers to all regulations in this subpart.

(1) *Must* is used, instead of ''shall'', to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

(2) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a statement of organization, practices, and procedures (SOPP) or an FMP.

(4) *May* is used in a permissive sense.

(5) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(6) *Could* is used when giving examples, in a hypothetical, permissive sense.

(7) *Can* is used to mean ''is able to,'' as distinguished from ''may.''

(8) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(9) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(10) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(11) *Target stocks* are stocks or stock complexes that fishers seek to catch for sale or personal use, including such fish that are discarded for economic or regulatory reasons as defined under Magnuson-Stevens Act section 3(9) and 3(38).

(12) *Non-target species* and *non-target stocks* are fish caught incidentally during the pursuit of target stocks in a fishery. Non-target stocks may require conservation and management and, if so, must be included in a FMP and be identified at the stock or stock complex level. If non-target species are not in need of conservation and management, they may be identified in an FMP as ecosystem component species.

(13) *Ecosystem Component Species* (*see* §§ 600.305(c)(5) and 600.310(d)(1)) are stocks that a Council or the Secretary has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives.

(e) *Relationship of National Standard 1 to other national standards—General.* National Standard 1 addresses preventing overfishing and achieving optimum yield. *See* 16 U.S.C. 1851(a)(1) and 50 CFR 600.310. National Standards 2 through 10 provide further requirements for conservation and management measures in FMPs. *See* 16 U.S.C. 1851(a)(2) through (10) and 50 CFR 600.315 through 600.355. Below is a description of how some of the other National Standards intersect with National Standard 1.

(1) *National Standard 2* (*see* § 600.315). Management measures and reference points to implement NS1 must be based on the best scientific information available. When data are insufficient to estimate reference points directly, Councils should develop reasonable proxies to the extent possible (also *see* § 600.310(e)(1)(v)(B)). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data. SSCs should advise their Councils regarding the best scientific information available for fishery management decisions.

(2) *National Standard 3* (*see* § 600.320). Reference points should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also *see* § 600.310(e)(1)(ii) and (iii)).

(3) *National Standard 6* (*see* § 600.335). Councils must build into the reference points and control rules appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors.

(4) *National Standard 8* (*see* § 600.345). National Standard 8 addresses economic and social considerations and minimizing to the extent practicable adverse economic impacts on fishing communities within the context of preventing overfishing and rebuilding overfished stocks as required under National Standard 1 and

other MSA provisions. Calculation of OY as reduced from maximum sustainable yield (MSY) also includes consideration of economic and social factors, but the combination of management measures chosen to achieve the OY must principally be designed to prevent overfishing and rebuild overfished stocks.

(5) *National Standard 9* (*see* § 600.350). Evaluation of stock status with respect to reference points must take into account mortality caused by bycatch. In addition, the estimation of catch should include the mortality of fish that are discarded.

■ 3. Section 600.310 is revised to read as follows:

**§ 600.310 National Standard 1—Optimum Yield.**

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

(b) *General.* (1) The guidelines set forth in this section describe fishery management approaches to meet the objectives of National Standard 1 (NS1), and include guidance on:

(i) Specifying maximum sustainable yield (MSY) and OY;

(ii) Specifying status determination criteria (SDC) so that overfishing and overfished determinations can be made for stocks and stock complexes in an FMP;

(iii) Preventing overfishing and achieving OY, incorporation of scientific and management uncertainty in control rules, and adaptive management using annual catch limits (ACL) and measures to ensure accountability (*i.e.,* accountability measures (AMs)); and

(iv) Rebuilding stocks and stock complexes.

(2) *Overview of Magnuson-Stevens Act concepts and provisions related to NS1*—(i) *MSY.* The Magnuson-Stevens Act establishes MSY as the basis for fishery management and requires that: The fishing mortality rate must not jeopardize the capacity of a stock or stock complex to produce MSY; the abundance of an overfished stock or stock complex must be rebuilt to a level that is capable of producing MSY; and OY must not exceed MSY.

(ii) *OY.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's conservation and management objectives, achieving an FMP's objectives, and balancing the various interests that comprise the greatest overall benefits to the Nation. OY is based on MSY as reduced under paragraphs (e)(3)(iii)(A) and (B) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(iii) *ACLs and AMs.* Any FMP shall establish a mechanism for specifying ACLs in the FMP (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability (Magnuson-Stevens Act section 303(a)(15)).

(iv) *Reference points.* SDC, MSY, OY, acceptable biological catch (ABC), and ACL, which are described further in paragraphs (e) and (f) of this section, are collectively referred to as ''reference points.''

(v) *Scientific advice.* The Magnuson-Stevens Act has requirements regarding scientific and statistical committees (SSC) of the Regional Fishery Management Councils, including but not limited to, the following provisions (paragraphs (b)(2)(v)(A) through (D) of this section). *See* the National Standard 2 guidelines for further guidance on SSCs and the peer review process (§ 600.315).

(A) Each Regional Fishery Management Council shall establish an SSC as described in section 302(g)(1)(A) of the Magnuson-Stevens Act.

(B) Each SSC shall provide its Regional Fishery Management Council recommendations for ABC as well as other scientific advice, as described in Magnuson-Stevens Act section 302(g)(1)(B).

(C) The Secretary and each Regional Fishery Management Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of a fishery (*see* Magnuson-Stevens Act section 302(g)(1)(E)). If a peer review process is established, it should investigate the technical merits of stock assessments and other scientific information to be used by the SSC or agency or international scientists, as appropriate. For Regional Fishery Management Councils, the peer review process is not a substitute for the SSC and both the SSC and peer review process should work in conjunction with each other. For the Secretary, which does not have an SSC, the peer review process should provide the scientific information necessary.

(D) Each Council shall develop ACLs for each of its managed fisheries that may not exceed the ''fishing level recommendations'' of its SSC or peer review process (Magnuson-Stevens Act section 302(h)(6)). The SSC recommendation that is the most relevant to ACLs is ABC, as both ACL and ABC are levels of annual catch.

(3) *Approach for setting limits and accountability measures, including targets, for consistency with NS1.* When specifying limits and accountability measures, Councils must take an approach that considers uncertainty in scientific information and management control of the fishery. These guidelines describe how the Councils could address uncertainty such that there is a low risk that limits are exceeded as described in paragraphs (f)(2) and (g)(4) of this section.

(4) *Vulnerability.* A stock's vulnerability to fishing pressure is a combination of its productivity, which depends upon its life history characteristics, and its susceptibility to the fishery. Productivity refers to the capacity of the stock to produce MSY and to recover if the population is depleted, and susceptibility is the potential for the stock to be impacted by the fishery, which includes direct captures, as well as indirect impacts of the fishery (*e.g.,* loss of habitat quality).

(c) *Summary of items to include in FMPs related to NS1.* This section provides a summary of items that Councils must include in their FMPs and FMP amendments in order to address ACL, AM, and other aspects of the NS1 guidelines. Councils must describe fisheries data for the stocks and stock complexes in their FMPs, or associated public documents such as Stock Assessment and Fishery Evaluation (SAFE) Reports. For all stocks and stock complexes that require conservation and management (*see* § 600.305(c)), the Councils must evaluate and describe the following items in their FMPs and amend the FMPs, if necessary, to align their management objectives to end or prevent overfishing and to achieve OY:

(1) MSY and SDC (*see* paragraphs (e)(1) and (2) of this section).

(2) OY at the stock, stock complex, or fishery level and provide the OY specification analysis (*see* paragraph (e)(3) of this section).

(3) ABC control rule (*see* paragraph (f)(2) of this section).

(4) Mechanisms for specifying ACLs (*see* paragraph (f)(4) of this section).

(5) AMs (*see* paragraph (g) of this section).

(6) Stocks and stock complexes that have statutory exceptions from ACLs and AMs (*see* paragraph (h)(1) of this section) or which fall under limited circumstances which require different approaches to meet the Magnuson-

Stevens Act requirements (*see* paragraph (h)(2) of this section).

(d) *Stocks and stock complexes*—

(1) *Introduction.* As described in § 600.305(c), Councils should identify in their FMPs the stocks that require conservation and management. Such stocks must have ACLs, other reference points, and accountability measures. Other stocks that are identified in an FMP (*i.e.,* EC species or stocks that the fishery interacts with but are managed primarily under another FMP, *see* § 600.305(c)(5) through (6)) do not require ACLs, other reference points, or accountability measures.

(2) *Stock complex.* Stocks that require conservation and management can be grouped into stock complexes. A ''stock complex'' is a tool to manage a group of stocks within a FMP.

(i) At the time a stock complex is established, the FMP should provide, to the extent practicable, a full and explicit description of the proportional composition of each stock in the stock complex. Stocks may be grouped into complexes for various reasons, including where stocks in a multispecies fishery cannot be targeted independent of one another; where there is insufficient data to measure a stock's status relative to SDC; or when it is not feasible for fishermen to distinguish individual stocks among their catch. Where practicable, the group of stocks should have a similar geographic distribution, life history characteristics, and vulnerabilities to fishing pressure such that the impact of management actions on the stocks is similar. The vulnerability of individual stocks should be considered when determining if a particular stock complex should be established or reorganized, or if a particular stock should be included in a complex.

(ii) *Indicator stocks.* (A) An indicator stock is a stock with measurable and objective SDC that can be used to help manage and evaluate more poorly known stocks that are in a stock complex.

(B) Where practicable, stock complexes should include one or more indicator stocks (each of which has SDC and ACLs). Otherwise, stock complexes may be comprised of: Several stocks without an indicator stock (with SDC and an ACL for the complex as a whole), or one or more indicator stocks (each of which has SDC and management objectives) with an ACL for the complex as a whole (this situation might be applicable to some salmon species). Councils should review the available quantitative or qualitative information (*e.g.,* catch trends, changes in vulnerability, fish health indices, etc.) of stocks within a complex on a regular basis to determine if they are being sustainably managed.

(C) If an indicator stock is used to evaluate the status of a complex, it should be representative of the typical vulnerability of stocks within the complex. If the stocks within a stock complex have a wide range of vulnerability, they should be reorganized into different stock complexes that have similar vulnerabilities; otherwise the indicator stock should be chosen to represent the more vulnerable stocks within the complex. In instances where an indicator stock is less vulnerable than other members of the complex, management measures should be more conservative so that the more vulnerable members of the complex are not at risk from the fishery.

(D) More than one indicator stock can be selected to provide more information about the status of the complex.

(E) When indicator stocks are used, the stock complex's MSY could be listed as ''unknown,'' while noting that the complex is managed on the basis of one or more indicator stocks that do have known stock-specific MSYs, or suitable proxies, as described in paragraph (e)(1)(v) of this section.

(e) *Features of MSY, SDC, and OY*—

(1) *MSY.* Each FMP must include an estimate of MSY for the stocks and stock complexes that require conservation and management. MSY may also be specified for the fishery as a whole.

(i) *Definitions.* (A) *MSY* is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets.

(B) *MSY fishing mortality rate* ($F_{msy}$) is the fishing mortality rate that, if applied over the long term, would result in MSY.

(C) *MSY stock size* ($B_{msy}$) means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate measure of the stock's reproductive potential that would be achieved by fishing at $F_{msy.}$

(ii) *MSY for stocks.* MSY should be estimated for each stock based on the best scientific information available (*see* § 600.315).

(iii) *MSY for stock complexes.* When stock complexes are used, MSY should be estimated for one or more indicator stocks or for the complex as a whole (*see* paragraph (d)(2)(ii)).

(iv) *Methods of estimating MSY for an aggregate group of stocks.* Estimating MSY for an aggregate group of stocks (including stock complexes and the fishery as a whole) can be done using models that account for multi-species interactions, composite properties for a group of similar species, biomass (energy) flow and production patterns, or other relevant factors (*see* paragraph (e)(3)(iv)(C) of this section).

(v) *Specifying MSY.* (A) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available (*see* § 600.315), and should be re-estimated as required by changes in long-term environmental or ecological conditions, fishery technological characteristics, or new scientific information.

(B) When data are insufficient to estimate MSY directly, Councils should adopt other measures of reproductive potential that can serve as reasonable proxies for MSY, $F_{msy}$, and $B_{msy}$.

(C) The MSY for a stock or stock complex is influenced by its interactions with other stocks in its ecosystem and these interactions may shift as multiple stocks in an ecosystem are fished. Ecological and environmental information should be taken into account, to the extent practicable, when assessing stocks and specifying MSY. Ecological and environmental information that is not directly accounted for in the specification of MSY can be among the ecological factors considered when setting OY below MSY.

(D) As MSY values are estimates or are based on proxies, they will have some level of uncertainty associated with them. The degree of uncertainty in the estimates should be identified, when practicable, through the stock assessment process and peer review (*see* § 600.335), and should be taken into account when specifying the ABC Control rule (*see* paragraph (f)(2) of this section).

(2) *Status determination criteria*—(i) *Definitions.* (A) *Status determination criteria* (*SDC*) mean the measurable and objective factors, MFMT, OFL, and MSST, or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. Magnuson-Stevens Act (section 3(34)) defines both ''overfishing'' and ''overfished'' to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the MSY on a continuing basis. To avoid confusion, this section clarifies that ''overfished'' relates to biomass of a stock or stock complex, and ''overfishing'' pertains to a rate or level of removal of fish from a stock or stock complex.

(B) *Overfishing* occurs whenever a stock or stock complex is subjected to a level of fishing mortality or total catch that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(C) *Maximum fishing mortality threshold (MFMT)* means the level of fishing mortalityi.e F), on an annual basis, above which overfishing is occurring. The MFMT or reasonable proxy may be expressed either as a single number (a fishing mortality rate or F value), or as a function of spawning biomass or other measure of reproductive potential.

(D) *Overfishing limit (OFL)* means the annual amount of catch that corresponds to the estimate of MFMT applied to a stock or stock complex's abundance and is expressed in terms of numbers or weight of fish.

(E) *Overfished.* A stock or stock complex is considered ''overfished'' when its biomass has declined below MSST.

(F) *Minimum stock size threshold (MSST)* means the level of biomass below which the capacity of the stock or stock complex to produce MSY on a continuing basis has been jeopardized.

(G) *Approaching an overfished condition.* A stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years.

(ii) *Specification of SDC and overfishing and overfished determinations.* Each FMP must describe how objective and measurable SDCs will be specified, as described in paragraphs (e)(2)(ii)(A) and (B) of this section. To be measurable and objective, SDC must be expressed in a way that enables the Council to monitor the status of each stock or stock complex in the FMP. Applying the SDC set forth in the FMP, the Secretary determines if overfishing is occurring and whether the stock or stock complex is overfished (Magnuson-Stevens Act section 304(e)). SDCs are often based on fishing rates or biomass levels associated with MSY or MSY based proxies. When data are not available to specify SDCs based on MSY or MSY proxies, alternative types of SDCs that promote sustainability of the stock or stock complex can be used. For example, SDC could be based on recent average catch, fish densities derived from visual census surveys, length/weight frequencies, or other methods. In specifying SDC, a Council must provide an analysis of how the SDC were chosen and how they relate to reproductive potential of stocks of fish within the fishery. If alternative types of SDCs are used, the Council should explain how the approach will promote sustainability of the stock or stock complex on a long term basis. A Council should consider a process that allows SDCs to be quickly updated to reflect the best scientific information available. In the case of internationally-managed stocks, the Council may decide to use the SDCs defined by the relevant international body. In this instance, the SDCs should allow the Council to monitor the status of a stock or stock complex, recognizing that the SDCs may not be defined in such a way that a Council could monitor the MFMT, OFL, or MSST as would be done with a domestically managed stock or stock complex.

(A) *SDC to Determine Overfishing Status.* Each FMP must specify a method used to determine the overfishing status for each stock or stock complex. For domestically-managed stocks or stock complexes, one of the following methods (described in (e)(2)(ii)(A)(*1*) and (*2*) of this section) should be specified. If the necessary data to use one of the methods described in either subparagraph (e)(2)(ii)(A)(*1*) or (*2*) is not available, a Council may use an alternate type of overfishing SDC as described in paragraph (e)(2)(ii).

*(1) Fishing Mortality Rate Exceeds MFMT.* Exceeding the MFMT for a period of 1 year constitutes overfishing.

*(2) Catch Exceeds the OFL.* Exceeding the annual OFL for 1 year constitutes overfishing.

(*3*) *Multi-Year Approach to Determine Overfishing Status.* Subparagraphs (e)(2)(ii)(A) (1) and (2) establish methods to determine overfishing status based on a period of 1 year. As stated in paragraph (e)(2)(ii)(A), a Council should specify, within the FMP, which of these methods will be used to determine overfishing status. However, in certain circumstances, a Council may utilize a multi-year approach to determine overfishing status based on a period of no more than 3 years. The Council should identify in its FMP or FMP amendment, circumstances when the multi-year approach is appropriate and will be used. Such circumstances may include situations where there is high uncertainty in the estimate of F in the most recent year, cases where stock abundance fluctuations are high and assessments are not timely enough to forecast such changes, or other circumstances where the most recent catch or F data does not reflect the overall status of the stock. The multi-year approach to determine overfishing status may not be used to specify future annual catch limits at levels that do not prevent overfishing.

(B) *SDC to determine overfished status.* The MSST or reasonable proxy must be expressed in terms of spawning biomass or other measure of reproductive potential. MSST should be between ½ $B_{msy}$ and $B_{msy}$, and could be informed by the life history of the stock, the natural fluctuations in biomass associated with fishing at MFMT over the long-term, the requirements of internationally-managed stocks, or other considerations.

(C) Where practicable, all sources of mortality including that resulting from bycatch, scientific research catch, and all fishing activities should be accounted for in the evaluation of stock status with respect to reference points.

(iii) *Relationship of SDC to environmental and habitat change.* Some short-term environmental changes can alter the size of a stock or stock complex without affecting its long-term reproductive potential. Long-term environmental changes may affect both the short-term size of the stock or stock complex and the long-term reproductive potential of the stock or stock complex.

(A) If environmental changes cause a stock or stock complex to fall below its MSST without affecting its long-term reproductive potential, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (*see* also paragraph (j)(3)(i) of this section). SDC should not be respecified.

(B) If environmental, ecosystem, or habitat changes affect the long-term reproductive potential of the stock or stock complex, one or more components of the SDC must be respecified. Once SDC have been respecified, fishing mortality may or may not have to be reduced, depending on the status of the stock or stock complex with respect to the new criteria.

(C) If manmade environmental changes are partially responsible for a stock or stock complex's biomass being below MSST, in addition to controlling fishing mortality, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (*see* also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(iv) *Secretarial approval of SDC.* Secretarial approval or disapproval of proposed SDC will be based on consideration of whether the proposal:

(A) Is based on the best scientific information available;

(B) Contains the elements described in paragraph (e)(2)(ii) of this section;

(C) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria; and

(D) Is operationally feasible.

(3) *Optimum yield.* For stocks that require conservation and management, OY may be established at the stock, stock complex, or fishery level.

(i) *Definitions*— (A) *Optimum yield (OY).* Magnuson-Stevens Act section (3)(33) defines ''optimum,'' with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

(B) In NS1, use of the phrase ''achieving, on a continuing basis, the OY from each fishery'' means: producing, from each stock, stock complex, or fishery, an amount of catch that is, on average, equal to the Council's specified OY; prevents overfishing; maintains the long term average biomass near or above $B_{msy}$; and rebuilds overfished stocks and stock complexes consistent with timing and other requirements of section 304(e)(4) of the Magnuson-Stevens Act and paragraph (j) of this section.

(ii) *General.* OY is a long-term average amount of desired yield from a stock, stock complex, or fishery. An FMP must contain conservation and management measures, including ACLs and AMs, to achieve OY on a continuing basis, and provisions for information collection that are designed to determine the degree to which OY is achieved. These measures should allow for practical and effective implementation and enforcement of the management regime. If these measures cannot meet the dual requirements of NS1 (preventing overfishing while achieving, on a continuing basis, OY), Councils should either modify the measures or reexamine their OY specifications to ensure that the dual NS1 requirements can be met.

(iii) *Assessing OY.* An FMP must contain an assessment and specification of OY (MSA section 303(a)(3)). The assessment should include: a summary of information utilized in making such specification; an explanation of how the OY specification will produce the greatest benefits to the nation and prevent overfishing and rebuild overfished stocks; and a consideration of the economic, social, and ecological factors relevant to the management of a particular stock, stock complex, or fishery. Consistent with Magnuson-Stevens Act section 302(h)(5), the assessment and specification of OY should be reviewed on a continuing basis, so that it is responsive to changing circumstances in the fishery.

(A) *Determining the greatest benefit to the Nation.* In determining the greatest benefit to the Nation, the values that should be weighed and receive serious attention when considering the economic, social, or ecological factors used in reducing MSY, or its proxy, to obtain OY are:

(*1*) The benefits of food production derived from providing seafood to consumers; maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies; and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(*2*) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving. Benefits also include the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(*3*) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem, maintaining evolutionary and ecological processes (*e.g.,* disturbance regimes, hydrological processes, nutrient cycles), maintaining productive habitat, maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(B) *Economic, Ecological, and Social Factors.* Councils should consider the management objectives of their FMPs and their management framework to determine the relevant social, economic, and ecological factors used to determine OY. There will be inherent trade-offs when determining the objectives of the fishery. The following is a non-exhaustive list of potential considerations for social, economic, and ecological factors.

(*1*) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery (*e.g.,* involvement in fisheries and ability to adapt to change). Consideration may be given to fishery-related indicators (*e.g.,* number of fishery permits, number of commercial fishing vessels, number of party and charter trips, landings, ex-vessel revenues etc.) and non-fishery related indicators (*e.g.,* unemployment rates, percent of population below the poverty level, population density, etc.), and preference for a particular type of fishery (*e.g.,* size of the fishing fleet, type of vessels in the fleet, permissible gear types). Other factors that may be considered include the effects that past harvest levels have had on fishing communities, the cultural place of subsistence fishing, obligations under tribal treaties, proportions of affected minority and low-income groups, and worldwide nutritional needs.

(*2*) *Economic factors.* Examples are prudent consideration of the risk of overharvesting when a stock's size or reproductive potential is uncertain (*see* § 600.335(c)(2)(i)), satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S. harvested fish. Other factors that may be considered include: The value of fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, the attendant increase in catch per unit of effort, alternate employment opportunities, and economic contribution to fishing communities, coastal areas, affected states, and the nation.

(*3*) *Ecological factors.* Examples include impacts on EC species, forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds. Species interactions that have not been explicitly taken into account when calculating MSY should be considered as relevant factors for setting OY below MSY. In addition, consideration should be given to managing forage stocks for higher biomass than $B_{msy}$ to enhance and protect the marine ecosystem. Also important are ecological or environmental conditions that stress marine organisms or their habitat, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(iv) *Specifying OY.* If the estimates of MFMT and current biomass are known with a high level of certainty and management controls can accurately limit catch, then OY could be set very close to MSY, assuming no other reductions are necessary for social, economic, or ecological factors. To the degree that such MSY estimates and management controls are lacking or

unavailable, OY should be set farther from MSY.

(A) The OY can be expressed in terms of numbers or weight of fish, and either as a single value or a range. When it is not possible to specify OY quantitatively, OY may be described qualitatively.

(B) The determination of OY is based on MSY, directly or through proxy. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, OY must still be established based on the best scientific information available.

(C) An OY established at a fishery level may not exceed the sum of the MSY values for each of the stocks or stocks complexes within the fishery. Aggregate level MSY estimates could be used as a basis for specifying OY for the fishery (*see* paragraph (e)(1)(iv) of this section). When aggregate level MSY is estimated, single stock MSY estimates can also be used to inform single stock management. For example, OY could be specified for a fishery, while other reference points are specified for individual stocks in order to prevent overfishing on each stock within the fishery.

(D) For internationally-managed stocks, fishing levels that are agreed upon by the U.S. at the international level are considered to be consistent with OY requirements under the MSA and these guidelines.

(v) *OY and foreign fishing.* Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States. The FMP must include an assessment to address the following, as required by section 303(a)(4) of the Magnuson-Stevens Act:

(A) The OY specification is the basis for establishing any total allowable level of foreign fishing (TALFF).

(B) Part of the OY may be held as a reserve to allow for domestic annual harvest (DAH). If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(C) *DAH.* Councils and/or the Secretary must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(D) *Domestic annual processing (DAP).* Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (*e.g.,* marketed as fresh whole fish, used for private consumption, or used for bait).

(E) *Joint venture processing (JVP).* When DAH exceeds DAP, the surplus is available for JVP.

(f) *Acceptable biological catch and annual catch limits.* (1) *Definitions.*— (i) *Catch* is the total quantity of fish, measured in weight or numbers of fish, taken in commercial, recreational, subsistence, tribal, and other fisheries. Catch includes fish that are retained for any purpose, as well as mortality of fish that are discarded.

(ii) *Acceptable biological catch (ABC)* is a level of a stock or stock complex's annual catch, which is based on an ABC control rule that accounts for the scientific uncertainty in the estimate of OFL, any other scientific uncertainty, and the Council's risk policy.

(iii) *Annual catch limit (ACL)* is a limit on the total annual catch of a stock or stock complex, which cannot exceed the ABC, that serves as the basis for invoking AMs. An ACL may be divided into sector-ACLs (*see* paragraph (f)(4) of this section).

(iv) *Control rule* is a policy for establishing a limit or target catch level that is based on the best scientific information available and is established by the Council in consultation with its SSC.

(v) *Management uncertainty* refers to uncertainty in the ability of managers to constrain catch so that the ACL is not exceeded, and the uncertainty in quantifying the true catch amounts (*i.e.,* estimation errors). The sources of management uncertainty could include: Late catch reporting; misreporting; underreporting of catches; lack of sufficient inseason management, including inseason closure authority; or other factors.

(vi) *Scientific uncertainty* refers to uncertainty in the information about a stock and its reference points. Sources of scientific uncertainty could include: Uncertainty in stock assessment results; uncertainty in the estimates of MFMT, MSST, the biomass of the stock, and OFL; time lags in updating assessments; the degree of retrospective revision of assessment results; uncertainty in projections; uncertainties due to the choice of assessment model; longer-term uncertainties due to potential ecosystem and environmental effects; or other factors.

(2) *ABC control rule.*— (i) For stocks and stock complexes required to have an ABC, each Council must establish an ABC control rule that accounts for scientific uncertainty in the OFL and for the Council's risk policy, and that is based on a comprehensive analysis that shows how the control rule prevents overfishing. The Council's risk policy could be based on an acceptable probability (at least 50 percent) that catch equal to the stock's ABC will not result in overfishing, but other appropriate methods can be used. When determining the risk policy, Councils could consider the economic, social, and ecological trade-offs between being more or less risk averse. The Council's choice of a risk policy cannot result in an ABC that exceeds the OFL. The process of establishing an ABC control rule may involve science advisors or the peer review process established under Magnuson-Stevens Act section 302(g)(1)(E).

(ii) The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and taking into account scientific uncertainty (*see* paragraph (f)(1)(vi) of this section). The ABC control rule should consider reducing fishing mortality as stock size declines below $B_{msy}$ and as scientific uncertainty increases, and may establish a stock abundance level below which fishing would not be allowed. When scientific uncertainty cannot be directly calculated, such as when proxies are used, then a proxy for the uncertainty should be established based on the best scientific information, including comparison to other stocks. The control rule may be used in a tiered approach to address different levels of scientific uncertainty. Councils can develop ABC control rules that allow for changes in catch limits to be phased-in over time or to account for the carry-over of some of the unused portion of the ACL from one year to the next. The Council must articulate within its FMP when the phase-in and/or carry-over provisions of the control rule can and cannot be used and how each provision prevents overfishing, based on a comprehensive analysis.

(A) *Phase-in ABC control rules.* Large changes in catch limits due to new

scientific information about the status of the stock can have negative short-term effects on a fishing industry. To help stabilize catch levels as stock assessments are updated, a Council may choose to develop a control rule that phases in changes to ABC over a period of time, not to exceed 3 years, as long as overfishing is prevented each year (*i.e.,* the phased-in catch level cannot exceed the OFL in any year). In addition, the Councils should evaluate the appropriateness of phase-in provisions for stocks that are overfished and/or rebuilding, as the overriding goal for such stocks is to rebuild them in as short a time as possible.

(B) *Carry-over ABC control rules.* An ABC control rule may include provisions for the carry-over of some of the unused portion of an ACL (*i.e.,* an ACL underage) from one year to increase the ABC for the next year, based on the increased stock abundance resulting from the fishery harvesting less than the full ACL. The resulting ABC recommended by the SSC must prevent overfishing and must consider scientific uncertainty consistent with the Council's risk policy. Carry-over provisions could also allow an ACL to be adjusted upwards as long as the revised ACL does not exceed the specified ABC. When considering whether to use a carry-over provision, Councils should consider the likely reason for the ACL underage. ACL underages that result from management uncertainty (*e.g.,* premature fishery closure) may be appropriate circumstances for considering a carry-over provision. ACL underages that occur as a result of poor or unknown stock status may not be appropriate to consider in a carry-over provision. In addition, the Councils should evaluate the appropriateness of carry-over provisions for stocks that are overfished and/or rebuilding, as the overriding goal for such stocks is to rebuild them in as short a time as possible.

(3) *Specification of ABC.* ABC may not exceed OFL (*see* paragraph (e)(2)(i)(D) of this section). Councils and their SSC should develop a process by which the SSC can access the best scientific information available when implementing the ABC control rule (*i.e.,* specifying the ABC). The SSC must recommend the ABC to the Council. An SSC may recommend an ABC that differs from the result of the ABC control rule calculation, based on factors such as data uncertainty, recruitment variability, declining trends in population variables, and other factors, but must provide an explanation for the deviation. For Secretarial FMPs or amendments, agency scientists or a peer review process would provide the scientific advice to establish ABC. For internationally-assessed stocks, an ABC as defined in these guidelines is not required if stocks fall under the international exception (*see* paragraph (h)(1)(ii) of this section). While the ABC is allowed to equal OFL, NMFS expects that in most cases ABC will be reduced from OFL to reduce the probability that overfishing might occur.

(i) *Expression of ABC.* ABC should be expressed in terms of catch, but may be expressed in terms of landings as long as estimates of bycatch and any other fishing mortality not accounted for in the landings are incorporated into the determination of ABC.

(ii) *ABC for overfished stocks.* For overfished stocks and stock complexes, a rebuilding ABC must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates (*i.e.,* $F_{rebuild}$) in the rebuilding plan.

(4) *Setting the annual catch limit*— (i) *General.* ACL cannot exceed the ABC and may be set annually or on a multiyear plan basis. ACLs in coordination with AMs must prevent overfishing (*see* MSA section 303(a)(15)). If an Annual Catch Target (ACT), or functional equivalent, is not used, management uncertainty should be accounted for in the ACL. If a Council recommends an ACL which equals ABC, and the ABC is equal to OFL, the Secretary may presume that the proposal would not prevent overfishing, in the absence of sufficient analysis and justification for the approach. A ''multiyear plan'' as referenced in section 303(a)(15) of the Magnuson-Stevens Act is a plan that establishes harvest specifications or harvest guidelines for each year of a time period greater than 1 year. A multiyear plan must include a mechanism for specifying ACLs for each year with appropriate AMs to prevent overfishing and maintain an appropriate rate of rebuilding if the stock or stock complex is in a rebuilding plan. A multiyear plan must provide that, if an ACL is exceeded for a year, then AMs are implemented for the next year consistent with paragraph (g)(3) of this section.

(ii) *Sector-ACLs.* A Council may, but is not required to, divide an ACL into sector-ACLs. If sector-ACLs are used, sector-AMs should also be specified. ''Sector,'' for purposes of this section, means a distinct user group to which separate management strategies and separate catch quotas apply. Examples of sectors include the commercial sector, recreational sector, or various gear groups within a fishery. If the management measures for different sectors differ in the degree of management uncertainty, then sector-ACLs may be necessary so that appropriate AMs can be developed for each sector. If a Council chooses to use sector-ACLs, the sum of sector-ACLs must not exceed the stock or stock complex level ACL. The system of ACLs and AMs designed must be effective in protecting the stock or stock complex as a whole. Even if sector-ACLs and sector-AMs are established, additional AMs at the stock or stock complex level may be necessary.

(iii) *ACLs for State-Federal Fisheries.* For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments should include an ACL for the overall stock that may be further divided. For example, the overall ACL could be divided into a Federal-ACL and state-ACL. However, NMFS recognizes that Federal management is limited to the portion of the fishery under Federal authority. *See* 16 U.S.C. 1856. When stocks are co-managed by Federal, state, tribal, and/or territorial fishery managers, the goal should be to develop collaborative conservation and management strategies, and scientific capacity to support such strategies (including AMs for state or territorial and Federal waters), to prevent overfishing of shared stocks and ensure their sustainability.

(iv) *Relationship between OY and the ACL framework.* The dual goals of NS1 are to prevent overfishing and achieve OY on a continuing basis. The ABC is an upper limit on catch that prevents overfishing within an established framework of risk and other considerations. As described in paragraph (e)(3) of this section, ecological, economic, and social factors, as well as values associated with determining the greatest benefit to the Nation, are important considerations in specifying OY. These types of considerations can also be considered in the ACL framework. For example, an ACL (or ACT) could be set lower than the ABC to account for ecological, economic, and social factors (*e.g.,* needs of forage fish, promoting stability, addressing market conditions, etc.). Additionally, economic, social, or ecological trade-offs could be evaluated when determining the risk policy for an ABC control rule (*see* paragraph (f)(2) of this section). While OY is a long-term average amount of desired yield, there is, for each year, an amount of fish that is consistent with achieving the long-term OY. A Council can choose to express OY on an annual basis, in which case the FMP or FMP amendment should indicate that the OY is an

''annual OY.'' An annual OY cannot exceed the ACL.

(g) *Accountability measures (AMs).* (1) *Introduction.* AMs are management controls to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. AMs should address and minimize both the frequency and magnitude of overages and correct the problems that caused the overage in as short a time as possible. NMFS identifies two categories of AMs, inseason AMs and AMs for when the ACL is exceeded. The FMP should identify what sources of data will be used to implement AMs (*e.g.,* inseason data, annual catch compared to the ACL, or multi-year averaging approach).

(2) *Inseason AMs.* Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs. Inseason AMs could include, but are not limited to: An annual catch target (*see* paragraph (g)(4) of this section); closure of a fishery; closure of specific areas; changes in gear; changes in trip size or bag limits; reductions in effort; or other appropriate management controls for the fishery. If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs. FMPs should contain inseason closure authority giving NMFS the ability to close fisheries if it determines, based on data that it deems sufficiently reliable, that an ACL has been exceeded or is projected to be reached, and that closure of the fishery is necessary to prevent overfishing. For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.

(3) *AMs for when the ACL is exceeded.* On an annual basis, the Council must determine as soon as possible after the fishing year if an ACL was exceeded. If an ACL was exceeded, AMs must be implemented as soon as possible to correct the operational issue that caused the ACL overage, as well as any biological consequences to the stock or stock complex resulting from the overage when it is known. These AMs could include, among other things, modifications of inseason AMs, the use or modification of ACTs, or overage adjustments. The type of AM chosen by a Council will likely vary depending on the sector of the fishery, status of the stock, the degree of the overage, recruitment patterns of the stock, or other pertinent information. If an ACL is set equal to zero and the AM for the fishery is a closure that prohibits fishing for a stock, additional AMs are not required if only small amounts of catch (including bycatch) occur, and the catch is unlikely to result in overfishing. For stocks and stock complexes in rebuilding plans, the AMs should include overage adjustments that reduce the ACLs in the next fishing year by the full amount of the overage, unless the best scientific information available shows that a reduced overage adjustment, or no adjustment, is needed to mitigate the effects of the overage.

(4) *Annual Catch Target (ACT) and ACT control rule.* ACTs, or the functional equivalent, are recommended in the system of AMs so that ACL is not exceeded. An ACT is an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the catch at or below the ACL. ACT control rules can be used to articulate how management uncertainty is accounted for in setting the ACT. ACT control rules can be developed by the Council, in coordination with the SSC, to help the Council account for management uncertainty.

(5) *AMs based on multi-year average data.* Some fisheries have highly variable annual catches and lack reliable inseason or annual data on which to base AMs. If there are insufficient data upon which to compare catch to ACL, AMs could be based on comparisons of average catch to average ACL over a three-year moving average period or, if supported by analysis, some other appropriate multi-year period. Councils should explain why basing AMs on a multi-year period is appropriate. Evaluation of the moving average catch to the average ACL must be conducted annually, and if the average catch exceeds the average ACL, appropriate AMs should be implemented consistent with paragraph (g)(3) of this section.

(6) *AMs for State-Federal Fisheries.* For stocks or stock complexes that have harvest in state or territorial waters, FMPs and FMP amendments must, at a minimum, have AMs for the portion of the fishery under Federal authority. Such AMs could include closing the EEZ when the Federal portion of the ACL is reached, or the overall stock's ACL is reached, or other measures.

(7) *Performance Standard.* If catch exceeds the ACL for a given stock or stock complex more than once in the last four years, the system of ACLs and AMs should be reevaluated, and modified if necessary, to improve its performance and effectiveness. If AMs are based on multi-year average data, the performance standard is based on a comparison of the average catch to the average ACL. A Council could choose a higher performance standard (*e.g.,* a stock's catch should not exceed its ACL more often than once every five or six years) for a stock that is particularly vulnerable to the effects of overfishing, if the vulnerability of the stock has not already been accounted for in the ABC control rule.

(h) *Establishing ACL mechanisms and AMs in FMPs.* FMPs or FMP amendments must establish ACL mechanisms and AMs for all stocks and stock complexes that require conservation and management (*see* § 600.305(c)), unless paragraph (h)(1) of this section is applicable. These mechanisms should describe the annual or multiyear process by which ACLs, AMs, and other reference points such as OFL and ABC will be established.

(1) *Exceptions from ACL and AM requirements*—(i) *Life cycle.* Section 303(a)(15) of the Magnuson-Stevens Act ''shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species'' (Pub. L. 109–479 104(b)(2)). This exception applies to a stock for which the average age of spawners in the population is approximately 1 year or less. While exempt from the ACL and AM requirements, FMPs or FMP amendments for these stocks must have SDC, MSY, OY, ABC, and an ABC control rule.

(ii) *International fishery agreements.* Section 303(a)(15) of the Magnuson-Stevens Act applies ''unless otherwise provided for under an international agreement in which the United States participates'' (Pub. L. 109–479 104(b)(1)). This exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as ''any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party'' (*see* Magnuson-Stevens Act section 3(24)). These stocks would still need to have SDC, MSY, and OY.

(2) *Flexibility in application of NS1 guidelines.* There are limited circumstances that may not fit the standard approaches to specification of reference points and management measures set forth in these guidelines. These include, among other things, conservation and management of Endangered Species Act listed species, harvests from aquaculture operations, stocks with unusual life history characteristics (*e.g.,* Pacific salmon, where the spawning potential for a stock

is spread over a multi-year period), and stocks for which data are not available either to set reference points based on MSY or MSY proxies, or to manage to reference points based on MSY or MSY proxies. In these circumstances, Councils may propose alternative approaches for satisfying requirements of the Magnuson-Stevens Act other than those set forth in these guidelines. Councils must document their rationale for any alternative approaches in an FMP or FMP amendment, which will be reviewed for consistency with the Magnuson-Stevens Act.

(i) *Fisheries data.* In their FMPs, or associated public documents such as SAFE reports as appropriate, Councils must describe general data collection methods, as well as any specific data collection methods used for all stocks and stock complexes in their FMPs, including:

(1) Sources of fishing mortality (both landed and discarded), including commercial and recreational catch and bycatch in other fisheries;

(2) Description of the data collection and estimation methods used to quantify total catch mortality in each fishery, including information on the management tools used (*e.g.,* logbooks, vessel monitoring systems, observer programs, landings reports, fish tickets, processor reports, dealer reports, recreational angler surveys, or other methods); the frequency with which data are collected and updated; and the scope of sampling coverage for each fishery; and

(3) Description of the methods used to compile catch data from various catch data collection methods and how those data are used to determine the relationship between total catch at a given point in time and the ACL for stocks and stock complexes that require conservation and management.

(j) *Council actions to address overfishing and rebuilding for stocks and stock complexes*—

(1) *Notification.* The Secretary will immediately notify in writing a Regional Fishery Management Council whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) A stock or stock complex is approaching an overfished condition; or

(iv) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress (*see* MSA section 304(e)).

(2) *Timing of actions*—(i) *If a stock or stock complex is undergoing overfishing.* Upon notification that a stock or stock complex is undergoing overfishing, a Council should immediately begin working with its SSC (or agency scientists or peer review processes in the case of Secretarially-managed fisheries) to ensure that the ABC is set appropriately to end overfishing. Councils should evaluate the cause of overfishing, address the issue that caused overfishing, and reevaluate their ACLs and AMs to make sure they are adequate.

(ii) *If a stock or stock complex is overfished or approaching an overfished condition.* Upon notification that a stock or stock complex is overfished or approaching an overfished condition, a Council must prepare and implement an FMP, FMP amendment, or proposed regulations within two years of notification, consistent with the requirements of section 304(e)(3) of the Magnuson-Stevens Act. Council actions should be submitted to NMFS within 15 months of notification to ensure sufficient time for the Secretary to implement the measures, if approved.

(3) *Overfished fishery.*—(i) Where a stock or stock complex is overfished, a Council must specify a time period for rebuilding the stock or stock complex based on factors specified in Magnuson-Stevens Act section 304(e)(4). This target time for rebuilding ($T_{target}$) shall be as short as possible, taking into account: The status and biology of any overfished stock, the needs of fishing communities, recommendations by international organizations in which the U.S. participates, and interaction of the stock within the marine ecosystem. In addition, the time period shall not exceed 10 years, except where biology of the stock, other environmental conditions, or management measures under an international agreement to which the U.S. participates, dictate otherwise. SSCs (or agency scientists or peer review processes in the case of Secretarial actions) shall provide recommendations for achieving rebuilding targets (*see* Magnuson-Stevens Act section 302(g)(1)(B)). The above factors enter into the specification of $T_{target}$ as follows:

(A) *The minimum time for rebuilding a stock ($T_{min}$).* $T_{min}$ means the amount of time the stock or stock complex is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. In this context, the term ''expected'' means to have at least a 50 percent probability of attaining the $B_{msy}$, where such probabilities can be calculated. The starting year for the $T_{min}$ calculation should be the first year that the rebuilding plan is expected to be implemented.

(B) *The maximum time for rebuilding a stock or stock complex to its $B_{msy}$ ($T_{max}$).*

(*1*) If $T_{min}$ for the stock or stock complex is 10 years or less, then $T_{max}$ is 10 years.

(*2*) If $T_{min}$ for the stock or stock complex exceeds 10 years, then one of the following methods can be used to determine $T_{max}$:

(*i*) $T_{min}$ plus the length of time associated with one generation time for that stock or stock complex. ''Generation time'' is the average length of time between when an individual is born and the birth of its offspring,

(*ii*) The amount of time the stock or stock complex is expected to take to rebuild to $B_{msy}$ if fished at 75 percent of MFMT, or

(*iii*) $T_{min}$ multiplied by two.

(*3*) In situations where $T_{min}$ exceeds 10 years, $T_{max}$ establishes a maximum time for rebuilding that is linked to the biology of the stock. When selecting a method for determining $T_{max}$, a Council, in consultation with its SSC, should consider the relevant biological data and scientific uncertainty of that data, and must provide a rationale for its decision based on the best scientific information available. One of the methods listed in subparagraphs (j)(3)(i)(B)(*2*)(*ii*) and (*iii*) may be appropriate, for example, if given data availability and the life history characteristics of the stock, there is high uncertainty in the estimate of generation time, or if generation time does not accurately reflect the productivity of the stock.

(C) *Target time to rebuilding a stock or stock complex ($T_{target}$).* $T_{target}$ is the specified time period for rebuilding a stock that is considered to be as short a time as possible, taking into account the factors described in paragraph (j)(3)(i) of this section. $T_{target}$ shall not exceed $T_{max}$, and the fishing mortality associated with achieving $T_{target}$ is referred to as $F_{rebuild}$.

(ii) Council action addressing an overfished fishery must allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

(iii) For fisheries managed under an international agreement, Council action addressing an overfished fishery must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(iv) *Adequate Progress.* The Secretary shall review rebuilding plans at routine intervals that may not exceed two years to determine whether the plans have resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks (MSA section 304(e)(7)). Such reviews could include

the review of recent stock assessments, comparisons of catches to the ACL, or other appropriate performance measures. The Secretary may find that adequate progress is not being made if $F_{rebuild}$ or the ACL associated with $F_{rebuild}$ is exceeded, and AMs are not correcting the operational issue that caused the overage, nor addressing any biological consequences to the stock or stock complex resulting from the overage when it is known (*see* paragraph (g)(3) of this section). A lack of adequate progress may also be found when the rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock. If a determination is made under this provision, the Secretary will notify the appropriate Council and recommend further conservation and management measures, and the Council must develop and implement a new or revised rebuilding plan within two years (*see* MSA sections 304(e)(3) and (e)(7)(B)). For Secretarially-managed fisheries, the Secretary would take immediate action necessary to achieve adequate progress toward rebuilding and ending overfishing.

(v) While a stock or stock complex is rebuilding, revising rebuilding timeframes (*i.e.,* $T_{target}$ and $T_{max}$) or $F_{rebuild}$ is not necessary, unless the Secretary finds that adequate progress is not being made.

(vi) If a stock or stock complex has not rebuilt by $T_{max}$, then the fishing mortality rate should be maintained at its current $F_{rebuild}$ or 75 percent of the MFMT, whichever is less, until the stock or stock complex is rebuilt or the fishing mortality rate is changed as a result of the Secretary finding that adequate progress is not being made.

(4) *Emergency actions and interim measures.* If a Council is developing a rebuilding plan or revising an existing rebuilding plan due to a lack of adequate progress (*see* MSA section 304(e)(7)), the Secretary may, in response to a Council request, implement interim measures that reduce, but do not necessarily end, overfishing (*see* MSA section 304(e)(6)) if all of the following criteria are met:

(i) The interim measures are needed to address an unanticipated and significantly changed understanding of the status of the stock or stock complex;

(ii) Ending overfishing immediately is expected to result in severe social and/or economic impacts to a fishery; and

(iii) The interim measures will ensure that the stock or stock complex will increase its current biomass through the duration of the interim measures.

(5) *Discontinuing a rebuilding plan based on new scientific information.* A Council may discontinue a rebuilding plan for a stock or stock complex before it reaches $B_{msy}$ if the Secretary determines that the stock was not overfished in the year that the overfished determination (*see* MSA section 304(e)(3)) was based on and has never been overfished in any subsequent year including the current year.

(k) *International overfishing.* If the Secretary determines that a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures (or no effective measures) to end overfishing under an international agreement to which the United States is a party, then the Secretary and/or the appropriate Council shall take certain actions as provided under Magnuson-Stevens Act section 304(i). The Secretary, in cooperation with the Secretary of State, must immediately take appropriate action at the international level to end the overfishing. In addition, within one year after the determination, the Secretary and/or appropriate Council shall:

(1) Develop recommendations for domestic regulations to address the relative impact of the U.S. fishing vessels on the stock. Council recommendations should be submitted to the Secretary.

(2) Develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock. Councils should, in consultation with the Secretary, develop recommendations that take into consideration relevant provisions of the Magnuson-Stevens Act and NS1 guidelines, including section 304(e) of the Magnuson-Stevens Act and paragraph (j)(3)(iii) of this section, and other applicable laws. For highly migratory species in the Pacific, recommendations from the Western Pacific, North Pacific, or Pacific Councils must be developed and submitted consistent with Magnuson-Stevens Reauthorization Act section 503(f), as appropriate.

(3) *Considerations for assessing ''relative impact.''* ''Relative impact'' under paragraphs (k)(1) and (2) of this section may include consideration of factors that include, but are not limited to: Domestic and international management measures already in place, management history of a given nation, estimates of a nation's landings or catch (including bycatch) in a given fishery, and estimates of a nation's mortality contributions in a given fishery. Information used to determine relative impact must be based upon the best available scientific information.

(l) *Exceptions to requirements to prevent overfishing.* Exceptions to the requirement to prevent overfishing could apply under certain limited circumstances. Harvesting one stock at its optimum level may result in overfishing of another stock when the two stocks tend to be caught together (This can occur when the two stocks are part of the same fishery or if one is bycatch in the other's fishery). Before a Council may decide to allow this type of overfishing, an analysis must be performed and the analysis must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any stock or stock complex falling below its MSST. The Council may decide to allow this type of overfishing if the fishery is not overfished and the analysis demonstrates that all of the following conditions are satisfied:

(1) Such action will result in long-term net benefits to the Nation;

(2) Mitigating measures have been considered and it has been demonstrated that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristics in a manner such that no overfishing would occur; and

(3) The resulting rate of fishing mortality will not cause any stock or stock complex to fall below its MSST more than 50 percent of the time in the long term, although it is recognized that persistent overfishing is expected to cause the affected stock to fall below its $B_{msy}$ more than 50 percent of the time in the long term.

■ 4. Section 600.320 is revised to read as follows:

**§ 600.320 National Standard 3—Management Units.**

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and

not be overly constrained by political boundaries.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (*e.g.,* Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred.

(d) *Management unit.* The term ''management unit'' means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain stocks of fish for which there is not enough information available to specify MSY and OY or their proxies.

(e) *Analysis.* An FMP should include discussion of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exists or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures. Where state action is necessary to implement measures within state waters to achieve FMP objectives, the FMP should identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on state management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

■ 5. Section 600.340 is revised to read as follows:

**§ 600.340 National Standard 7—Costs and Benefits.**

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(c) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: Capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

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Part V

## Environmental Protection Agency

40 CFR Part 50

Review of the National Ambient Air Quality Standards for Lead; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 50**

**[EPA–HQ–OAR–2010–0108; FRL–9952–87–OAR]**

**RIN 2060–AQ44**

## Review of the National Ambient Air Quality Standards for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Based on the Environmental Protection Agency's (EPA's) review of the air quality criteria and the national ambient air quality standards (NAAQS) for lead (Pb), the EPA is retaining the current standards, without revision.

**DATES:** This final rule is effective on November 17, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0108. Incorporated into this docket is a separate docket established for the Integrated Science Assessment for this review (Docket ID No. EPA–HQ–ORD–2011–0051). All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. It may be viewed, with prior arrangement, at the EPA Docket Center. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket Information Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket Information Center is (202) 566–1742.

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### Availability of Information Related to this Action

A number of the documents that are relevant to this action are available through the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.* These documents include the *Integrated Review Plan for the National Ambient Air Quality Standards for Lead* (USEPA, 2011a), available at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_2010_pd.html,* the *Integrated Science Assessment for Lead* (USEPA, 2013a), available at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_2010_isa.html,* the *Review of the National Ambient Air Quality Standards for Lead: Risk and Exposure Assessment Planning Document* (USEPA, 2011b), available at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_2010_pd.html,* and the *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards* (USEPA, 2014), available at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_2010_pa.html.* These and other related documents are also available for inspection and copying in the EPA docket identified above.

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### Executive Summary

This document describes the completion of our current review of the NAAQS for Pb. This review of the standards and the air quality criteria (the scientific information upon which the standards are based) is required by the Clean Air Act on a periodic basis. In conducting this review, the EPA has carefully evaluated the currently available scientific literature on the health and welfare effects of Pb, focusing particularly on the information newly available since the conclusion of the last review in 2008. Between 2008 and 2014, the EPA prepared draft and final versions of the Integrated Science Assessment and the Policy Assessment, multiple drafts of which were subject to public review and comment and were reviewed by the Clean Air Scientific Advisory Committee, an independent scientific advisory committee established pursuant to the Clean Air Act and charged with providing advice to the Administrator. The EPA issued a proposed decision on the standards on January 5, 2015 (80 FR 278), and provided a 3-month period for submission of comments from the public. After consideration of public comments on the proposed decision and advice from the Clean Air Scientific Advisory Committee, the EPA has developed this document, which is the final step in the review process.

The prior review of the NAAQS for Pb was completed in 2008. As a result of that review, we significantly revised

both the primary and secondary standards, including a lowering of the standard levels by an order of magnitude. The 2008 change to the primary standard was focused on providing the requisite protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children, including neurocognitive effects (*e.g.,* IQ loss) and neurobehavioral effects. Although Pb has long been recognized to exert an array of adverse health effects, over the three decades from the time the standard was initially set in 1978 through its revision with the NAAQS review completed in 2008, the evidence base expanded considerably in a number of areas, including with regard to effects on neurocognitive function in young children at increasingly lower blood Pb levels. These effects formed the principal basis for the 2008 revisions to the primary standard.

The health effects evidence newly available in this review of the 2008 standard, as critically assessed in the ISA in conjunction with the full body of evidence, reaffirms conclusions on the broad array of effects recognized for Pb in the last review. Further, the currently available evidence is generally consistent with the evidence available in the last review, particularly with regard to key aspects of the evidence on which the current standard (set in 2008) is based. These key aspects include those regarding the relationships between air Pb concentrations and the associated Pb in the blood of young children as well as between total blood Pb levels and effects on children's IQ.

Based on consideration of the currently available health effects evidence in the context of this framework, and with support from the exposure/risk information, recognizing the uncertainties attendant in both, as well as the increasing uncertainty of risk estimates for lower air Pb concentrations, the Administrator concludes that the current primary standard provides the requisite protection of public health with an adequate margin of safety, including protection of at-risk populations. With regard to the secondary standard, the EPA has considered the currently available welfare effects evidence and screening-level risk information, including the general consistency of the current evidence with that available in the last review and the substantial limitations in the current evidence that complicate conclusions regarding the potential for Pb emissions under the current, much lower standard to contribute to welfare effects. Based on these considerations, the Administrator concludes that the current secondary standard is requisite to protect public welfare from known or anticipated adverse effects. Thus, based on the EPA's review of the air quality criteria and the NAAQS for Pb, the EPA is retaining the current standards, without revision.

## I. Background

### *A. Legislative Requirements*

Two sections of the Clean Air Act (CAA or the Act) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her ''judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;'' ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;'' and ''for which . . . [the Administrator] plans to issue air quality criteria . . .'' Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air . . .'' 42 U.S.C. 7408(b). Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants for which air quality criteria are issued. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [1] A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.''

The requirement that primary standards provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *See Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied,* 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982); *American Farm Bureau Federation* v. *EPA,* 559 F. 3d 512, 533 (D.C. Cir. 2009); *Association of Battery Recyclers* v. *EPA,* 604 F. 3d 613, 617–18 (D.C. Cir. 2010). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, see *Lead Industries* v. *EPA,* 647 F.2d at 1156 n.51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for an adequate margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of sensitive population(s) at risk,[2] and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. See *Lead Industries Association* v. *EPA,* 647 F.2d at 1161–62.

In setting primary and secondary standards that are ''requisite'' to protect public health and welfare, respectively, as provided in section 109(b), the EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, the EPA may not consider the

[1] The legislative history of section 109 indicates that a primary standard is to be set at ''the maximum permissible ambient air level . . . which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group.'' See S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970).

[2] As used here and similarly throughout this document, the term population (or group) refers to persons having a quality or characteristic in common, such as a specific pre-existing illness or a specific age or life stage. As discussed more fully in section II.A.2.d below, the identification of sensitive groups (called at-risk groups or at-risk populations) involves consideration of susceptibility and vulnerability.

costs of implementing the standards. See generally, *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 465–472, 475–76 (2001). Likewise, ''[a]ttainability and technological feasibility are not relevant considerations in the promulgation of national ambient air quality standards.'' *American Petroleum Institute* v. *Costle,* 665 F. 2d at 1185.

Section 109(d)(1) requires that ''not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards . . . and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate. . . .'' Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria . . . and the national primary and secondary ambient air quality standards . . . and shall recommend to the Administrator any new . . . standards and revisions of existing criteria and standards as may be appropriate . . .'' Since the early 1980s, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).[3]

*B. Related Lead Control Programs*

States are primarily responsible for ensuring attainment and maintenance of the NAAQS. Under section 110 of the Act (42 U.S.C. 7410) and related provisions, states are to submit, for EPA approval, state implementation plans that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The states, in conjunction with the EPA, also administer the Prevention of Significant Deterioration program (42 U.S.C. 7470–7479) for these pollutants.

The NAAQS is only one component of the EPA's programs to address Pb in the environment. Federal programs additionally provide for nationwide reductions in air emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under Title II of the Act (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, nonroad engine, and aircraft emissions; the new source performance standards under section 111 of the Act (42 U.S.C. 7411); emissions standards for solid waste incineration units and the national emission standards for hazardous air pollutants (NESHAP) under sections 129 (42 U.S.C. 7429) and 112 (42 U.S.C. 7412) of the Act, respectively.

The EPA has taken a number of actions associated with these air pollution control programs since the last review of the Pb NAAQS (completed in 2008), including completion of several regulations that will result in reduced Pb emissions from stationary sources regulated under the CAA sections 112 and 129. For example, in January 2012, the EPA updated the NESHAP for the secondary lead smelting source category (77 FR 555, January 5, 2012). These amendments to the original maximum achievable control technology standards apply to facilities nationwide that use furnaces to recover Pb from Pb-bearing scrap, mainly from automobile batteries (13 existing facilities). This action was estimated to result in a Pb emissions reduction of 13.6 tons per year (tpy) across the category (a 68 percent reduction). Somewhat lesser Pb emissions reductions are also expected from regulations completed in 2013 for commercial and industrial solid waste incineration units (78 FR 9112, February 7, 2013), as well as several other regulations since 2007 (72 FR 73179, December 26, 2007; 72 FR 74088, December 28, 2007; 73 FR 225, November 20, 2008; 78 FR 10006, February 12, 2013; 76 FR 15372, March 21, 2011; 78 FR 7138, January 31, 2013; 74 FR 51368, October 6, 2009; Policy Assessment, Appendix 2A).

The presentation below briefly summarizes additional ongoing activities that, although not directly pertinent to the review of the NAAQS, are associated with controlling environmental Pb levels and human Pb exposures more broadly. Among those identified are the EPA programs intended to encourage exposure reduction programs in other countries.

Reducing Pb exposures has long been recognized as a federal priority as environmental and public health agencies continue to grapple with soil and dust Pb levels from the historical use of Pb in paint and gasoline and from other sources (Alliance to End Childhood Lead Poisoning, 1991; 62 FR 19885, April 23, 1997; 66 FR 52013, October 11, 2001; 68 FR 19931, April 23, 2003). A broad range of federal programs beyond those that focus on air pollution control provide for nationwide reductions in environmental releases and human exposures.

Pursuant to section 1412 of the Safe Drinking Water Act (SDWA), EPA sets public health goals and enforceable standards for drinking water quality. The Lead and Copper Rule (LCR) is a treatment technique rule. The LCR requires public water systems to treat the water to reduce corrosion of Pb and copper from premise plumbing and drinking water distribution system components. When corrosion control treatment isn't enough, water systems must educate the public about Pb in drinking water and replace lead service lines, which are the pipes that connect buildings to the drinking water mains (40 CFR 141.80–141.91). The importance of corrosion control treatment was illustrated by the recent events in Flint, MI, when Pb levels in drinking water increased after the water system did not maintain corrosion control treatment when the system changed its water supply. Section 1417 of the SDWA additionally prohibits the use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system or any plumbing in a residential or non-residential facility providing water for human consumption, that is not lead free as defined by the Act.[4]

Additionally, federal Pb abatement programs provide for the reduction in human exposures and environmental releases from in-place materials containing Pb (*e.g.,* Pb-based paint, urban soil and dust, and contaminated waste sites). Federal regulations on disposal of Pb-based paint waste help facilitate the removal of Pb-based paint from residences (68 FR 36487, June 18, 2003).

Federal programs to reduce exposure to Pb in paint, dust, and soil are specified under the comprehensive federal regulatory framework developed under the Residential Lead-Based Paint Hazard Reduction Act (Title X). Under Title X (codified as Title IV of the Toxic Substances Control Act [TSCA]), the EPA has established regulations and associated programs in six categories: (1) Training, certification and work practice requirements for persons engaged in Pb-based paint activities (abatement, inspection and risk assessment); accreditation of training providers; and authorization of state and tribal Pb-based paint programs; (2) training, certification, and work practice requirements for persons engaged in home renovation, repair and painting (RRP) activities; accreditation of RRP training providers; and authorization of

[3] Lists of CASAC members and of members of the CASAC Lead Review Panel are available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/CommitteesandMembership?OpenDocument.*

[4] Effective in January 2014, the amount of Pb permitted in pipes, fittings, and fixtures was lowered (see ''Section 1417 of the Safe Drinking Water Act: Prohibition on Use of Lead Pipes, Solder, and Flux'' at *http://www.epa.gov/dwstandardsregulations/section-1417-safe-drinking-water-act-prohibition-use-lead-pipes-solder-and*).

state and tribal RRP programs; (3) ensuring that, for most housing constructed before 1978, information about Pb-based paint and Pb-based paint hazards flows from sellers to purchasers, from landlords to tenants, and from renovators to owners and occupants; (4) establishing standards for identifying dangerous levels of Pb in paint, dust and soil; (5) providing grant funding to establish and maintain state and tribal Pb-based paint programs; and (6) providing information on Pb hazards to the public, including steps that people can take to protect themselves and their families from Pb-based paint hazards. The most recent rule issued under Title IV of TSCA is for the Lead Renovation, Repair and Painting Program (73 FR 21692, April 22, 2008), which became fully effective in April 2010 and which applies to compensated renovators and maintenance professionals who perform RRP activities in housing and child-care facilities built prior to 1978. To foster adoption of the rule's measures, the EPA has been conducting an extensive education and outreach campaign to promote awareness of these new requirements among both the regulated entities and the consumers who hire them (*http://www2.epa.gov/lead/renovation-repair-and-painting-program*). In addition, the EPA is investigating whether Pb hazards are also created by RRP activities in public and commercial buildings, in which case the EPA plans to issue RRP requirements, where appropriate, for this class of buildings (79 FR 31072, May 30, 2014).

Programs associated with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and Resource Conservation Recovery Act (RCRA) also implement abatement programs, reducing exposures to Pb and other pollutants. For example, the EPA determines and implements protective levels for Pb in soil at Superfund sites and RCRA corrective action facilities. Federal programs, including those implementing RCRA, provide for management of hazardous substances in hazardous and municipal solid waste (*e.g.,* 66 FR 58258, November 20, 2001). Federal regulations concerning batteries in municipal solid waste facilitate the collection and recycling or proper disposal of batteries containing Pb.[5] Similarly, federal programs provide for the reduction in environmental releases of hazardous substances such as Pb in the management of wastewater (*http://www.epa.gov/owm/*).

A variety of federal nonregulatory programs also provide for reduced environmental release of Pb-containing materials by encouraging pollution prevention, promotion of reuse and recycling, reduction of priority and toxic chemicals in products and waste, and conservation of energy and materials. These include the ''National Waste Minimization Program'' (*https://archive.epa.gov/epawaste/hazard/wastemin/web/html/tools.html*), ''Sustainable Management of Electronics'' (*https://www.epa.gov/smm-electronics*), and the ''Sustainable Materials Management (SMM) Electronics Challenge'' (*https://www.epa.gov/smm-electronics/sustainable-materials-management-smm-electronics-challenge*).

The EPA's research program identifies, encourages and conducts research needed to develop methods and tools to characterize and help reduce risks related to Pb exposure. An example of one such effort is the EPA's Integrated Exposure Uptake Biokinetic Model for Lead in Children (IEUBK model), which is widely used and accepted as a tool that informs the evaluation of site-specific data. More recently, in recognition of the need for a single model that predicts Pb concentrations in tissues for children and adults, the EPA has been developing the All Ages Lead Model (AALM) to provide researchers and risk assessors with a pharmacokinetic model capable of estimating blood, tissue, and bone concentrations of Pb based on estimates of exposure over the lifetime of the individual (USEPA, 2006a, sections 4.4.5 and 4.4.8; USEPA, 2013a, section 3.6). The EPA's research activities on substances including Pb, such as those identified here, focus on improving our characterization of health and environmental effects, exposure, and control or management of environmental releases (see *http://www.epa.gov/research/*).

Other federal agencies also participate in programs intended to reduce Pb exposures. For example, programs of the Centers for Disease Control and Prevention (CDC) provide for the tracking of children's blood Pb levels in the U.S. and provide guidance on levels at which medical and environmental case management activities should be implemented (CDC, 2012; ACCLPP, 2012). As a result of coordinated, intensive efforts at the national, state and local levels, including those programs described above, blood Pb levels in all segments of the population have continued to decline from levels observed in the past. For example, blood Pb levels for the general population of children 1 to 5 years of age have dropped to a geometric mean level of 1.17 μg/dL in the 2009–2010 National Health and Nutrition Examination Survey (NHANES)[6] as compared to the geometric mean in 1999–2000 of 2.23 μg/dL and in 1988–1991 of 3.6 μg/dL (USEPA, 2013a, section 3.4.1; USEPA, 2006a, AX4–2). Similarly, statistics for the distribution of blood Pb levels in non-Hispanic black and lower socioeconomic groups of young children, which are generally higher than those for that population as a whole, have also declined, as have the differences in these statistics between non-Hispanic black and other groups, as well as between lower and higher socioeconomic groups (USEPA, 2013a, sections 3.4.1, 5.2.3 and 5.2.4; Jones et al., 2009).

The EPA also participates in a broad range of international programs focused on reducing environmental releases and human exposures in other countries. For example, the Partnership for Clean Fuels and Vehicles program engages governments and stakeholders in developing countries to eliminate Pb in gasoline globally.[7] From 2007 to 2011, the number of countries known to still be using leaded gasoline was reduced from just over 20 to six (USEPA, 2011c). As of January, leaded gasoline for on-road use is known to be available (along with unleaded gasoline) in three countries.[8]

The EPA is a contributor to the Global Alliance to Eliminate Lead Paint, a voluntary public-private partnership jointly led by the World Health Organization and the United Nations Environment Programme (UNEP) to prevent children's exposure to Pb from paints containing Pb and to minimize occupational exposures to Pb paint. The objective of this alliance is to promote a phase-out of the manufacture and sale of paints containing Pb and eventually to eliminate the risks that such paints

[5] See, *e.g.,* ''Implementation of the Mercury-Containing and Rechargeable Battery Management Act'' available from *https://www.epa.gov/hw* and facts and figures on recycling and disposal in the U.S. at *https://www.epa.gov/smm/advancing-sustainable-materials-management-facts-and-figures.*

[6] Since the completion of the ISA, more recent NHANES data indicate the geometric mean blood Pb concentration for children in the U.S. population, aged one to five, to have declined to 0.97 μg/dL in the 2011–2012 survey (CDC, 2015).

[7] International programs in which the U.S. participates, including those identified here, are described at: *https://www.epa.gov/international-cooperation, http://www.unep.org/transport/pcfv/, http://www.unep.org/hazardoussubstances/Home/tabid/197/hazardoussubstances/LeadCadmium/PrioritiesforAction/GAELP/tabid/6176/Default.aspx.*

[8] UNEP. ''Leaded Petrol Phase-out: Global Status as at January 2016'' map downloaded from *http://www.unep.org/transport/new/pcfv/.*

pose. The UNEP is also engaged on the problem of managing wastes containing Pb, including Pb-containing batteries. The Governing Council of the UNEP, of which the U.S. is a member, has adopted decisions focused on promoting the environmentally sound management of products, wastes and contaminated sites containing Pb and reducing risks to human health and the environment from Pb and cadmium throughout the life cycles of those substances (UNEP Governing Council, 2011, 2013). The EPA is also engaged in the issue of environmental impacts of spent Pb-acid batteries internationally through the Commission for Environmental Cooperation (CEC), where the EPA Administrator along with the cabinet-level or equivalent representatives of Mexico and Canada comprise the CEC's senior governing body (CEC Council).[9]

*C. Review of the Air Quality Criteria and Standards for Lead*

Unlike pollutants such as particulate matter and carbon monoxide, air quality criteria had not been issued for Pb as of the enactment of the CAA of 1970, which first set forth the requirement to set NAAQS based on air quality criteria. In the years just after enactment of the CAA, the EPA did not list Pb under section 108 of the Act, having determined to control Pb air pollution through regulations to phase out the use of Pb additives in gasoline (see 41 FR 14921, April 8, 1976). However, the decision not to list Pb under section 108 was challenged by environmental and public health groups, and the U.S. District Court for the Southern District of New York concluded that the EPA was required to list Pb under section 108. *Natural Resources Defense Council* v. *EPA,* 411 F. Supp. 864 21 (S.D. N.Y. 1976), affirmed, 545 F.2d 320 (2d Cir. 1978). Accordingly, on April 8, 1976, the EPA published a notice in the **Federal Register** that Pb had been listed under section 108 as a criteria pollutant (41 FR 14921, April 8, 1976), and on October 5, 1978, the EPA promulgated primary and secondary NAAQS for Pb under section 109 of the Act (43 FR 46246, October 5, 1978). Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter (μg/m$^3$), measured as Pb in total suspended particles (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. These standards were based on the 1977 *Air Quality Criteria for Lead* (USEPA, 1977).

The first review of the Pb standards was initiated in the mid-1980s. The scientific assessment for that review is described in the 1986 *Air Quality Criteria for Lead* (USEPA, 1986a; henceforth referred to as the 1986 CD), the associated Addendum (USEPA, 1986b) and the 1990 Supplement (USEPA, 1990a). As part of the review, the agency designed and performed human exposure and health risk analyses (USEPA, 1989), the results of which were presented in a 1990 Staff Paper (USEPA, 1990b). Based on the scientific assessment and the human exposure and health risk analyses, the 1990 Staff Paper presented recommendations for consideration by the Administrator (USEPA, 1990b). After consideration of the documents developed during the review and the significantly changed circumstances since Pb was listed in 1976, the agency did not propose any revisions to the 1978 Pb NAAQS. In a parallel effort, the agency developed the broad, multi-program, multimedia, integrated *U.S. Strategy for Reducing Lead Exposure* (USEPA, 1991). As part of implementing this strategy, the agency focused efforts primarily on regulatory and remedial clean-up actions aimed at reducing Pb exposures from a variety of nonair sources judged to pose more extensive public health risks to U.S. populations, as well as on actions to reduce Pb emissions to air, such as bringing more areas into compliance with the existing Pb NAAQS (USEPA, 1991). The EPA continues this broad, multi-program, multimedia approach to reducing Pb exposures today, as described in section I.B above.

The last review of the air quality criteria and standards for Pb was initiated in November 2004 (69 FR 64926, November 9, 2004); the agency's plans for preparation of the Air Quality Criteria Document (AQCD) and conduct of the NAAQS review were presented in documents completed in 2005 and early 2006 (USEPA, 2005a; USEPA 2006b).[10] The schedule for completion of the review was governed by a judicial order in *Missouri Coalition for the Environment* v. *EPA* (No. 4:04CV00660 ERW, September 14, 2005; and amended on April 29, 2008 and July 1, 2008).

The scientific assessment for the review is described in the 2006 *Air Quality Criteria for Lead* (USEPA, 2006a; henceforth referred to as the 2006 CD), multiple drafts of which received review by CASAC and the public. The EPA also conducted human exposure and health risk assessments and a pilot ecological risk assessment for the review after consultation with the CASAC and receiving public comment on a draft analysis plan (USEPA, 2006c). Drafts of these quantitative assessments were reviewed by CASAC and the public. The pilot ecological risk assessment was released in December 2006 (ICF International, 2006), and the final health risk assessment report was released in November 2007 (USEPA, 2007a). The policy assessment, based on both of these assessments, air quality analyses and key evidence from the 2006 CD, was presented in the Staff Paper (USEPA, 2007b), a draft of which also received CASAC and public review. The final Staff Paper presented OAQPS staff's evaluation of the public health and welfare policy implications of the key studies and scientific information contained in the 2006 CD and presented and interpreted results from the quantitative risk/exposure analyses conducted for this review. Based on this evaluation, the Staff Paper presented OAQPS staff recommendations that the Administrator give consideration to substantially revising the primary and secondary standards to a range of levels at or below 0.2 μg/m$^3$.

Immediately subsequent to completion of the Staff Paper, the EPA issued an advance notice of proposed rulemaking (ANPR) that was signed by the Administrator on December 5, 2007 (72 FR 71488, December 17, 2007).[11] The CASAC provided advice and recommendations to the Administrator with regard to the Pb NAAQS based on its review of the ANPR and the previously released final Staff Paper and risk assessment reports. In 2008, the proposed decision on revisions to the Pb NAAQS was signed on May 1, and published in the **Federal Register** on May 20 (73 FR 29184, May 20, 2008). Members of the public provided comments, and the CASAC Pb Panel also provided advice and recommendations to the Administrator based on its review of the proposal. The decision on revisions to the Pb NAAQS was signed on October 15, 2008, and published in the **Federal Register** on November 12, 2008 (73 FR 66964, November 12, 2008).

[9] The CEC was established to support cooperation among the North American Free Trade Agreement partners to address environmental issues of continental concern, including the environmental challenges and opportunities presented by continent-wide free trade.

[10] In the current review, these two documents have been combined in the *Integrated Review Plan for the National Ambient Air Quality Standards for Lead* (USEPA, 2011a).

[11] The ANPR, one of the features of the revised NAAQS review process that EPA instituted in 2006, was replaced by reinstatement of the Policy Assessment prepared by OAQPS staff (previously termed the OAQPS Staff Paper) in 2009 (Jackson, 2009).

The November 2008 preamble to the final rule described the EPA's decision to revise the primary and secondary standards for Pb, as discussed more fully in sections II.A.1 and III.A below. In consideration of the much-expanded health effects evidence on neurocognitive effects of Pb in children, the EPA substantially revised the primary standard level from 1.5 μg/m$^3$ to a level of 0.15 μg/m$^3$. The averaging time was revised to a rolling 3-month period with a maximum (not-to-be-exceeded) form, evaluated over a 3-year period. The indicator of Pb-TSP was retained, reflecting the evidence that Pb particles of all sizes pose health risks. The secondary standard was revised to be identical in all respects to the revised primary standard (40 CFR 50.16). Revisions to the NAAQS were accompanied by revisions to the data handling procedures, the treatment of exceptional events and the ambient air monitoring and reporting requirements, as well as emissions inventory reporting requirements. One aspect of the revised data handling requirements is the allowance for the use of monitoring for particulate matter with mean diameter below 10 microns (Pb-$PM_{10}$) for Pb NAAQS attainment purposes in certain limited circumstances at non-source-oriented sites. Subsequent to the 2008 rulemaking, additional revisions were made to the monitoring network requirements (75 FR 81126, December 27, 2010). Guidance on the approach for implementation of the new standards was described in the preambles for the proposed and final rules (73 FR 29184, May 20, 2008; 73 FR 66964, November 12, 2008).

On February 26, 2010, the EPA formally initiated its current review of the air quality criteria and standards for Pb, requesting the submission of recent scientific information on specified topics (75 FR 8934, February 26, 2010). Soon after this, the EPA held a workshop to discuss the policy-relevant science, which informed identification of key policy issues and questions to frame the review (75 FR 20843, April 21, 2010). Drawing from the workshop discussions, the EPA developed the draft Integrated Review Plan (draft IRP, USEPA, 2011d). The draft IRP was made available in late March 2011 for consultation with the CASAC Pb Review Panel and for public comment (76 FR 20347, April 12, 2011). This document was discussed by the Panel via a publicly accessible teleconference consultation on May 5, 2011 (76 FR 21346, April 15, 2011; Frey, 2011a). The final *Integrated Review Plan for the National Ambient Air Quality Standards for Lead* (IRP), developed in consideration of the CASAC consultation and public comment, was released in November 2011 (USEPA, 2011a; 76 FR 76972, December 9, 2011).

In developing the Integrated Science Assessment (ISA) [12] for this review, the EPA held a workshop in December 2010 to discuss with invited scientific experts preliminary draft materials and released the first external review draft of the document for CASAC review and public comment in May 2011 (USEPA, 2011e; 76 FR 26284, May 6, 2011; 76 FR 36120, June 21, 2011). The CASAC Pb Review Panel met at a public meeting on July 20, 2011, to review the draft ISA (76 FR 36120, June 21, 2011). The CASAC provided comments in a December 9, 2011, letter to the EPA Administrator (Frey and Samet, 2011). The second external review draft ISA was released for CASAC review and public comment in February 2012 (USEPA, 2012a; 77 FR 5247, February 2, 2012) and was the subject of a public meeting on April 10–11, 2012 (77 FR 14783, March 13, 2012). The CASAC provided comments in a July 20, 2012, letter (Samet and Frey, 2012). The third external review draft was released for CASAC review and public comment in November 2012 (USEPA, 2012b; 77 FR 70776, November 27, 2012) and was the subject of a public meeting on February 5–6, 2013 (78 FR 938, January 7, 2013). The CASAC provided comments in a June 4, 2013, letter (Frey, 2013a). The final ISA was released in late June 2013 (USEPA, 2013a, henceforth referred to as the ISA; 78 FR 38318, June 26, 2013).

In June 2011, the EPA developed and released the *Risk and Exposure Assessment Planning Document* (REA Planning Document) for consultation with the CASAC and public comment (USEPA, 2011b; 76 FR 58509). This document presented a critical evaluation of the information related to Pb human and ecological exposure and risk (*e.g.,* data, modeling approaches) newly available in this review, with a focus on consideration of the extent to which new or substantially revised REAs for health and ecological risk might be warranted by the newly available evidence. Evaluation of the newly available information with regard to designing and implementing health and ecological REAs for this review led us to conclude that the currently available information did not provide a basis for developing new quantitative risk and exposure assessments that would have substantially improved utility for informing the agency's consideration of health and welfare effects and evaluation of the adequacy of the current primary and secondary standards, respectively (REA Planning Document, sections 2.3 and 3.3, respectively). The CASAC Pb Review Panel provided consultative advice on that document and its conclusions at a public meeting on July 21, 2011 (76 FR 36120, June 21, 2011; Frey, 2011b). Based on its consideration of the REA Planning Document analysis, the CASAC Pb Review Panel generally concurred with the conclusion that a new REA was not warranted in this review (Frey, 2011b; Frey, 2013b). In consideration of the conclusions reached in the REA Planning Document and CASAC's consultative advice, the EPA has not developed REAs for health and ecological risk for this review. We have considered the findings from the last review for human exposure and health risk (USEPA, 2007a, henceforth referred to as the 2007 REA) and ecological risk (ICF International, 2006; henceforth referred to as the 2006 REA) with regard to any appropriate further interpretation in light of the evidence newly available in this review, as described in the Policy Assessment (PA) and proposal.

A draft of the PA was released for public comment and review by CASAC in January 2013 (USEPA, 2013b; 77 FR 70776, November 27, 2012) and was the subject of a public meeting on February 5–6, 2013 (78 FR 938, January 7, 2013). Comments provided by the CASAC in a June 4, 2013, letter (Frey, 2013b), as well as public comments received on the draft PA were considered in preparing the final PA, which was released in May 2014 (USEPA, 2014; 79 FR 26751, May 9, 2014). The proposed decision (henceforth ''proposal'') on this review of the NAAQS for Pb was signed on December 19, 2014, and published in the **Federal Register** on January 5, 2015. Written comments were received from twelve commenters during the public comment period on the proposal. Significant issues raised in the public comments and the EPA's responses to those comments are discussed in the preamble of this final action.

As in prior NAAQS reviews, the EPA is basing its decision in this review on studies and related information included in the ISA and PA,[13] which

[12] As of this review, the document developed in NAAQS reviews in which the air quality criteria are assessed, previously the AQCD, is the ISA, and the document describing the OAQPS staff evaluation, previously the Staff Paper, is the PA. These documents are described in the IRP.

[13] As a new REA was not warranted in this review, the exposure and risk information from the last review (2007 REA; 2006 REA) is summarized in the PA in the context of the currently available health and welfare effects evidence.

have undergone CASAC and public review. The studies assessed in the ISA [14] and PA, and the integration of the scientific evidence presented in them, have undergone extensive critical review by the EPA, the CASAC, and the public. The rigor of that review makes these studies, and their integrative assessment, the most reliable source of scientific information on which to base decisions on the NAAQS, decisions that all parties recognize as of great import. Decisions on the NAAQS can have profound impacts on public health and welfare, and NAAQS decisions should be based on studies that have been rigorously assessed in an integrative manner not only by the EPA but also by the statutorily mandated independent scientific advisory committee, as well as the public review that accompanies this process. Some commenters have referred to and discussed individual scientific studies on the health effects of Pb that were not included in the ISA (''‘new’ studies''). In considering and responding to comments for which such ''new'' studies were cited in support, the EPA has provisionally considered the cited studies in the context of the findings of the ISA. The EPA's provisional consideration of these studies did not and could not provide the kind of in-depth critical review described above.

The decision to rely on studies and related information included in the ISA, REAs and PA, which have undergone CASAC and public review, is consistent with the EPA's practice in prior NAAQS reviews and its interpretation of the requirements of the CAA. Since the 1970 amendments, the EPA has taken the view that NAAQS decisions are to be based on scientific studies and related information that have been assessed as a part of the pertinent air quality criteria, and the EPA has consistently followed this approach. This longstanding interpretation was strengthened by new legislative requirements enacted in 1977, which added section 109(d)(2) of the Act concerning CASAC review of air quality criteria. See 71 FR 61144, 61148 (October 17, 2006, final decision on review of NAAQS for particulate matter) for a detailed discussion of this issue and the EPA's past practice.

As discussed in the EPA's 1993 decision not to revise the NAAQS for ozone, ''new'' studies may sometimes be of such significance that it is appropriate to delay a decision on revision of a NAAQS and to supplement the pertinent air quality criteria so the studies can be taken into account (58 FR at 13013–13014, March 9, 1993). In the present case, the EPA's provisional consideration of ''new'' studies concludes that, taken in context, the ''new'' information and findings do not materially change any of the broad scientific conclusions regarding the health and welfare effects and exposure pathways of Pb in ambient air made in the air quality criteria. For this reason, reopening the air quality criteria review would not be warranted.

Accordingly, the EPA is basing the final decisions in this review on the studies and related information included in the Pb air quality criteria that have undergone CASAC and public review. The EPA will consider the ''new'' studies for purposes of decision making in the next periodic review of the NAAQS for Pb, which the EPA expects to begin soon after the conclusion of this review and which will provide the opportunity to fully assess these studies through a more rigorous review process involving the EPA, CASAC, and the public.

### *D. Multimedia, Multipathway Aspects of Lead*

Since Pb is distributed from air to other media and is persistent, our review of the NAAQS for Pb considers the protection provided against effects associated both with exposures to Pb in ambient air and with exposures to Pb that makes its way into other media from ambient air. Additionally, in assessing the adequacy of protection afforded by the current NAAQS, we are mindful of the long history of greater and more widespread atmospheric emissions that occurred in previous years (both before and after establishment of the 1978 NAAQS) and that contributed to the Pb that is in human populations and ecosystems today. Likewise, we also recognize the role of other, nonair sources of Pb now and in the past that also contribute to the Pb that is in human populations and ecosystems today.

Lead emitted to ambient air is transported through the air and is also distributed from air to other media. This multimedia distribution of Pb emitted into ambient air (air-related Pb) contributes to multiple air-related pathways of human and ecosystem exposure (ISA, sections 3.1.1 and 3.7.1). Air-related pathways may also involve media other than air, including indoor and outdoor dust, soil, surface water and sediments, vegetation and biota. Air-related Pb exposure pathways for humans include inhalation of ambient air or ingestion of food, water or other materials, including dust and soil, that have been contaminated through a pathway involving Pb deposition from ambient air (ISA, section 3.1.1.1). Ambient air inhalation pathways include both inhalation of air outdoors and inhalation of ambient air that has infiltrated into indoor environments. The air-related ingestion pathways occur as a result of Pb passing through the ambient air, being distributed to other environmental media and contributing to human exposures via contact with and ingestion of indoor and outdoor dusts, outdoor soil, food and drinking water.

Lead currently occurring in nonair media may also derive from sources other than ambient air (nonair Pb sources) (ISA, sections 2.3 and 3.7.1). For example, Pb in dust inside some houses or outdoors in some urban areas may derive from the common past usage of leaded paint, while Pb in drinking water may derive from the use of leaded pipe or solder in drinking water distribution systems (ISA, section 3.1.3.3). We also recognize the history of much greater air emissions of Pb in the past, such as that associated with leaded gasoline usage and higher industrial emissions which have left a legacy of Pb in other (nonair) media.

The relative importance of different pathways of human exposure to Pb, as well as the relative contributions from Pb resulting from recent and historic air emissions and from nonair sources, vary across the U.S. population as a result of both extrinsic factors, such as a home's proximity to industrial Pb sources or its history of leaded paint usage, and intrinsic factors, such as a person's age and nutritional status (ISA, sections 5.1, 5.2, 5.2.1, 5.2.5 and 5.2.6). Thus, the relative contributions from specific pathways are situation specific (ISA, p. 1–11), although a predominant Pb exposure pathway for very young children is the incidental ingestion of indoor dust by hand-to-mouth activity (ISA, section 3.1.1.1). For adults, however, diet may be the primary Pb exposure pathway (2006 CD, section 3.4). Similarly, the relative importance of air-related and nonair-related Pb also varies with the relative magnitudes of

[14] Studies were identified for the Pb ISA based on the review's opening ''call for information'' (75 FR 8934), as well as literature searches conducted routinely ''to identify studies published since the last review, focusing on studies published from 2006 (close of the previous scientific assessment) through September 2011'' (ISA, p. 1–2). In a subsequent step, ''[s]tudies that have undergone scientific peer review and have been published or accepted for publication and reports that have undergone review are considered for inclusion in the ISA'' and ''[a]nalyses conducted by EPA using publicly available data are also considered for inclusion in the ISA'' (ISA, p. xlv). References ''that were considered for inclusion or actually cited in this ISA can be found at *http://hero.epa.gov/lead*'' (ISA, p. 1–2).

exposure by those pathways, which may vary with different circumstances.

The distribution of Pb from ambient air to other environmental media also influences the exposure pathways for organisms in terrestrial and aquatic ecosystems. Exposure of terrestrial animals and vegetation to air-related Pb can occur by contact with ambient air or by contact with soil, water or food items that have been contaminated by Pb from ambient air (ISA, section 6.2). Transport of Pb into aquatic systems similarly provides for exposure of biota in those systems, and exposures may vary among systems as a result of differences in sources and levels of contamination, as well as characteristics of the systems themselves, such as salinity, pH and turbidity (ISA, section 2.3.2). In addition to Pb contributed by current atmospheric deposition, Pb may occur in aquatic systems as a result of nonair sources such as industrial discharges or mine-related drainage, of historical air Pb emissions (*e.g.,* contributing to deposition to a water body or via runoff from soils near historical air sources) or combinations of different types of sources (*e.g.,* resuspension of sediments contaminated by urban runoff and surface water discharges).

The persistence of Pb contributes an important temporal aspect to lead's environmental pathways, and the time (or lag) associated with realization of the impact of air Pb concentrations on concentrations in other media can vary with the media (*e.g.,* ISA, section 6.2.2). For example, exposure pathways most directly involving Pb in ambient air or surface waters can respond more quickly to changes in ambient air Pb concentrations, while pathways involving exposure to Pb in soil or sediments generally respond more slowly.[15] An additional influence on the response time for nonair media is the environmental presence of Pb associated with past, generally higher, air concentrations. For example, after a reduction in air Pb concentrations, the time needed for sediment or surface soil concentrations to indicate a response to reduced air Pb concentrations might be expected to be longer in areas of more substantial past contamination than in areas with lesser past contamination. Thus, considering the Pb concentrations occurring in nonair environmental media as a result of air quality conditions that meet the current NAAQS is a complexity of this review, as it also was, although to a lesser degree, with regard to the prior standard in the last review.

*E. Air Quality Monitoring*

Lead emitted to the air is predominantly in particulate form. Once emitted, particle-bound Pb can be transported long or short distances depending on particle size, which influences the amount of time spent in the aerosol phase. In general, larger particles tend to deposit more quickly, within shorter distances from emissions points, compared with smaller particles that remain in the aerosol phase and travel longer distances before depositing (ISA, section 1.2.1). Accordingly, airborne concentrations of Pb near sources are much higher (and the representation of larger particles generally greater) than at sites not directly influenced by sources (PA, Figure 2–11; ISA sections 2.3.1 and 2.5.3).

Ambient air monitoring data for Pb, in terms of Pb-TSP, Pb-$PM_{10}$ or Pb in particulate matter with mean aerodynamic diameter less than or equal to 2.5 microns (Pb-$PM_{2.5}$), are currently collected in several national networks. Monitoring conducted for purposes of Pb NAAQS surveillance is regulated to ensure accurate and comparable data for determining compliance with the NAAQS. In order to be used in NAAQS attainment designations, ambient Pb concentration data must be obtained using either the federal reference method (FRM) or a federal equivalent method (FEM). The FRMs for sample collection and analysis are specified in 40 CFR part 50. The procedures for approval of FRMs and FEMs are specified in 40 CFR part 53. In 2013, after consultation with the CASAC's Ambient Air Monitoring and Methods Subcommittee, the EPA adopted a new FRM for Pb-TSP, based on inductively coupled plasma-mass spectrometry (78 FR 40000, July 3, 2013). The previous FRM was retained as an FEM, and existing FEMs were retained as well.

The Pb NAAQS surveillance network regulations (40 CFR part 58, appendix D, paragraph 4.5) require source-oriented monitoring sites, and also the collection of one year of Pb-TSP measurements at 15 specific airports. The indicator for the current Pb NAAQS is Pb-TSP, although in some situations,[16] Pb-$PM_{10}$ concentrations may be used in judging nonattainment. Currently, more than 200 Pb-TSP monitors are in operation; these are a mixture of source- and non-source-oriented monitors (PA, p. 2–14).

Since the phase-out of Pb in on-road gasoline, Pb is widely recognized as a near-source air pollutant, the ambient air concentrations of which generally fall off quickly with distance from sources. Variability in ambient air Pb concentrations is highest in areas including a Pb source, ''with high concentrations downwind of the sources and low concentration at areas far from sources'' (ISA, p. 2–92). The current requirements for source-oriented monitoring include placement of monitor sites near sources of air Pb emissions that are expected to or have been shown to contribute to ambient air Pb concentrations in excess of the NAAQS. At a minimum, there must be one source-oriented site located to measure the maximum Pb concentration in ambient air resulting from each non-airport Pb source that emits 0.50 or more tons of Pb per year and from each airport that emits 1.0 or more tons of Pb per year.[17] The EPA Regional Administrators may require additional monitoring beyond the minimum requirements where the likelihood of Pb air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. Such locations may include those near additional industrial Pb sources, recently closed industrial sources and other sources of re-entrained Pb dust, as well as airports where piston-engine aircraft emit Pb associated with combustion of leaded aviation fuel (40 CFR part 58, appendix D, section 4.5(c)). A single year of monitoring was also required near 15 specific airports[18] in order to gather

[15] The time it takes for exposures to be reduced in response to reductions in air Pb concentrations varies with the various inhalation and ingestion exposure pathways. For example, exposures resulting from human exposure pathways most directly involving Pb in ambient air and exchanges of ambient air with indoor air (*e.g.,* inhalation) can respond most quickly, while those for pathways involving exposure to Pb deposited from ambient air into the environment (*e.g.,* diet) may be expected to respond more slowly. The extent of this will be influenced by the magnitude of change, as well as—for deposition-related pathways—the extent of prior deposition and environment characteristics influencing availability of prior deposited Pb.

[16] The Pb-$PM_{10}$ measurements may be used for NAAQS monitoring as an alternative to Pb-TSP measurements in certain conditions defined in 40 CFR part 58, appendix C, section 2.10.1.2. These conditions include where Pb concentrations are not expected to equal or exceed 0.10 $\mu g/m^3$ as an arithmetic 3-month mean and where the source of Pb emissions is expected to emit a substantial majority of its Pb in the size fraction captured by $PM_{10}$ monitors.

[17] The Regional Administrator may waive this requirement for monitoring near Pb sources if the state or, where appropriate, local agency can demonstrate the Pb source will not contribute to a maximum 3-month average Pb concentration in ambient air in excess of 50 percent of the NAAQS level based on historical monitoring data, modeling, or other means (40 CFR part 58, appendix D, section 4.5(a)(ii)).

[18] These airports were selected based on three criteria: annual Pb inventory between 0.5 ton/year and 1.0 ton/year, ambient air within 150 meters of the location of maximum emissions (*e.g.,* the end

Continued

additional information on ambient air Pb concentrations near airports, including specifically on the likelihood of NAAQS exceedances due to the combustion of leaded aviation gasoline (75 FR 81126, December 27, 2010; 40 CFR part 58, appendix D, 4.5(a)(iii)). These airport monitoring data along with other data gathering and analyses will inform the EPA's ongoing investigation under section 231(a)(2)(A) of the CAA of whether Pb emissions from piston-engine aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare (see for example, EPA's Advance Notice of Proposed Rulemaking on Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline, 75 FR 22439, April 28, 2010). The EPA is conducting this investigation separate from the Pb NAAQS review. As a whole, the various data gathering efforts and analyses are expected to improve our understanding of Pb concentrations in ambient air near airports and conditions influencing these concentrations.

Monitoring agencies may also conduct non-source-oriented Pb monitoring at the NCore monitoring sites.[19] In 2015, all NCore sites with a population of 500,000 or more (as defined by the U.S. Census Bureau)[20] were measuring Pb concentrations, with a 2014 analysis indicating generally similar numbers of sites measuring Pb in TSP and Pb in $PM_{10}$ (Cavender, 2014). These numbers may change in the future as the requirement for Pb monitoring at these sites was recently eliminated in consideration of current information indicating concentrations at these sites to be well below the Pb NAAQS and of the existence of other monitoring networks that provide information on Pb concentrations at similar types of sites (81 FR 17248, March 28, 2016). The data available for the NCore sites indicate maximum 3-month average concentrations (of Pb-$PM_{10}$ or Pb-TSP) well below the level of the Pb NAAQS, with the large majority of these sites indicating maximum 3-month average concentrations at or below 0.01 $\mu g/m^3$ (Cavender, 2014). Other monitoring networks that provide data on Pb in $PM_{10}$ or $PM_{2.5}$ at non-source-oriented urban, and some rural, sites include the National Air Toxics Trends Stations for $PM_{10}$ and the Chemical Speciation Network for $PM_{2.5}$. Data on Pb in $PM_{2.5}$ are also provided at the rural sites of the Interagency Monitoring of Protected Visual Environments network (also known as the IMPROVE network).

The long-term record of Pb monitoring data documents the dramatic decline in atmospheric Pb concentrations that has occurred since the 1970s in response to reduced emissions (PA, Figures 2–1 and 2–7). Currently, the highest concentrations occur near some metals industries where some individual locations have concentrations that exceed the NAAQS (PA, Figure 2–10). Concentrations at non-source-oriented monitoring sites are much lower than those at source-oriented sites and well below the standard (PA, Figure 2–11).

### *F. Summary of Proposed Decisions*

For reasons discussed in the proposal and summarized in sections II.B.1 and III.B.1 below, the Administrator proposed to retain the current primary and secondary standards for Pb, without revision.

### *G. Organization and Approach to Final Decisions*

This action presents the Administrator's final decisions in the current review of the primary and secondary Pb standards. The final decisions addressing standards for Pb are based on a thorough review in the ISA of scientific information on known and potential human health and welfare effects associated with exposure to Pb associated with levels typically found in the ambient air. These final decisions also take into account the following: (1) Staff assessments in the PA of the most policy-relevant information in the ISA as well as quantitative health and welfare exposure and risk information; (2) CASAC advice and recommendations, as reflected in its letters to the Administrator and its discussions of drafts of the ISA and PA at public meetings; (3) public comments received during the development of these documents, both in connection with CASAC meetings and separately; and (4) public comments received on the proposal.

The primary standard is addressed in section II and the secondary standard is addressed in section III. Section IV addresses applicable statutory and executive order reviews.

## II. Rationale for Decision on the Primary Standard

This section presents the rationale for the Administrator's decision to retain the existing primary Pb standard. This rationale is based on a thorough review in the ISA of the latest scientific information, generally published through September 2011, on human health effects associated with Pb and pertaining to the presence of Pb in the ambient air. This decision also takes into account: (1) The PA's staff assessments of the most policy-relevant information in the ISA and staff analyses of air quality, human exposure and health risks, upon which staff conclusions regarding appropriate considerations in this review are based; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA and PA at public meetings, in separate written comments, and in the CASAC's letters to the Administrator; (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately, and (4) public comments received on the proposal.

Section II.A provides background on the general approach for review of the primary standard for Pb and brief summaries of key aspects of the currently available health effects and exposure/risk information. Section II.B presents the Administrator's conclusions on adequacy of the current standard, drawing on consideration of this information, advice from the CASAC, and comments from the public. Section II.C summarizes the Administrator's decision on the primary standard.

### *A. Introduction*

As in prior reviews, the general approach to reviewing the current primary standard is based, most fundamentally, on using the EPA's assessment of the current scientific evidence and associated quantitative analyses to inform the Administrator's judgment regarding a primary standard for Pb that protects public health with an adequate margin of safety. In drawing conclusions with regard to the primary standard, the final decision on the adequacy of the current standard is largely a public health policy judgment to be made by the Administrator. The

of the runway or run-up location), and airport configuration and meteorological scenario that leads to a greater frequency of operations from one runway. These criteria or characteristics were selected as they were expected, ''collectively, to identify airports with the highest potential to have ambient air Pb concentrations approaching or exceeding the Pb NAAQS'' (75 FR 81132, December 27, 2010).

[19] The NCore network that formally began in January 2011, is a subset of the state and local air monitoring stations network that is intended to meet multiple monitoring objectives (*e.g.,* long-term trends analysis, model evaluation, health and ecosystem studies, as well as NAAQS compliance). The complete NCore network consists of 63 urban and 15 rural stations, with each state containing at least one NCore station; 46 of the states plus Washington, DC and Puerto Rico have at least one urban station.

[20] Metropolitan area population size information is available at the Census Bureau Web site (*http://www.census.gov/population/www/metroareas/metroarea.htm*).

Administrator's final decision must draw upon scientific information and analyses about health effects, population exposure and risks, as well as judgments about how to consider the range and magnitude of uncertainties that are inherent in the scientific evidence and analyses. The approach to informing these judgments, discussed more fully below, is based on the recognition that the available health effects evidence generally reflects a continuum, consisting of levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. This approach is consistent with the requirements of the NAAQS provisions of the Act and with how the EPA and the courts have historically interpreted the Act. These provisions require the Administrator to establish primary standards that, in the judgment of the Administrator, are requisite to protect public health with an adequate margin of safety. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that primary standards be set at a zero-risk level, but rather at a level that avoids unacceptable risks to public health including the health of sensitive groups. The four basic elements of the NAAQS (indicator, averaging time, level, and form) are considered collectively in evaluating the health protection afforded by the current standard.

To evaluate whether it is appropriate to consider retaining the current primary Pb standard, or whether consideration of revision is appropriate, the EPA has adopted an approach in this review that builds upon the general approach used in the last review and reflects the broader body of evidence and information now available. As summarized in section II.A.1 below, the Administrator's decisions in the prior review were based on an integration of information on health effects associated with exposure to Pb with that on relationships between ambient air Pb and blood Pb; expert judgments on the adversity and public health significance of key health effects; and policy judgments as to when the standard is requisite to protect public health with an adequate margin of safety. These considerations were informed by air quality and related analyses, quantitative exposure and risk assessments, and qualitative assessment of impacts that could not be quantified.

Similarly in this review, as described in the PA, we draw on the current evidence and quantitative assessments of exposure pertaining to the public health risk of Pb in ambient air. In considering the scientific and technical information here as in the PA, we consider both the information available at the time of the last review and information newly available since the last review, including most particularly that which has been critically analyzed and characterized in the current ISA. We additionally consider the quantitative exposure/risk assessments from the last review that estimated Pb-related IQ decrements associated with different air quality conditions in simulated at-risk populations in multiple case studies (PA, section 3.4; 2007 REA). The evidence-based discussions presented below draw upon evidence from epidemiological studies and experimental animal studies evaluating health effects related to exposures to Pb, as discussed in the ISA. The exposure/risk-based discussions have drawn from the quantitative health risk analyses for Pb performed in the last Pb NAAQS review in light of the currently available evidence (PA, section 3.4; 2007 REA; REA Planning Document). Sections II.A.2 through II.A.4 below provide an overview of the current health effects and quantitative exposure and risk information with a focus on the specific policy-relevant questions identified for these categories of information in the PA (PA, chapter 3).

1. Background on the Current Standard

The current primary standard was established in the last review, which was completed in 2008 (73 FR 66964, November 12, 2008), and is set at a level that is one-tenth the level of the prior standard. The 2008 decision to substantially revise the primary standard was based on the extensive body of scientific evidence published over almost three decades, from the time the standard was originally set in 1978 through 2005–2006. While recognizing that Pb has been demonstrated to exert ''a broad array of deleterious effects on multiple organ systems,'' the 2008 review focused on the effects most pertinent to recent ambient air exposures, which are those associated with relatively lower exposures and associated blood Pb levels (73 FR 66975, November 12, 2008). Given the general scientific consensus that the developing nervous system in children is among the most sensitive health endpoints associated with Pb exposure, if not the most sensitive one, primary attention was given to consideration of nervous system effects, including neurocognitive and neurobehavioral effects, in children (73 FR 66976, November 12, 2008). The body of evidence included associations of such effects in study populations of variously aged children with mean blood Pb levels below 10 μg/dL, extending from 8 down to 2 μg/dL (73 FR 66976, November 12, 2008). Particular focus was given to the public health implications of effects of air-related Pb on cognitive function (*e.g.,* IQ).

The conclusions reached by the Administrator in the 2008 review were based primarily on the scientific evidence, with the risk- and exposure-based information providing support for various aspects of the decision. In reaching his conclusion on the adequacy of the then-current standard, which was set in 1978, the Administrator placed primary consideration on the large body of scientific evidence available in the review including significant new evidence concerning effects at blood Pb concentrations substantially below those identified when the standard was initially set (73 FR 66987, November 12, 2008; 43 FR 46246, October 5, 1978). He gave particular attention to the robust evidence of neurotoxic effects of Pb exposure in children, recognizing: (1) That while blood Pb levels in U.S. children had decreased notably since the late 1970s, newer epidemiological studies had investigated and reported associations of effects on the neurodevelopment of children with those more recent lower blood Pb levels and (2) that the toxicological evidence included extensive experimental laboratory animal evidence substantiating well the plausibility of the epidemiological findings observed in human children and expanding our understanding of likely mechanisms underlying the neurotoxic effects (73 FR 66987, November 12, 2008). Additionally, within the range of blood Pb levels investigated in the available evidence base, a threshold level for neurocognitive effects was not identified (73 FR 66984, November 12, 2008; 2006 CD, p. 8–67). Further, the evidence indicated a steeper concentration-response (C–R) relationship for effects on cognitive function at those lower blood Pb levels than at higher blood Pb levels that were more common in the past, ''indicating the potential for greater incremental impact associated with exposure at these lower levels'' (73 FR 66987, November 12, 2008).

Based on consideration of the health effects evidence, supported by the quantitative risk analyses, the Administrator concluded that, for exposures projected for air Pb concentrations at the level of the 1978

standard, the quantitative estimates of IQ loss associated with air-related Pb indicated risk of a magnitude that, in his judgment, was significant from a public health perspective, and that the 1978 standard did not protect public health with an adequate margin of safety (73 FR 66987, November 12, 2008). The Administrator further concluded that the evidence indicated the need for a substantially lower standard level to provide increased public health protection, especially for sensitive or at-risk groups (most notably children), against an array of effects, most importantly including effects on the developing nervous system (73 FR 66987, November 12, 2008). In identifying the appropriate revised standard, revisions to each of the four basic elements of the NAAQS (indicator, averaging time, form and level) were considered.

With regard to indicator, the Administrator decided to retain Pb-TSP as the indicator. The EPA recognized that the difference in particulate Pb captured by TSP and $PM_{10}$ monitors may be on the order of a factor of two in some areas, and that ultra-coarse Pb particles may have a greater presence in areas near sources where Pb concentrations are highest, contributing uncertainty with regard to whether a Pb-$PM_{10}$-based standard would also effectively control ultra-coarse Pb particles (73 FR 66991, November 12, 2008). Accordingly, Pb-TSP was retained as the indicator in order to provide sufficient public health protection from the broad range of particle sizes of ambient air Pb, including ultra-coarse particles, given the recognition that Pb in all particle sizes contributes to Pb in blood and associated health effects (73 FR 66991, November 12, 2008).[21]

With regard to averaging time and form for the revised standard, after giving consideration to a monthly averaging time, with a form of second maximum, and to 3-month and calendar quarter averaging times, with not-to-be exceeded forms, two changes were made. These were to a rolling 3-month average, thus giving equal weight to all 3-month periods, and to the method for deriving the 3-month average to provide equal weighting to each month. Both of these changes afford greater weight to each individual month than did the calendar quarter form of the 1978 standard, thus tending to control both the likelihood that any month will exceed the level of the standard and the magnitude of any such exceedance. The Administrator decided on these changes in recognition of the complexity inherent in this aspect of the standard which is greater for Pb than in the case of other criteria pollutants due to the multimedia nature of Pb and its multiple pathways of human exposure. In this situation for Pb, the Administrator emphasized the importance of considering in an integrated manner all of the relevant factors, both those pertaining to the human physiological response to changes in Pb exposures and those pertaining to the response of air-related Pb exposure pathways to changes in airborne Pb, recognizing that some factors might imply support for a period as short as a month for averaging time, and others supporting use of a longer time, with all having associated uncertainty. Based on such an integrated consideration of the range of relevant factors, the averaging time was revised to a rolling 3-month period with a maximum (not-to-be-exceeded) form, evaluated over a 3-year period (73 FR 66996, November 12, 2008).

In reaching the decision on level for the revised standard, that, in combination with the specified choice of indicator, averaging time, and form, the Administrator judged requisite to protect public health, including the health of sensitive groups, with an adequate margin of safety, he considered the evidence using a very specifically defined framework, referred to as an air-related IQ loss evidence-based framework (73 FR 67004, November 12, 2008). This framework integrates evidence for the relationship between Pb in air and Pb in young children's blood with evidence for the relationship between Pb in young children's blood and IQ loss (73 FR 66987, November 12, 2008). This evidence-based approach considers air-related effects on neurocognitive function (using the quantitative metric of IQ loss) associated with exposure in those areas with elevated air concentrations equal to potential alternative levels for the Pb standard. In simplest terms, the framework focuses on children exposed to air-related Pb in those areas with elevated air Pb concentrations equal to specific potential standard levels, providing for estimation of a mean air-related IQ decrement for young children with air-related exposures that are in the high end of the national distribution of such exposures. Thus, the conceptual context for the framework is that it provides estimates of air-related IQ loss for the subset of U.S. children living in close proximity to air Pb sources that contribute to such elevated air Pb concentrations. Consideration of this framework additionally recognizes that in such cases when a standard of a particular level is just met at a monitor sited to record the highest source-oriented concentration in an area, the large majority of children in the larger surrounding area would likely experience exposures to concentrations well below that level.

The two primary inputs to the air-related IQ loss evidence-based framework are air-to-blood ratios[22] and C–R functions for the relationship between blood Pb concentration and IQ response in young children (73 FR 67004, November 12, 2008). In applying and drawing conclusions from the framework, the Administrator additionally took into consideration the uncertainties inherent in these two inputs. Application of the framework also entailed consideration of an appropriate level of protection from air-related IQ loss to be used in conjunction with the framework. The framework estimates of mean air-related IQ loss are derived through multiplication of the following factors: standard level (μg/$m^3$), air-to-blood ratio (albeit in terms of μg/dL blood Pb per μg/$m^3$ air concentration), and slope for the C–R function in terms of points of IQ decrement per μg/dL blood Pb. In light of the uncertainties and limitations associated with the evidence on these relationships, and other considerations, application of the air-related IQ loss evidence-based framework was recognized to provide ''no evidence- or risk-based bright line that indicates a single appropriate level'' for the standard (73 FR 67005–67006, November 12, 2008). Rather, the framework was seen as a useful guide, in the context of the specified averaging time and form, for consideration of health risks from exposure to levels of Pb in the ambient air to inform the Administrator's decision on a level for

[21] However, in order to take advantage of the increased precision of Pb-$PM_{10}$ measurements and decreased spatial variation of Pb-$PM_{10}$ concentrations without raising the same concerns over a lack of protection against health risks from all particulate Pb emitted to the ambient air that support retention of Pb-TSP as the indicator (versus revision to Pb-$PM_{10}$), a role was provided for Pb-$PM_{10}$ measurements in the monitoring required for a Pb-TSP standard (73 FR 66991, November 12, 2008) at sites not influenced by sources of ultra-coarse Pb, and where Pb concentrations are well below the standard (73 FR 66991, November 12, 2008).

[22] The term ''air-to-blood ratio'' describes the increase in blood Pb (in μg/dL) estimated to be associated with each unit increase of air Pb (in μg/$m^3$). Ratios are presented in the form of 1:x, with the 1 representing air Pb (in μg/$m^3$) and x representing blood Pb (in μg/dL). Description of ratios as higher or lower refers to the values for x (*i.e.,* the change in blood Pb per unit of air Pb).

a revised NAAQS that provides public health protection that is sufficient but not more than necessary under the Act (73 FR 67004, November 12, 2008).

Use of the air-related IQ loss evidence-based framework to inform selection of the standard level involved consideration of the evidence for the two primary input parameters mentioned above. With regard to air-to-blood ratio estimates, the evidence in the 2008 review indicated a broad range of estimates, each with limitations and associated uncertainties. Based on this evidence, the Administrator concluded that 1:5 to 1:10 represented a reasonable range to consider and focused on 1:7 as a generally central value (73 FR 67004, November 12, 2008). With regard to C–R functions, in light of the evidence of nonlinearity and of steeper slopes at lower blood Pb levels, the Administrator concluded it was appropriate to focus on C–R analyses based on blood Pb levels that most closely reflected the then-current population of young children in the U.S.,[23] recognizing the EPA's identification of four such analyses and giving weight to the central estimate or median of the resultant linear C–R functions (73 FR 67003, November 12, 2008, Table 3; 73 FR 67004, November 12, 2008). The median estimate for the four C–R slopes of -1.75 IQ points decrement per μg/dL blood Pb was selected for use with the framework. With the framework, potential alternative standard levels (μg/m$^3$) are multiplied by estimates of air-to-blood ratio (μg/dL blood Pb per μg/m$^3$ air Pb) and the median slope for the C–R function (points IQ decrement per μg/dL blood Pb), yielding estimates of a mean air-related IQ decrement for a specific subset of young children (*i.e.,* those children exposed to air-related Pb in areas with elevated air Pb concentrations equal to specified alternative levels). As such, the application of the framework yields estimates for the mean air-related IQ decrements of the subset of children expected to experience air-related Pb exposures at the high end of the distribution of such exposures. The associated mean IQ loss estimate is the average for this highly exposed subset and is not the average air-related IQ loss projected for the entire U.S. population of children. Uncertainties and limitations were recognized in the use of the framework and in the resultant estimates (73 FR 67000, November 12, 2008).

In considering the use of the air-related IQ loss evidence-based framework to inform his judgment as to the appropriate degree of public health protection that should be afforded by the NAAQS to provide requisite protection against risk of neurocognitive effects in sensitive populations, such as IQ loss in children, the Administrator recognized in the 2008 review that there were no commonly accepted guidelines or criteria within the public health community that would provide a clear basis for such a judgment. During the 2008 review, CASAC commented regarding the significance from a public health perspective of a 1–2 point IQ loss in the entire population of children and, along with some commenters, emphasized that the NAAQS should prevent air-related IQ loss of a significant magnitude, such as on the order of 1–2 IQ points, in all but a small percentile of the population. Similarly, the Administrator stated that ''ideally air-related (as well as other) exposures to environmental Pb would be reduced to the point that no IQ impact in children would occur'' (73 FR 66998, November 12, 2008). The Administrator further recognized that, in the case of setting a national ambient air quality standard, he was required to make a judgment as to what degree of protection is requisite to protect public health with an adequate margin of safety (73 FR 66998, November 12, 2008). The NAAQS must be sufficient but not more stringent than necessary to achieve that result, and the Act does not require a zero-risk standard (73 FR 66998, November 12, 2008). The Administrator additionally recognized that the air-related IQ loss evidence-based framework did not provide estimates pertaining to the U.S. population of children as a whole. Rather, the framework provided estimates (with associated uncertainties and limitations) for the mean of a subset of that population, the subset of children assumed to be exposed to the level of the standard. As described in the final decision ''[t]he framework in effect focuses on the sensitive subpopulation that is the group of children living near sources and more likely to be exposed at the level of the standard'' (73 FR 67000, November 12, 2008). Further description of the EPA's consideration of this issue is provided in the preamble to the final decision rule (73 FR 67000, November 12, 2008):

> EPA is unable to quantify the percentile of the U.S. population of children that corresponds to the mean of this sensitive subpopulation. Nor is EPA confident in its ability to develop quantified estimates of air-related IQ loss for higher percentiles than the mean of this subpopulation. EPA expects that the mean of this subpopulation represents a high, but not quantifiable, percentile of the U.S. population of children. As a result, EPA expects that a standard based on consideration of this framework would provide the same or greater protection from estimated air-related IQ loss for a high, albeit unquantifiable, percentage of the entire population of U.S. children.

In reaching a judgment as to the appropriate degree of protection, the Administrator considered advice and recommendations from CASAC and public comments and recognized the uncertainties in the health effects evidence and related information as well as the role of, and context for, a selected air-related IQ loss in the application of the framework, as described above. Based on these considerations, the Administrator identified an air-related IQ loss of 2 points for use with the framework, as a tool for considering the evidence with regard to the level for the standard (73 FR 67005, November 12, 2008). In so doing, the Administrator was not determining that such an IQ decrement value was appropriate in other contexts (73 FR 67005, November 12, 2008). Given the various uncertainties associated with the framework and the scientific evidence base, and the focus of the framework on the sensitive subpopulation of children that are more highly exposed to air-related Pb, a standard level selected in this way, in combination with the selected averaging time and form, was expected to significantly reduce and limit for a high percentage of U.S. children the risk of experiencing an air-related IQ loss of that magnitude (73 FR 67005, November 12, 2008). At the standard level of 0.15 μg/m$^3$, with the combination of the generally central estimate of air-to-blood ratio of 1:7 and the median of the four C–R functions (-1.75 IQ point decrement per μg/dL blood Pb), the framework estimates of air-related IQ loss were below 2 IQ points (73 FR 67005, November 12, 2008, Table 4).

In reaching the decision in 2008 on a level for the revised standard, the Administrator also considered the results of the quantitative risk assessment to provide a useful

[23] The geometric mean blood Pb level for U.S. children aged 5 years and below, reported for NHANES in 2003–04 (the most recent years for which such an estimate was available at the time of the 2008 decision) was 1.8 μg/dL and the 5th and 95th percentiles were 0.7 μg/dL and 5.1 μg/dL, respectively (73 FR 67002). Using the air-to-blood ratio 1:7, the estimated air-related blood Pb level associated with the final standard level is approximately 1 μg/dL. In the 2008 decision, the EPA noted that even if it assumed, as an extreme hypothetical example, that the mean for the general population of U.S. children included zero contribution from air-related sources and added that to the estimate of air-related Pb, the result would still be below the lowest mean blood Pb level among the set of C–R analyses (73 FR 67002).

perspective on risk from air-related Pb. In light of important uncertainties and limitations for purposes of evaluating potential standard levels, however, the Administrator placed less weight on the risk estimates than on the evidence-based assessment. Nevertheless, in recognition of the general comparability of quantitative risk estimates for the case studies considered most conceptually similar to the scenario represented by the evidence-based framework, he judged the quantitative risk estimates to be ''roughly consistent with and generally supportive'' of the evidence-based framework estimates (73 FR 67006, November 12, 2008).

Based on consideration of the entire body of evidence and information available in the review, as well as the recommendations of CASAC and public comments, the Administrator decided that a level for the primary Pb standard of 0.15 μg/m$^3$, in combination with the specified choice of indicator, averaging time and form, was requisite to protect public health, including the health of sensitive groups, with an adequate margin of safety (73 FR 67006, November 12, 2008). In reaching decisions on level as well as the other elements of the revised standard, the Administrator took note of the complexity associated with consideration of health effects caused by different ambient air concentrations of Pb and with uncertainties with regard to the relationships between air concentrations, exposures, and health effects. For example, selection of a maximum, not to be exceeded, form in conjunction with a rolling 3-month averaging time over a 3-year span was expected to have the effect that the at-risk population of children would be exposed below the standard most of the time (73 FR 67005, November 12, 2008). The Administrator additionally considered the provision of an adequate margin of safety in making decisions on each of the elements of the standard, including, for example ''selection of TSP as the indicator and the rejection of the use of $PM_{10}$ scaling factors; selection of a maximum, not to be exceeded form, in conjunction with a 3-month averaging time that employs a rolling average, with the requirement that each month in the 3-month period be weighted equally (rather than being averaged by individual data) and that a 3-year span be used for comparison to the standard; and the use of a range of inputs for the evidence-based framework, that includes a focus on higher air-to-blood ratios than the lowest ratio considered to be supportable, and steeper rather than shallower C–R functions, and the consideration of these inputs in selection of 0.15 μg/m$^3$ as the level of the standard'' (73 FR 67007, November 12, 2008).

The Administrator additionally noted that a standard with this level would reduce the risk of a variety of health effects associated with exposure to Pb, including effects indicated in the epidemiological studies at lower blood Pb levels, particularly including neurological effects in children, and the potential for cardiovascular and renal effects in adults (73 FR 67006, November 12, 2008). The Administrator additionally considered higher and lower levels for the standard, concluding that a level of 0.15 μg/m$^3$ provided for a standard that was neither more or less stringent than necessary for this purpose, recognizing that the Act does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety (73 FR 67007, November 12, 2008). For example, the Administrator additionally considered potential public health protection provided by standard levels above 0.15 μg/m$^3$, which he concluded were insufficient to protect public health with an adequate margin of safety. The Administrator also noted that in light of all of the evidence, including the evidence-based framework, the degree of public health protection likely afforded by standard levels below 0.15 μg/m$^3$ would be greater than what is necessary to protect public safety with an adequate margin of safety.

The Administrator concluded, based on review of all of the evidence (including the evidence-based framework), that when taken as a whole the selected standard, including the indicator, averaging time, form, and level, would be ''sufficient but not more than necessary to protect public health, including the health of sensitive subpopulations, with an adequate margin of safety'' (73 FR 67007, November 12, 2008).

2. Overview of Health Effects Evidence

In this section, we provide an overview of the information presented in section II.B of the proposal on policy-relevant aspects of the health effects evidence available for consideration in this review. Section II.B of the proposal provides a detailed summary of key information contained in the ISA and in the PA on health and public health effects of Pb, focusing particularly on the information most relevant to consideration of effects associated with the presence of Pb in ambient air (80 FR 290–297, January 5, 2015). The subsections below briefly outline this information in the five topic areas addressed in section II.B of the proposal.

a. Array of Effects

Lead has been demonstrated to exert a broad array of deleterious effects on multiple organ systems as described in the assessment of the evidence available in this review and consistent with conclusions of past CDs (ISA, section 1.6; 2006 CD, section 8.4.1). A sizeable number of studies on Pb health effects are newly available in this review and are critically assessed in the ISA as part of the full body of evidence. The newly available evidence reaffirms conclusions on the broad array of effects recognized for Pb in the last review (see ISA, section 1.10).[24] Consistent with those conclusions, in the context of pollutant exposures considered relevant to the Pb NAAQS review,[25] the ISA determines that causal relationships [26] exist for Pb with effects on the nervous system in children (cognitive function decrements and the group of externalizing behaviors comprising attention, impulsivity and hyperactivity), the hematological system (altered heme synthesis and decreased red blood cell survival and function), and the cardiovascular system (hypertension and coronary heart disease), and on reproduction and development (postnatal development and male reproductive function) (ISA, Table 1–2). Additionally, the ISA

[24] Since the last Pb NAAQS review, the ISAs, which have replaced CDs in documenting each review of the scientific evidence (or air quality criteria), employ a systematic framework for weighing the evidence and describing associated conclusions with regard to causality using established descriptors: ''causal'' relationship with relevant exposure, ''likely'' to be a causal relationship, evidence is ''suggestive'' of a causal relationship, ''inadequate'' evidence to infer a causal relationship, and ''not likely'' to be a causal relationship (ISA, Preamble).

[25] In drawing judgments regarding causality for the criteria air pollutants, the ISA places emphasis ''on evidence of effects at doses (*e.g.,* blood Pb concentration) or exposures (*e.g.,* air concentrations) that are relevant to, or somewhat above, those currently experienced by the population. The extent to which studies of higher concentrations are considered varies . . . but generally includes those with doses or exposures in the range of one to two orders of magnitude above current or ambient conditions. Studies that use higher doses or exposures may also be considered . . .[t]hus, a causality determination is based on weight of evidence evaluation . . ., focusing on the evidence from exposures or doses generally ranging from current levels to one or two orders of magnitude above current levels'' (ISA, pp. lx-lxi).

[26] In determining a causal relationship to exist for Pb with specific health effects, the EPA concludes that ''[e]vidence is sufficient to conclude that there is a causal relationship with relevant pollutant exposures (*i.e.,* doses or exposures generally within one to two orders of magnitude of current levels)'' (ISA, p. lxii).

describes relationships between Pb and certain types of effects on the nervous system in adults, and on immune system function, as well as with cancer,[27] as likely to be causal [28] (ISA, Table 1–2, sections 1.6.4 and 1.6.7).

Among the nervous system effects of Pb, the newly available evidence is consistent with conclusions in the previous review which recognized that ''[t]he neurotoxic effects of Pb exposure are among those most studied and most extensively documented among human population groups'' (2006 CD, p. 8–25) and took note of the diversity of studies in which such effects of Pb exposure early in development (from fetal to postnatal childhood periods) have been observed (2006 CD, p. E–9). While some studies are newly available of other effects in children with somewhat lower blood Pb levels than previously available for these effects, nervous system effects continue to receive prominence in the current review, as in previous reviews, with particular emphasis on those affecting cognitive function and behavior in children (ISA, section 4.3), with conclusions that are consistent with findings of the last review. For example, based on the extensive assessment of the full body of evidence available in this review, the major conclusions drawn by the ISA regarding health effects of Pb in children include the following (ISA, p. lxxxvii).

Multiple epidemiologic studies conducted in diverse populations of children consistently demonstrate the harmful effects of Pb exposure on cognitive function (as measured by IQ decrements, decreased academic performance and poorer performance on tests of executive function). . . . Evidence suggests that some Pb-related cognitive effects may be irreversible and that the neurodevelopmental effects of Pb exposure may persist into adulthood (Section 1.9.4). Epidemiologic studies also demonstrate that Pb exposure is associated with decreased attention, and increased impulsivity and hyperactivity in children (externalizing behaviors). This is supported by findings in animal studies demonstrating both analogous effects and biological plausibility at relevant exposure levels. Pb exposure can also exert harmful effects on blood cells and blood producing organs, and is likely to cause an increased risk of symptoms of depression and anxiety and withdrawn behavior (internalizing behaviors), decreases in auditory and motor function, asthma and allergy, as well as conduct disorders in children and young adults. There is some uncertainty about the Pb exposures contributing to the effects and blood Pb levels observed in epidemiologic studies; however, these uncertainties are greater in studies of older children and adults than in studies of young children (Section 1.9.5).

As in prior reviews of the Pb NAAQS, this review is focused on those effects most pertinent to ambient air Pb exposures. Given the reductions in ambient air Pb concentrations over the past decades, these effects are generally those associated with the lowest levels of Pb exposure that have been evaluated. Additionally, we recognize the limitations on our ability to draw conclusions regarding the exposure conditions contributing to the findings from epidemiological analyses of blood Pb levels in populations of older children and adults, particularly in light of their history of higher Pb exposures. For example, the evidence newly available for Pb relationships with cardiovascular effects in adults includes some studies with somewhat lower blood Pb levels than in the last review. However, the long exposure histories of these cohorts, as well as the generally higher Pb exposures of the past, complicate conclusions regarding exposure levels that may be eliciting observed effects (ISA, sections 4.4.2.4 and 4.4.7).[29] Evidence available in future reviews may better inform this issue. Recognizing this, the extensive assessment of the full body of evidence available in this review contributed to the following major conclusions drawn by the ISA regarding health effects of Pb in adults (ISA, p. lxxxviii).

A large body of evidence from both epidemiologic studies of adults and experimental studies in animals demonstrates the effect of long-term Pb exposure on increased blood pressure (BP) and hypertension (Section 1.6.2). In addition to its effect on BP, Pb exposure can also lead to coronary heart disease and death from cardiovascular causes and is associated with cognitive function decrements, symptoms of depression and anxiety, and immune effects in adult humans. The extent to which the effects of Pb on the cardiovascular system are reversible is not well-characterized. Additionally, the frequency, timing, level, and duration of Pb exposure causing the effects observed in adults has not been pinpointed, and higher past exposures may contribute to the development of health effects measured later in life.

In the last review, while recognizing the range of health effects in variously aged populations related to Pb exposure, we focused on the health effects for which the evidence was strongest with regard to relationships with the lowest exposure levels, neurocognitive effects in young children. Similarly, given the strength of the evidence, including the greater confidence in conclusions regarding the exposures contributing to the observed effects, we focus in this review, as in the last, on neurocognitive effects in young children.

b. Critical Periods of Exposure

As in the last review, we base our current understanding of health effects associated with different Pb exposure circumstances at various stages of life or in different populations on the full body of available evidence and primarily on epidemiological studies of health effects associated with population Pb biomarker levels (as discussed further in section II.B.3 of the proposal). The epidemiological evidence is overwhelmingly composed of studies that rely on blood Pb for the exposure metric, with the remainder largely including a focus on bone Pb. Because these metrics reflect Pb in the body (*e.g.,* as compared to Pb exposure concentrations) and, in the case of blood Pb, reflect Pb available for distribution to target sites, they strengthen the evidence base for purposes of drawing causal conclusions with regard to Pb generally. The complexity of Pb exposure pathways and internal dosimetry, however, tends to limit the extent to which these types of studies inform our more specific understanding of the Pb exposure circumstances (*e.g.,* timing within lifetime, duration, frequency and magnitude) eliciting the various effects.

A critical aspect of much of the epidemiological evidence, particularly studies focused on adults (and older children) in the U.S. today, is the backdrop of generally declining environmental Pb exposure (from higher exposures during their younger years) that is common across many study populations (ISA, p. 4–2).[30] An additional factor complicating the interpretation of health effect

[27] The EPA concludes that a causal relationship is likely to exist between Pb exposure and cancer, based primarily on consistent, strong evidence from experimental animal studies, but inconsistent epidemiological evidence (ISA, section 4.10.5). Lead has also been classified as a probable human carcinogen by the International Agency for Research on Cancer, based mainly on sufficient animal evidence, and as reasonably anticipated to be a human carcinogen by the U.S. National Toxicology Program (ISA, section 4.10).

[28] In determining that there is likely to be a causal relationship for Pb with specific health effects, the EPA has concluded that ''[e]vidence is sufficient to conclude that a causal relationship is likely to exist with relevant pollutant exposures, but important uncertainties remain'' (ISA, p. lxii).

[29] Studies from the late 1960s and 1970s suggest that adult blood Pb levels during that period ranged from roughly 13 to 16 μg/dL and from 15 to 30 μg/dL in children aged 6 and younger (ISA, section 4.4.1).

[30] The declines in Pb exposure concentrations occurring from the 1970s through the early 1990s (and experienced by middle aged and older adults of today), as indicated by NHANES blood Pb information, were particularly dramatic (ISA, section 3.4.1).

associations with blood Pb measurements in older children and younger adults is the common behaviors of younger children (*e.g.,* hand-to-mouth contact) that generally contribute to relatively greater exposures earlier in life (ISA, sections 3.1.1, 5.2.1). Such exposure histories for adults and older children complicate our ability to draw conclusions regarding critical time periods and lifestages for Pb exposures eliciting the effects for which associations with Pb biomarkers have been observed in these populations (*e.g.,* ISA, section 1.9.6).[31] Thus, our confidence is greatest in the role of early childhood exposure in contributing to Pb-related neurocognitive effects that have been associated with blood Pb levels in young children. This is due, in part, to the relatively short exposure histories of young children (ISA, sections 1.9.4, 1.9.6 and 4.3.11).

Epidemiological analyses evaluating risk of neurocognitive impacts (*e.g.,* reduced IQ) associated with different blood Pb metrics in cohorts with differing exposure patterns (including those for which blood Pb levels at different ages were not highly correlated) also indicate associations with blood Pb measurements concurrent with full scale IQ (FSIQ) tests at ages of approximately 6–7 years. The analyses did not, however, conclusively demonstrate stronger findings for early (*e.g.,* at age 2 years) or concurrent blood Pb levels (ISA, section 4.3.11).[32] The experimental animal evidence additionally indicates early life susceptibility (ISA, section 4.3.15 and p. 5–21). Thus, while uncertainties remain with regard to the role of Pb exposures during a particular age of life in eliciting nervous system effects, such as cognitive function decrements, the full evidence base continues to indicate prenatal and early childhood lifestages as periods of increased Pb-related risk (ISA, sections 4.3.11 and 4.3.15). We recognize increasing uncertainty, however, in our understanding of the relative impact on neurocognitive function of additional Pb exposure of children by school age or later that is associated with limitations of the currently available evidence, including epidemiological cohorts with generally similar temporal patterns of exposure.

In summary, as in the last review, we continue to recognize a number of uncertainties regarding the circumstances of Pb exposure, including timing or lifestages, eliciting specific health effects. Consideration of the evidence newly available in this review has not appreciably changed our understanding on this topic. The relationship of long-term exposure to Pb with hypertension and increased blood pressure in adults is substantiated despite some uncertainty regarding the exposure circumstances contributing to blood Pb levels measured in epidemiological studies. For example, the evidence does not indicate the exposure magnitude and timing that are eliciting such effects. Across the full evidence base, the effects for which our understanding of relevant exposure circumstances is greatest are neurocognitive effects in young children. Moreover, available evidence does not suggest a more sensitive endpoint. Thus, we continue to recognize and give particular attention to the role of Pb exposures relatively early in childhood in contributing to neurocognitive effects, some of which may persist into adulthood.

c. Nervous System Effects in Children

The evidence currently available with regard to the magnitude of blood Pb levels associated with neurocognitive effects in children is generally consistent with that available in the review completed in 2008. Nervous system effects in children, specifically effects on cognitive function, continue to be the effects that are best substantiated as occurring at the lowest blood Pb concentrations (ISA, pp. lxxxvii–lxxxviii). Associations of blood Pb with effects on cognitive function measures in children have been reported in many studies across a range of childhood blood Pb levels, including study group (mean/median) levels ranging down to 2 μg/dL (*e.g.,* ISA, p. lxxxvii and section 4.3.2).[33]

Among the analyses of lowest study group blood Pb levels at the youngest ages are analyses available in the last review of Pb associations with neurocognitive function decrement in study groups with mean levels on the order of 3–4 μg/dL in children aged 24 months or ranging from 5 to 7 years (73 FR 66978–66979, November 12, 2008; ISA, sections 4.3.2.1 and 4.3.2.2; Bellinger and Needleman, 2003; Canfield et al., 2003; Lanphear et al., 2005; Tellez-Rojo et al., 2006; Bellinger, 2008; Canfield, 2008; Tellez-Rojo, 2008; Kirrane and Patel, 2014).[34] Newly available in this review are two studies reporting association of blood Pb levels prior to 3 years of age with academic performance on standardized tests in primary school; mean blood Pb levels in these studies were 4.2 and 4.8 μg/dL (ISA, section 4.3.2.5; Chandramouli et al., 2009; Miranda et al., 2009). One of these two studies, which represented integer blood Pb levels as categorical variables, indicated a small effect on end-of-grade reading score of blood Pb levels as low as 2 μg/dL, after adjustment for age of measurement, race, sex, enrollment in free or reduced lunch program, parental education, and school type (Miranda et al., 2009).

Newly available in this review are also several studies in older children on neurocognitive effects and other nervous system effects. As described in section II.B.3 of the proposal, however, these studies are focused on population groups of ages for which the available information indicates exposure levels were higher earlier in childhood. Thus, in light of this information, although the blood Pb levels in the studies in older child population groups are lower (at the time of the study) than the younger child study levels, the studies of older

[31] The evidence from experimental animal studies can be informative with regard to key aspects of exposure circumstances in eliciting specific effects, thus informing our interpretation of epidemiological evidence. For example, the animal evidence base with regard to Pb effects on blood pressure demonstrates the etiologically-relevant role of long-term exposure (ISA, section 4.4.1). This finding then informs consideration of epidemiological studies of adult populations for whom historical exposures were likely more substantial than concurrent ones, suggesting that the observed effects may be related to the past exposure (ISA, section 4.4.1). For other health effects, the animal evidence base may or may not be informative in this manner.

[32] In the collective body of evidence of nervous system effects in children, it is difficult to distinguish exposure in later lifestages (*e.g.,* school age) and its associated risk from risks resulting from exposure in prenatal and early childhood (ISA, section 4.3.11). While early childhood is recognized as a time of increased susceptibility, a difficulty in identifying a discrete period of susceptibility from epidemiological studies has been that the period of peak exposure, reflected in peak blood Pb levels, is around 18–27 months when hand-to-mouth activity is at its maximum (ISA, section 3.4.1 and 5.2.1.1; 2006 CD, p. 6–60). The task is additionally complicated by the role of maternal exposure history in contributing Pb to the developing fetus (ISA, section 3.2.2.4.).

[33] The value of 2 μg/dL refers to the regression analysis of blood Pb and end-of-grade test scores, in which blood Pb was represented by categories for integer values of blood Pb from 1 μg/dL to 9 and >10 μg/dL from large statewide database. A significant effect estimate was reported for test scores with all blood Pb categories in comparison to the reference category (1 μg/dL), which included results at and below the limit of detection. Mean levels are not provided for any of the categories (Miranda et al., 2009).

[34] The tests for cognitive function in these studies include age-appropriate Wechsler intelligence tests (Lanphear et al., 2005; Bellinger and Needleman, 2003), the Stanford-Binet intelligence test (Canfield et al., 2003), and the Bayley Scales of Infant Development (Tellez-Rojo et al., 2006). The Wechsler and Stanford-Binet tests are widely used to assess neurocognitive function in children and adults. These tests, however, are not appropriate for children under age 3. For such children, studies generally use the age-appropriate Bayley Scales of Infant Development as a measure of cognitive development.

children do not provide a basis for concluding a role for lower Pb exposure levels than those experienced by the younger study groups. Rather, this information makes these studies relatively uninformative with regard to evidence of effects associated with lower exposure levels than provided by evidence previously available.

Recognizing the complexity associated with interpretation of studies involving older cohorts,[35] as well as the potential role of higher exposure levels in the past, we continue to focus our consideration of this question on the evidence of effects in young children for which our understanding of exposure history is less uncertain.[36] Within this evidence base, we recognize the lowest study group blood Pb levels to be associated with effects on cognitive function measures, indicating that to be the most sensitive endpoint. As described above, the evidence available in this review is generally consistent with that available in the last review with regard to blood Pb levels at which such effects had been reported (ISA, section 4.3.2; 2006 CD, section 8.4.2.1; 73 FR 66976–66979, November 12, 2008). As blood Pb levels are a reflection of exposure history, particularly in early childhood (ISA, section 3.3.2), we conclude, by extension, that the currently available evidence does not indicate Pb effects at exposure levels appreciably lower than recognized in the last review.

We additionally note that, as in the last review, a threshold blood Pb level with which nervous system effects, and specifically cognitive effects, occur in young children cannot be discerned from the currently available studies (ISA, sections 1.9.3 and 4.3.12). Epidemiological analyses have reported blood Pb associations with cognitive effects (FSIQ or BSID MDI[37]) for young child population subgroups (age 5 years or younger) with individual blood Pb measurements as low as approximately 1 μg/dL and mean concentrations as low as 2.9 to 3.8 μg/dL (ISA, section 4.3.12; Bellinger and Needleman, 2003; Bellinger, 2008; Canfield el al., 2003; Canfield, 2008; Tellez-Rojo et al., 2006; Tellez-Rojo, 2008). As concluded in the ISA, however, ''the current evidence does not preclude the possibility of a threshold for neurodevelopmental effects in children existing with lower blood levels than those currently examined'' (ISA, p. 4–274).

Important uncertainties associated with the evidence of effects at low exposure levels are similar to those recognized in the last review, including the shape of the concentration-response relationship for effects on neurocognitive function at low blood Pb levels in today's young children. Also of note is our interpretation of associations between blood Pb levels and effects in epidemiological studies, with which we recognize uncertainty with regard to the specific exposure circumstances (timing, duration, magnitude and frequency) that have elicited the observed effects, as well as uncertainties in relating ambient air concentrations (and associated air-related exposures) to blood Pb levels in early childhood, as recognized in section II.A.2.b above. We additionally recognize uncertainties associated with conclusions drawn with regard to the nature of the epidemiological associations with blood Pb (*e.g.,* ISA, section 4.3.13) but note that, based on consideration of the full body of evidence for neurocognitive effects, the EPA has determined a causal relationship to exist between relevant blood Pb levels and neurocognitive impacts in children (ISA, section 4.3.15.1).

Based primarily on studies of FSIQ, the assessment of the currently available studies, as was the case in the last review, continues to recognize a nonlinear relationship between blood Pb levels and effects on cognitive function, with a greater incremental effect (greater slope) at lower relative to higher blood Pb levels within the range thus far studied, extending from well above 10 μg/dL to below 5 μg/dL (ISA, section 4.3.12). This was supported by the evidence available in the last review, including the analysis of the large pooled international dataset comprised of blood Pb measurements and IQ test results from seven prospective cohorts (Lanphear et al., 2005; Rothenberg and Rothenberg, 2005; ISA, section 4.3.12). The blood Pb measurements in this pooled dataset that were concurrent with the IQ tests ranged from 2.5 μg/dL to 33.2 μg/dL.

The study by Lanphear et al. (2005) additionally presented analyses that stratified the dataset based on peak blood Pb levels (*e.g.,* with cutpoints of 7.5 μg/dL and 10 μg/dL peak blood Pb) and found that the coefficients from linear models of the association for IQ with concurrent blood Pb levels were higher in the lower peak blood Pb level subsets than the higher groups (ISA, section 4.3.12; Lanphear et al., 2005).[38] In other publications, stratified analyses of several individual cohorts also observed higher coefficients for blood Pb relationships with measures of neurocognitive function in lower as compared to higher blood Pb subgroups (ISA, section 4.3.12; Canfield et al., 2003; Bellinger and Needleman, 2003; Kordas et al., 2006; Tellez-Rojo et al., 2006). Of these subgroup analyses, those involving the lowest mean blood Pb levels and closest to the current mean for U.S. preschool children are listed in Table 1 of the proposal (drawn from Table 3 of the 2008 preamble to the final rule [73 FR 67003, November 12, 2008], and Kirrane and Patel, 2014).[39] These analyses were important inputs for the air-related IQ loss evidence-based framework which informed decisions on a revised standard in the last review (73 FR 67005, November 12, 2008), discussed in section II.A.1 above. Specifically, the framework focused on the median of the four average linear slope estimates from the studies recognized in Table 3 of the 2008 decision (73 FR 67003, November 12, 2008). As shown in Table 1 of the proposal, the median is unchanged by

[35] Our conclusions regarding exposure levels at which Pb health effects occur, particularly with regard to such levels that might be common in the U.S. today, are complicated now, as in the last review, by several factors. These factors include the scarcity of information in epidemiological studies on cohort exposure histories, as well as by the backdrop of higher past exposure levels which frame the history of most, if not all, older study cohorts.

[36] In focusing on effects associated with blood Pb levels in early childhood, however, we additionally recognize the evidence across categories of effects that relate to blood Pb levels in older child study groups (for which early childhood exposure may have had an influence) which provides additional support to an emphasis on nervous system effects (ISA, sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8).

[37] The Bayley Scales of Infant Development, Mental Development Index (BSID MDI) is a well-standardized and widely used assessment measure of infant cognitive development. Scores earlier than 24 months are not necessarily strongly correlated with later FSIQ scores in children with normal development (ISA, section 4.3.15.1).

[38] As described in the PA and noted in the proposal, since the completion of the ISA, two errors have been identified with the pooled dataset analyzed by Lanphear et al. (2005) (Kirrane and Patel, 2014). A recent publication and the EPA have separately recalculated the statistics and mathematical model parameters of Lanphear et al. (2005) using the corrected pooled dataset (see Kirrane and Patel, 2014). While the magnitude of the loglinear and linear regression coefficients are modified slightly based on the corrections, the conclusions drawn from these coefficients, including the finding of a steeper slope at lower (as compared to higher) blood Pb concentrations, are not affected (Kirrane and Patel, 2014).

[39] One of these four subgroup analyses is the analysis of the lowest blood Pb subset of the pooled international study by Lanphear et al. (2005). The nonlinear model developed from the full pooled dataset is the basis of the C–R functions used in the 2007 REA, in which risk was estimated over a large range of blood Pb levels (PA, section 3.4.3.3). Given the narrower focus of the evidence-based framework on IQ response at the end of studied blood Pb levels (closer to U.S. mean level), the C–R functions in Table 1 are from linear analyses (each from separate publications) for the study group subsets with blood Pb levels closest to mean for children in the U.S. today.

consideration of the information newly available in this review.[40]

Several studies newly available in the current review have, in all but one instance, also found a nonlinear blood Pb-cognitive function relationship in nonparametric regression analyses of the cohort blood Pb levels analyzed (ISA, section 4.3.12). These studies, however, used statistical approaches that did not produce quantitative results for each blood Pb group (ISA, section 4.3.12). Thus, newly available studies have not extended the range of observation for quantitative estimates of this relationship to lower blood Pb levels than those of the previous review. The ISA further notes that the potential for nonlinearity has not been examined in detail within a lower, narrower range of blood Pb levels than those of the full cohorts thus far studied in the currently available evidence base (ISA, section 4.3.12). Such an observation in the last review supported the consideration of linear slopes with regard to blood Pb levels at and below those represented in Table 1 of the proposal. In summary, the newly available evidence does not substantively alter our understanding of the C–R relationship (including quantitative aspects) for neurocognitive impact, such as IQ, with blood Pb in young children.

d. At-Risk Populations

In this section, as elsewhere, we use the term ''at-risk populations''[41] to recognize populations that have a greater likelihood of experiencing Pb-related health effects, *i.e.,* groups with characteristics that contribute to an increased risk of Pb-related health effects. These populations are also referred to as sensitive groups (as in section I.A above). In identifying factors that increase risk of Pb-related health effects, we have considered evidence regarding factors contributing to increased susceptibility, generally including physiological or intrinsic factors contributing to a greater response for the same exposure and those contributing to increased exposure, including that resulting from behavior leading to increased contact with contaminated media (ISA, Chapter 5). Physiological risk factors include both conditions contributing to a group's increased risk of effects at a given blood Pb level and those that contribute to blood Pb levels higher than those otherwise associated with a given Pb exposure (*e.g.,* ISA, sections 5.3 and 5.1, respectively).

In considering factors that increase risk by contributing to increased exposure or to increased blood Pb levels over those otherwise associated with a given Pb exposure, we note that the currently available evidence continues to support a nonlinear relationship between neurocognitive effects and blood Pb that indicates incrementally greater impacts at lower as compared to higher blood Pb levels (ISA, section 4.3.12), as described in section II.B.3 of the proposal and briefly noted in section II.A.2.c above. An important implication of this finding is that while children with higher blood Pb levels are at greater risk of Pb-related effects than children with lower blood Pb levels, on an incremental basis (*e.g.,* per µg/dL) the risk is greater for children at lower blood Pb levels. This was given particular attention in the last review of the Pb NAAQS, in which the standard was revised with consideration of the incremental impact of air-related Pb on young children in the U.S. and the recognition of greater incremental impact for those children with lower absolute blood Pb levels (73 FR 67002, November 12, 2008). Such consideration included a focus on those C–R studies involving the lowest blood Pb levels, as described in section II.A.1 above.

The information newly available in this review has not appreciably altered our previous understanding of at-risk populations for Pb in ambient air. As in the last review, the factor most prominently recognized to contribute to increased risk of Pb effects is childhood (ISA, section 1.9.6). As discussed in section II.B.2 of the proposal and briefly noted in section II.A.2.b above, while uncertainties remain with regard to the role of Pb exposures during a particular age of life in eliciting nervous system effects, such as cognitive function decrements, the full evidence base continues to indicate prenatal and early childhood lifestages as periods of increased Pb-related risk (ISA, sections 4.3.11 and 4.3.15). Thus, in the current review, as at the time of the last review of the Pb NAAQS, we recognize young children as an important at-risk population, with sensitivity extending to prenatal exposures and into childhood development.

An additional physiological risk factor that contributes to increased blood Pb levels is nutritional status, which can play a role in Pb absorption from the gastrointestinal tract, with iron-, calcium- and zinc-deficient diets contributing to increased Pb absorption and associated blood Pb levels (ISA, sections 3.2.1.2, 5.1, 5.3.10 and 5.4). Risk factors based on increased exposure include spending time in proximity to sources of Pb to ambient air or other environmental media, such as large active metals industries or locations of historical Pb contamination (ISA, sections 1.9.6, 3.7.1, 5.2.5 and 5.4). Residential factors associated with other sources of Pb exposure (*e.g.,* leaded paint or plumbing with Pb pipes or solder) are another exposure-related risk factor (ISA, sections 3.7.1, 5.2.6 and 5.4). Additionally, some races or ethnicities have been associated with higher blood Pb levels, with differential exposure indicated in some cases as the cause (ISA, sections 5.2.3 and 5.4).

Lower socioeconomic status (SES) has been associated with higher Pb exposure and higher blood Pb concentration in some study groups, leading the ISA to conclude the evidence is suggestive for low SES as a risk factor (ISA, sections 5.3.16, 5.2.4 and 5.4).[42] Although the differences in blood Pb levels, nationally, between children of lower and higher income levels (as well as among some races or ethnicities) have lessened, blood Pb levels continue to be higher among lower-income children indicating higher exposure and/or greater influence of factors independent of exposure, such as nutritional factors (ISA, sections 1.9.6, 5.2.1.1 and 5.4).[43] The evidence is also suggestive of increased risk associated with several other factors: older adulthood,[44] pre-

[40] As the framework focused on the median of the four slopes in Table 1, the change to the one from Lanphear et al. (2005) based on the recalculation described above has no impact on conclusions drawn from the framework.

[41] In the context of ''at-risk populations,'' the term ''population'' refers to persons having one or more qualities or characteristics including, for example, a specific pre-existing illness or a specific age or lifestage, with lifestage referring to a distinguishable time frame in an individual's life characterized by unique and relatively stable behavioral and/or physiological characteristics that are associated with development and growth.

[42] The approach used by the EPA in evaluating the evidence regarding factors that may influence the risk of Pb-related health effects is described in chapter 5 of the ISA.

[43] Although the evidence for SES continues to indicate increased blood Pb levels in lower income children, its role with regard to an increased health risk for the same blood Pb level is unclear and its role generally with regard to Pb-related risk is somewhat complicated. SES often serves as a marker term for one or a combination of unspecified or unknown environmental or behavioral variables. Further, it is independently associated with an adverse impact on neurocognitive development, and a few studies have examined SES as a potential modifier of the association of childhood Pb exposure with cognitive function with inconsistent findings regarding low SES as a potential risk factor.

[44] The ISA identifies older adulthood as a lifestage of potentially greater risk of Pb-related health effects based primarily on the evidence of increases in blood Pb levels during this lifestage (ISA, sections 5.2.1.2, 5.3.1.2, and 5.4), as well as observed associations of some cardiovascular and nervous system effects with bone and blood Pb in older populations, with biological plausibility for the role of Pb provided by experimental animal studies (ISA, sections 4.3.5, 4.3.7 and 4.4). Exposure

existing disease (*e.g.,* hypertension), variants for certain genes and increased stress (ISA, section 5.3.4).

In summary, we recognize the sensitivity of the prenatal period and several stages of childhood to an array of neurocognitive and behavioral effects, and we particularly recognize young children as an important at-risk population in light of current environmental exposure levels. Age or lifestage was used to distinguish potential groups on which to focus in the last review in recognition of its role in exposure and susceptibility, and young children were the focus of the REA in consideration of the health effects evidence regarding endpoints of greatest public health concern and in recognition of effects on the developing nervous system as a sentinel endpoint for public health impacts of Pb. This identification continues to be supported by the evidence available in the current review.

e. Potential Impacts on Public Health

There are several potential public health impacts associated with Pb exposure in the current U.S. population. In recognition of effects causally related to blood Pb levels somewhat near those most recently reported for today's population and for which the weight of the evidence is greatest, the potential public health impacts most prominently recognized in the ISA are population IQ impacts associated with childhood Pb exposure and prevalence of cardiovascular effects in adults (ISA, section 1.9.1). With regard to the latter category, as discussed above, the full body of evidence indicates a role of long-term cumulative exposure, with uncertainty regarding the specific exposure circumstances contributing to the effects in the epidemiological studies of adult populations, for whom historical Pb exposures were likely much higher than exposures that commonly occur today (ISA, section 4.4). There is less uncertainty regarding the exposure patterns contributing to the blood Pb levels reported in studies of younger populations (ISA, sections 1.9.4 and 1.10). Accordingly, the discussion of public health implications relevant to this review is focused predominantly on nervous system effects, including IQ decrements, in children.

The magnitude of a public health impact is dependent upon the type or severity of the effect, as well as the size of populations affected. Intelligence quotient is a well-established, widely recognized and rigorously standardized measure of neurocognitive function, as well as a global measure reflecting the integration of numerous processes (ISA, section 4.3.2; 2006 CD, sections 6.2.2 and 8.4.2). In considering population risk, the distribution of effects across members of the population is important. For example, if Pb-related decrements are manifested uniformly across the range of IQ scores in a population, ''a small shift in the population mean IQ may be significant from a public health perspective because such a shift could yield a larger proportion of individuals functioning in the low range of the IQ distribution, which is associated with increased risk of educational, vocational, and social failure'' as well as a decrease in the proportion with high IQ scores (ISA, section 1.9.1). Examples of other measures of cognitive function negatively associated with Pb exposure include other measures of intelligence and cognitive development and measures of other cognitive abilities, such as learning, memory, and executive functions, as well as academic performance and achievement (ISA, section 4.3.2). Although some neurocognitive effects of Pb in children may be transient, some may persist into adulthood (ISA, section 1.9.5).[45] We also note that deficits in neurodevelopment early in life may have lifetime consequences as ''[n]eurodevelopmental deficits measured in childhood may set affected children on trajectories more prone toward lower educational attainment and financial well-being'' (ISA, section 4.3.14). Thus, population groups for which neurodevelopment is affected by Pb exposure in early childhood are at risk of related impacts on their success later in life.

As indicated above, young children are the at-risk population that may be most at risk of health effects associated with exposure to Pb, and children at greatest risk from *air-related* Pb are those children with highest air-related Pb exposure, which we consider to be those living in areas of higher ambient air Pb concentrations (*e.g.,* concentrations near or above the current standard). Analyses in the PA indicate this group to be a very small subset of all young children in the U.S. Together the analyses indicate that well below one-tenth of one percent of the full population of children aged 5 years or younger in the U.S. today live in areas with air Pb concentrations near or above the current standard, with the current monitoring data indicating the size of this population to be approximately one-hundredth of a percent of the full population of children aged 5 or younger (PA, pp. 3–36 to 3–38, 4–25, 4–32). It is these children that were the Administrator's focus in revising the primary standard in 2008.

3. Overview of Information on Blood Lead Relationships With Air Lead

This section provides a brief overview of the information summarized in section II.C of the proposal on key aspects of the information available in this review on blood Pb as a biomarker and on relationships of blood Pb with air Pb (80 FR 298–300, January 5, 2015). Blood Pb is well established as a biomarker of Pb exposure and of internal dose, with relationships between air Pb concentrations and blood Pb concentrations informing consideration of the NAAQS for Pb since its initial establishment in 1978. The blood Pb concentration in childhood (particularly early childhood) can more quickly (than in adulthood) reflect changes in total body burden (associated with the shorter exposure history) and can also reflect changes in recent exposures (ISA, section 3.3.5). The relationship of children's blood Pb to recent exposure may reflect their labile bone pool, with their rapid bone turnover in response to rapid childhood growth rates (ISA, section 3.3.5). The relatively smaller skeletal compartment of Pb in children (particularly very young children) compared to adults is subject to more rapid turnover. Multiple studies have demonstrated young children's blood Pb levels to reflect Pb exposures, including exposures to Pb in surface dust (*e.g.,* Lanphear and Roghmann, 1997; Lanphear et al., 1998). These and studies of child populations near sources of air Pb emissions, such as metal smelters, have further demonstrated the effect of airborne Pb on interior dust and on blood Pb (ISA, sections 3.4.1, 3.5.1 and 3.5.3; Hilts, 2003; Gulson et al., 2004).

As blood Pb is an integrated marker of aggregate Pb exposure across all pathways, the blood Pb C–R relationships described in epidemiological studies of Pb-exposed populations do not distinguish among different sources of Pb or pathways of

histories of older adult study populations, which included younger years during the time of leaded gasoline usage and other sources of Pb exposures which were more prevalent in the past than today, are likely contributors to their blood Pb levels (ISA, pp. lx-lxi; Figure 2–1 and sections 2.5.2, 3.3.5 and 5.2.1.2).

[45] The ISA states that the ''persistence of effects appears to depend on the duration and window of exposure as well as other factors that may affect an individual's ability to recover from an insult,'' with some evidence of greater recovery in children reared in households with more optimal caregiving characteristics and low concurrent blood Pb levels (ISA, p. 1–77; Bellinger et al., 1990).

Pb exposure (*e.g.,* inhalation, ingestion of indoor dust, ingestion of dust containing leaded paint). Thus, our interpretation of the health effects evidence for purposes of this review necessitates characterization of the relationships between Pb from those sources and pathways of interest in this review (*i.e.,* those related to Pb emitted into the air) and blood Pb.

The evidence for air-to-blood relationships derives from analyses of datasets for populations residing in areas with differing air Pb concentrations, including datasets for circumstances in which blood Pb levels have changed in response to changes in air Pb. The control for variables other than air Pb that can affect blood Pb varies across these analyses. At the conclusion of the last review in 2008, the EPA interpreted the evidence as providing support for use (in informing the Administrator's decision on standard level) of a range of air-to-blood ratios [46] ''inclusive at the upper end of estimates on the order of 1:10 and at the lower end on the order of 1:5'' (73 FR 67002, November 12, 2008). This conclusion reflected consideration of the air-to-blood ratios presented in the 1986 CD [47] and associated observations regarding factors contributing to variation in such ratios, ratios reported subsequently and ratios estimated based on modeling performed in the REA, as well as advice from CASAC (73 FR 66973–66975, 67001–67002, November 12, 2008). The information available in this review, which is assessed in the ISA and largely, although not completely, comprises studies that were available in the last review, does not alter the primary scientific conclusions drawn in the last review regarding the relationships between Pb in ambient air and Pb in children's blood. The ratios summarized in the ISA in this review span a range generally consistent with the range concluded in 2008 (ISA, section 3.5.1).

The evidence on the quantitative relationship between air Pb and air-related Pb in blood is now, as in the past, limited by the circumstances (such as those related to Pb exposure) in which the data were collected. Previous reviews have recognized the significant variability in air-to-blood ratios for different populations exposed to Pb through different air-related exposure pathways and at different air and blood levels, with the 1986 CD noting that ratios derived from studies involving the higher blood and air Pb levels pertaining to occupationally exposed workers are generally smaller than ratios from studies involving lower blood and air Pb levels (ISA, p. 3–132; 1986 CD, p. 11–99). Consistent with this observation, slopes in the range of 3 to 5 were estimated for child population datasets assessed in the 1986 CD (ISA, p. 3–132; 1986 CD p. 11–100; Brunekreef, 1984). Additional studies considered in the last review and those assessed in the ISA provide evidence of ratios above this older range (ISA, p. 3–133). For example, a ratio of 1:6.5 to 1:7 is indicated by the study by Hilts (2003), one of the few studies that evaluate the air Pb-blood Pb relationship in conditions that are closer to the current state in the U.S. (ISA, p. 3–132). We additionally note the variety of factors identified in the ISA that may potentially affect estimates of various ratios (including potentially coincident reductions in nonair Pb sources during the course of the studies) and for which a lack of complete information may preclude any adjustment of estimates to account for their role (ISA, section 3.5).

In summary, as at the time of the last review of the NAAQS for Pb, the currently available evidence includes estimates of air-to-blood ratios, both empirical and model-derived, with associated limitations and related uncertainties. These limitations and uncertainties, which are summarized here and also noted in the ISA, usually include uncertainty associated with reductions in other Pb sources during the study period. The limited amount of new information available in this review has not appreciably altered the scientific conclusions reached in the last review regarding relationships between Pb in ambient air and Pb in children's blood or with regard to the range of ratios. The currently available evidence continues to indicate ratios relevant to the population of young children in the U.S. today, reflecting multiple air-related pathways in addition to inhalation, to be generally consistent with the approximate range of 1:5 to 1:10 given particular attention in the 2008 NAAQS decision, including the ''generally central estimate'' of 1:7 (73 FR 67002, 67004, November 12, 2008; ISA, pp. 3–132 to 3–133).

4. Overview of Risk and Exposure Assessment Information

This section provides a brief overview of key aspects of the risk and exposure assessment information available in this review, which is based primarily on the exposure and risk assessment developed in the last review of the Pb NAAQS.[48] This overview is drawn from the summary presented in the proposal (80 FR 300–305, January 5, 2015). As described in the REA Planning Document, careful consideration of the information newly available in this review, with regard to designing and implementing a full REA for this review, led to the conclusion that performance of a new REA for this review was not warranted. We did not find the information newly available in this review to provide the means by which to develop an updated or enhanced risk model that would substantially improve the utility of risk estimates in informing the current Pb NAAQS review (REA Planning Document, section 2.3). Based on its consideration of the REA Planning Document analysis, the CASAC Pb Review Panel generally concurred with the conclusion that a new REA was not warranted in this review (Frey, 2011b).[49] Accordingly, the exposure/risk information considered in this review is drawn primarily from the 2007 REA, augmented by a limited new computation for one case study focused on risk associated with the current standard, as described in section II.D of the proposal and in section 3.4 and Appendix 3A of the PA.

The focus for the risk assessment and associated estimates is on Pb derived from sources emitting Pb to ambient air. In order to characterize exposure and risk from these pathways, however, the assessment also recognized the role of Pb exposure pathways unrelated to Pb in ambient air (2007 REA, section 2.1). Sources of human Pb exposure include current and historical air emissions sources, as well as miscellaneous nonair sources, which can contribute to multiple exposure media and associated pathways, such as inhalation of ambient air, ingestion of indoor dust, outdoor soil/dust and diet or drinking water (as recognized in section I.D above). In addition to airborne emissions (recent or

[46] The quantitative relationship between ambient air Pb and blood Pb, often termed a slope or ratio, describes the increase in blood Pb (in μg/dL) estimated to be associated with each unit increase of air Pb (in μg/m$^3$). Ratios are presented in the form of 1:x, with the 1 representing air Pb (in μg/m$^3$) and x representing blood Pb (in μg/dL). Description of ratios as higher or lower refers to the values for x (*i.e.,* the change in blood Pb per unit of air Pb). Slopes are presented as simply the value of x.

[47] The 2006 CD did not include an assessment of then-current evidence on air-to-blood ratios.

[48] The information in this review is based on the assessment from the last review, described in the 2007 REA, the 2007 Staff Paper and the 2008 notice of final decision (USEPA, 2007a; USEPA, 2007b; 73 FR 66964, November 12, 2008), as considered in the context of the evidence newly available in this review (PA, section 3.4; proposal, section II.D).

[49] In its review of the draft PA, the CASAC Pb Review Panel reinforced its concurrence with the EPA's decision not to develop a new REA (Frey, 2013).

those in the past), sources of Pb to these pathways also include old leaded paint, including Pb mobilized indoors during renovation/repair activities, and contaminated soils. Lead in diet and drinking water may have air pathway-related contributions as well as contributions from nonair sources (*e.g.,* Pb solder on older water distribution pipes and Pb in materials used in food processing).

Limitations in our data and modeling tools handicapped our ability to address the various complexities associated with exposure to ambient air Pb and to fully separate the nonair contributions to Pb exposure from estimates of air-related Pb exposure and risk. As a result, the assessment included a number of simplifying assumptions in a number of areas, and the estimates of air-related Pb risk produced are approximate, characterized by bounds within which air-related Pb risk is estimated to fall. The lower bound is based on a combination of pathway-specific estimates that do not completely represent all air-related pathways, while the upper bound is based on a combination of pathway-specific estimates that includes pathways that are not air-related but the separating out of which is precluded by modeling and data limitations (PA, section 3.4).

Key aspects of the 2007 REA, such as the exposure populations, exposure or dose metric, health effects endpoint and risk metric were based on consideration of the then-currently available evidence as assessed in detail in the 2006 CD. As discussed in the REA Planning Document (USEPA, 2011b), these selections continue to be supported by the evidence now available in this review as described in the ISA. The REA focused on risk to the central nervous system in childhood as the most sensitive effect that could be quantitatively assessed, with decrement in IQ used as the risk metric. Exposure and biokinetic modeling was used to estimate blood Pb concentrations in children exposed to Pb up to age 7 years.[50] This focus reflected the evidence for young children with regard to air-related exposure pathways and susceptibility to Pb health impacts (*e.g.,* ISA, sections 3.1.1, 4.3, 5.2.1.1, 5.3.1.1, and 5.4). For example, the hand-to-mouth activity of young children contributes to their Pb exposure (*i.e.,* incidental soil and indoor dust ingestion), and ambient air-related Pb has been shown to contribute to Pb in outdoor soil and indoor house dust (ISA, sections 3.1.1 and 3.4.1; 2006 CD, section 3.2.3).

The 2007 REA relied on a case study approach to provide estimates that inform our understanding of air-related exposure and risk in different types of air Pb exposure situations. Lead exposure and associated risk were estimated for multiple case studies that generally represent two types of residential population exposures to air-related Pb: (1) Location-specific urban populations of children with a broad range of air-related exposures, reflecting existence of urban concentration gradients; and (2) children residing in localized areas with air-related exposures representing air concentrations specifically reflecting the standard level being evaluated (see PA, Table 3–6). Thus, the two types of case studies differed with regard to the extent to which they represented population variability in air-related Pb exposure.

In drawing on the 2007 REA for our purposes in this review, we focused on two case studies, one from each of these two categories: (1) The location-specific urban case study for Chicago and (2) the generalized (local) urban case study (PA, Table 3–6). The generalized (local) urban case study (also referred to as *general urban case study*) was not based on a specific geographic location and reflected several simplifying assumptions in representing exposure including uniform ambient air Pb levels associated with the standard of interest across the hypothetical study area and a uniform study population. Based on the nature of the population exposures represented by the two categories of case study, the generalized (local) urban case study includes populations that are relatively more highly exposed by way of air pathways to air Pb concentrations near the standard level evaluated, compared with the populations in the location-specific urban case. The location-specific urban case studies provided representations of urban populations with a broad range of air-related exposures due to spatial gradients in both ambient air Pb levels and population density. For example, the highest air concentrations in these case studies (*i.e.,* those closest to the standard being assessed) were found in very small parts of the study areas, while a large majority of the case study populations resided in areas with much lower air concentrations.

Air-related risk estimates for the two case studies are accompanied by a number of uncertainties (summarized in section II.D.3 of the proposal and described in detail in section 3.4 of the PA). Exposure and risk modeling conducted for this analysis was complex and subject to significant uncertainties due to limitations in the data and models, among other aspects, as recognized at the time of the last review.[51] The multimedia and persistent nature of Pb, the role of multiple exposure pathways, and the contributions of nonair sources of Pb to human exposure media all present challenges and contribute significant additional complexity to the health risk assessment that goes far beyond the situation for similar assessments typically performed for other NAAQS pollutants (*e.g.,* that focus only on the inhalation pathway). Of particular note among the assessment limitations are limitations in the assessment design, data and modeling tools that handicapped us from sharply separating Pb linked to ambient air from Pb that is not air related. The resultant, approximate, air-related risk bounds, however, encompass estimates drawn from the air-related IQ loss evidence-based framework, providing a rough consistency and general support, as was the case in the last review (73 FR 67004, November 12, 2008).

### *B. Conclusions on the Primary Standard*

In drawing conclusions on the adequacy of the current primary Pb standard, in view of the advances in scientific knowledge and additional information now available, the Administrator considers the evidence base, information and policy judgments that were the foundation of the last review and reflects upon the body of evidence and information newly available in this review. The Administrator has taken into account both evidence-based and exposure- and risk-based considerations, advice from CASAC and public comment. Evidence-based considerations draw upon the EPA's assessment and integrated synthesis of the scientific evidence from epidemiological studies and experimental animal studies evaluating health effects related to exposures to Pb,

[50] The pathways represented in this modeling included childhood inhalation and ingestion pathways, as well as maternal contributions to newborn body burden (2007 REA, Appendix H, Exhibit H–6).

[51] As summarized in section II.D.3 of the proposal, a range of limitations and areas of uncertainty were associated with the information available in the last review (PA, sections 3.4.4, 3.4.6 and 3.4.7), and the newly available information in this review did not substantially reduce any of the primary sources of uncertainty identified to have the greatest impact on risk estimates (USEPA, 2011b). Thus, the key observations regarding air-related Pb risk modeled for the set of standard levels assessed in the 2007 REA, as well as the risk estimates interpolated for the current standard, are not significantly affected by the new information. Nor is our overall characterization of uncertainty and variability associated with those estimates (as summarized above and in sections 3.4.6 and 3.4.7 of the PA).

with a focus on policy-relevant considerations as discussed in the PA. The exposure- and risk-based considerations draw from the results of the quantitative analyses presented in the 2007 REA (augmented as described in the PA and summarized in section II.D of the proposal) and consideration of those results in the PA.

As described in section II.A.2 of the proposal, consideration of the evidence and exposure/risk information in the PA and by the Administrator is framed by consideration of a series of key policy-relevant questions. Section II.B.1 below summarizes the rationale for the Administrator's proposed decision, drawing from section II.E.4 of the proposal. A fuller presentation of PA considerations and conclusions, and advice from the CASAC, which were taken into account by the Administrator, is provided in sections II.E.1 through II.E.3 of the proposal. Advice received from CASAC in this review is briefly summarized in section II.B.2 below, and public comments on the proposed decision are addressed in section II.B.3. The Administrator's conclusions in this review regarding the adequacy of the current primary standard are described in section II.B.4.

1. Basis for the Proposed Decision

At the time of the proposal, the Administrator carefully considered the assessment of the current evidence and conclusions reached in the ISA; the currently available exposure/risk information, including associated limitations and uncertainties; considerations and staff conclusions and associated rationales presented in the PA; the advice and recommendations from CASAC; and public comments that had been offered up to that point. In reaching her proposed conclusion on the primary standard, the Administrator first took note of the PA discussion with regard to the complexity and associated uncertainties involved in considering the adequacy of protection in the case of the primary Pb standard, which differs substantially from that involved in consideration of the primary standard in other NAAQS reviews. For the pollutants in the other reviews, the focus is on inhalation as the single route of exposures, which provides a relatively simpler context than the multiple exposure pathways that are relevant to Pb. Additionally, an important component of the evidence base for most other NAAQS pollutants is the availability of studies that have investigated an association between concentrations of the pollutant in ambient air and the occurrence of health effects plausibly related to ambient air exposure to that pollutant. Such studies of associations with air concentrations do not figure prominently in the review of the NAAQS for Pb. Rather, the evidence base in this review includes most prominently epidemiological studies focused on associations of blood Pb levels in U.S. populations with health effects plausibly related to Pb exposures occurring by multiple pathways. Support for conclusions regarding the plausibility for ambient air Pb to play a role in such findings derives, in part, from studies linking Pb in ambient air with the occurrence of health effects. However, such studies (dating from the past or from other countries) involve ambient air Pb concentrations many times greater than those that would meet the current standard. Thus, in considering the adequacy of the current Pb standard, rather than considering studies that have directly investigated current concentrations of Pb in ambient air (including in locations where the current standard is met) and the occurrence of health effects, we primarily consider the evidence for, and risk estimated from, models based upon key relationships, such as those among ambient air Pb, Pb exposure, blood Pb and health effects. This evidence, with its associated limitations and uncertainties, contributes to the EPA's conclusions regarding a relationship between ambient air Pb conditions under the current standard and health effects.

In considering the nature and magnitude of the array of uncertainties that are inherent in the scientific evidence and analyses, the Administrator recognized that the current understanding of the relationships between the presence of a pollutant in ambient air and associated health effects is based on a broad body of information encompassing not only more established aspects of the evidence, but also aspects in which there may be substantial uncertainty. In her considerations for the proposal, she took into account both the well-established body of evidence on the health effects of Pb, which continues to support identification of neurocognitive effects in young children as the most sensitive endpoint associated with Pb exposure, and of the recognition in the PA, with which the CASAC concurred, of increased uncertainty in characterizing the relationship of effects on IQ with blood Pb levels below those represented in the evidence base and also in projecting the magnitude of blood Pb response to ambient air Pb concentrations at and below the level of the current standard. In this light, she based her proposed decision on her consideration of the current evidence within the conceptual and quantitative context of the air-related IQ evidence-based loss framework; the available information and advice from CASAC regarding the public health significance of neurocognitive effects; and the limitations and uncertainties inherent in the evidence and its consideration within this framework. The Administrator additionally recognized support from the exposure/risk information, with its attendant uncertainties.

In her consideration of the air-related IQ loss evidence-based framework, the Administrator took note of the PA finding, with which the CASAC concurred, that application of the air-related IQ loss evidence-based framework, developed in the last review, continues to provide a useful approach for considering and integrating the evidence on relationships between Pb in ambient air and Pb in children's blood and risks of neurocognitive effects (for which IQ loss is used as an indicator). She additionally took note of the PA finding (described in section II.E.1 of the proposal, and with which the CASAC concurred) that the currently available evidence base, while somewhat expanded since the last review, is not supportive of appreciably different conclusions with regard to air-to-blood ratios or C–R functions for neurocognitive decrements in young children.

In the Administrator's consideration of the level of public health protection provided by the current standard, she gave weight to CASAC advice in the last review (and similar views expressed in the last review by public health experts, such as the American Academy of Pediatrics), which recognized a population mean IQ loss of 1 to 2 points to be of public health significance and recommended that a very high percentage of the population be protected from such a magnitude of IQ loss (73 FR 67000, November 12, 2008). In so doing, she additionally noted that the EPA is aware of no new information or new commonly accepted guidelines or criteria within the public health community for interpreting public health significance of neurocognitive effects in the context of a decision on adequacy of the current Pb standard, and CASAC provided no alternate advice in this area in the current review (PA, pp. 4–33 to 4–34). Accordingly, with the objective identified in the CASAC advice from the 2008 review in

mind, the Administrator considered the role of the air-related IQ loss evidence-based framework in reviewing the level of protection provided by the current standard. In so doing, the Administrator recognized distinctions between estimates produced by the framework, for which the conceptual context is a subset of U.S. children, and specific quantitative public health policy goals for air-related IQ loss for the entire U.S. population of children. She additionally took note of the PA conclusion on the size of the population subset that might pertain to the situation represented by the framework (areas with elevated air Pb concentrations equal to the standard level), as well as uncertainties associated with the framework estimates, particularly at successively lower standard levels. In summary, the Administrator concluded in the proposal that the current evidence, as considered within the conceptual and quantitative context of the evidence-based framework, and current air monitoring information indicate that the current standard provides protection for young children from neurocognitive impacts, including IQ loss, consistent with advice from CASAC regarding IQ loss of public health significance.

The Administrator based her proposed conclusions on consideration of the health effects evidence, including consideration of this evidence in the context of the air-related IQ loss evidence-based framework, and with support from the exposure/risk information, recognizing the uncertainties attendant with both. In so doing, she took note of the PA description of the complexities and limitations in the evidence base associated with reaching conclusions regarding the magnitude of risk associated with the current standard, as well as the increasing uncertainty of risk estimates for lower air Pb concentrations. Inherent in the Administrator's proposed conclusions are public health policy judgments on the public health implications of the blood Pb levels and risk estimated for air-related Pb under the current standard, including the public health significance of the Pb effects being considered, as well as aspects of the use of the evidence-based framework that may be considered to contribute to the margin of safety. These public health policy judgments include judgments related to the appropriate degree of public health protection that should be afforded to protect against risk of neurocognitive effects in at-risk populations, such as IQ loss in young children, as well as with regard to the appropriate weight to be given to differing aspects of the evidence and the exposure/risk information, and how to consider their associated uncertainties. Based on these considerations and the judgments summarized here, the Administrator proposed to conclude that the current standard provides the requisite protection of public health with an adequate margin of safety, including protection of at-risk populations, such as young children living near Pb emissions sources where ambient concentrations just meet the standard.

The Administrator's proposed conclusion that the current standard provides the requisite protection and that a more restrictive standard would not be requisite additionally recognized that the uncertainties and limitations associated with many aspects of the estimated relationship between air Pb concentrations and blood Pb levels and associated health effects are amplified with consideration of increasingly lower air concentrations. In reaching her proposed conclusion, she took note of the PA conclusion, with which CASAC has agreed, that based on the current evidence, there is appreciable uncertainty associated with drawing conclusions regarding whether there would be reductions in blood Pb levels and risk to public health from alternative lower levels of the standard as compared to the level of the current standard (PA, pp. 4–35 to 4–36; Frey, 2013b, p. 6). The Administrator judged this uncertainty to be too great for the current evidence and exposure/risk information to provide a basis for revising the current standard. Thus, based on the public health policy judgments described above, including the weight given to uncertainties in the evidence, the Administrator proposed to conclude that the current standard should be retained, without revision.

2. CASAC Advice in This Review

In comments on the draft PA, the CASAC concurred with staff's overall preliminary conclusions that it is appropriate to consider retaining the current primary standard without revision, stating that ''the current scientific literature does not support a revision to the Primary Lead (Pb) National Ambient Air Quality Standard (NAAQS)'' (Frey, 2013b, p. 1). The CASAC further noted that ''[a]lthough the current review incorporates a substantial body of new scientific literature, the new literature does not justify a revision to the standards'' (Frey, 2013b, p. 1).

The CASAC comments additionally indicated agreement with key aspects of staff's consideration of the exposure/risk information and currently available evidence in this review (Frey, 2013b, Consensus Response to Charge Questions, p. 7).

> The use of exposure/risk information from the previous Pb NAAQS review appears appropriate given the absence of significant new information that could fundamentally change the interpretation of the exposure/risk information. This interpretation is reasonable given that information supporting the current standard is largely unchanged since the current standard was issued.
>
> The CASAC agrees that the adverse impact of low levels of Pb exposure on neurocognitive function and development in children remains the most sensitive health endpoint, and that a primary Pb NAAQS designed to protect against that effect will offer satisfactory protection against the many other health impacts associated with Pb exposure.
>
> The CASAC concurs with the draft PA that the scientific findings pertaining to air-to-blood Pb ratios and the C–R relationships between blood Pb and childhood IQ decrements that formed the basis of the current Pb NAAQS remain valid and are consistent with current data.

The CASAC concurred with the appropriateness of the application of the evidence-based framework from the last Pb NAAQS review. With regard to the key inputs to that framework, the CASAC concluded that ''[t]he new literature published since the previous review provides further support for the health effect conclusions presented in that review'' and that the studies newly available in this review ''do not fundamentally alter the uncertainties for air-to-blood ratios or C–R functions for IQ decrements in young children'' (Frey, 2013b, Consensus Response to Charge Questions, p. 6). The comments from the CASAC also took note of the uncertainties that remain in this review which contribute to the uncertainties associated with drawing conclusions regarding air-related exposures and associated health risk at or below the level of the current standard, stating agreement with ''the EPA conclusion that 'there is appreciable uncertainty associated with drawing conclusions regarding whether there would be reductions in blood Pb levels from alternative lower levels as compared to the level of the current standard''' (Frey, 2013b, Consensus Response to Charge Questions, p. 6).

3. Comments on the Proposed Decision

The majority of public comments on the proposal supported the Administrator's proposed decision to retain the current primary standard, without revision. This group includes the National Association of Clean Air

Agencies (NACAA), both of the state agencies that submitted comments and nearly all of the industry organizations that submitted comments. All of these commenters generally noted their agreement with the rationale provided in the proposal and noted the CASAC's concurrence with the EPA conclusion that the current evidence does not support revision to the standard. Most also cited the EPA and CASAC statements that information newly available in this review has not substantially altered our previous understanding of at-risk populations, C–R relationships or effects from exposures lower than what was previously examined and does not call into question the adequacy of the current standard. Some commenters stated that multimedia or multipathway aspects of Pb make the review of the primary standard for Pb subject to greater uncertainty than reviews of primary NAAQS for other pollutants and/or noted greater uncertainty with consideration of lower blood Pb and standard levels. Some also noted that EPA's task in setting NAAQS is not to reduce risk to zero but to identify a standard that is neither more nor less stringent than necessary. The EPA generally agrees with these commenters and with the CASAC regarding the adequacy of the current primary standard and the lack of support for revision of the standard.

Four submissions recommending revision of the standard were received; all four advocated a tightening of the standard. These commenters include two individuals, a secondary Pb smelting company, and the Children's Health Protection Advisory Committee to the EPA (CHPAC).[52] In support of their view that the standard should be revised, all four commenters generally stated that there is no safe level of Pb exposure.[53] The CHPAC submission, to which the smelting company submission repeatedly cited, asserted that a lower standard is needed to protect children from impacts related to neurodevelopmental and low birthweight effects, stating that studies it cited that have been published since the cut-off for the ISA indicate effects on children's IQ at ''appreciably lower'' Pb exposures than those recognized in the last review and raise concerns regarding cumulative effects of multiple chemical exposures. These commenters additionally cited the PA's presentation of the 2007 REA results that included lower risk estimates for alternative more stringent standards, stating that minority and low-income groups are more greatly impacted by Pb, and that for these reasons the standard should be lowered. The CHPAC submission also suggests consideration of some transient sources to provide support for a more stringent standard. Among the reasons given for their recommendations to substantially lower the standard level, the individual commenters variously stated that not revising or lowering the standard will allow increases in air Pb in locations near some sources of Pb emissions, such as airports, and that the persistence of Pb indicated the need for a more stringent standard.

The four commenters that supported revision of the standard suggested a wide array of alternatives. The CHPAC repeated the view it expressed in the 2008 review that the standard should be revised to the most stringent alternative analyzed in the 2007 REA (a potential standard with an averaging time of one month and a level of 0.02 μg/m$^3$). One individual commenter expressed a preference for a standard level of 0.0005 μg/m$^3$. Another individual commenter urged revision to the lowest feasible standard, and the smelting company recommended that EPA adopt an approach similar to a local air quality management district's emissions standards regulation[54] that requires air monitoring at large Pb acid battery recycling metal melting facilities to meet, by a future date, a 30-day average Pb concentration of 0.1 μg/m$^3$, which the company indicated its technology can address.

We agree with commenters that a threshold level for neurocognitive effects has not been identified in the current evidence, as stated in section II.A.2.c above, and described in more detail in the ISA. We additionally note that the lack of an established threshold of effects is not uncommon among the criteria pollutant evidence bases. For example, in past reviews of the primary standards for ozone and particulate matter, the EPA has recognized that the available epidemiological evidence neither supports nor refutes the existence of thresholds at the population level, while noting uncertainties and limitations in studies that make discerning thresholds in populations difficult (*e.g.,* 73 FR 16444, March 27, 2008; 71 FR 61158, October 17, 2006). The lack of a discernible threshold of exposure associated with health effects does not of itself provide support for revision of an existing standard or for revision to the most stringent standard one might identify. As recognized in section I.A above, the CAA does not require the Administrator to establish a primary national ambient air quality standard at a zero-risk level or at background concentrations (*Lead Industries* v. *EPA,* 647 F.2d at 1156 n.51; *Mississippi* v. *EPA,* 744 F. 3d at 1351), but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety, and the selection of any particular approach for providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment (*Lead Industries Association* v. *EPA,* 647 F.2d at 1161–62; *Mississippi,* 744 F. 3d at 1353). The CAA requirement in establishing a standard is that it be set at a level of air quality that is requisite, meaning ''sufficient, but not more than necessary'' (*Whitman* v. *American Trucking Ass'ns,* 531 U.S. 457, 473 [2001]).

In the setting of the current standard in 2008, a key consideration of the Administrator was the recognition of the lack of a discernible threshold level in the evidence with respect to neurocognitive effects associated with Pb exposure. This recognition, which differed from the scientific consensus at the time the previous standard was set in 1978, led the Administrator in 2008 to depart from the threshold-based approach used in setting the 1978 standard and to focus on consideration of air-related Pb in the context of the air-related IQ loss evidence-based framework (described in section II.A.1

[52] As described in its charter, the CHPAC is a policy-oriented committee providing policy advice to EPA related to the development of regulations, guidance and policies to address children's environmental health, consistent with provisions of the Federal Advisory Committee Act (*http://www.epa.gov/faca/childrens-health-protection-advisory-committee-charter-september-11–2015*). The role and scope of activities for the CHPAC differs from those of the CASAC, which is the independent scientific review committee fulfilling the function described in the CAA of reviewing the air quality criteria and the NAAQS for protection of public health and welfare and making recommendations to the Administrator concerning revisions as may be appropriate (as described in section 109(d)(2) of the Act and summarized in section I.A above).

[53] In expressing this view, some commenters cited statements by various government agencies regarding their interpretation of children's blood Pb levels with regard to risk management decisions based on consideration of the available information in those risk management contexts (*e.g.,* CDC, 2005; Cal EPA, 2007; NYDHMH, 2010). The scientific information on health effects of Pb considered by these agencies was also available and, to the extent relevant to consideration of the adequacy of the NAAQS, was assessed in the current and, in some cases, also the prior review. As discussed below, the conclusion that a threshold level for neurocognitive effects has not been identified was a consideration of the EPA in the last review, and the current one.

[54] This commenter referred to a March 2015 amendment of a California South Coast Air Quality Management District rule on emission standards for lead and other toxic air contaminants from large lead-acid battery recycling facilities in that state air quality district.

above). In the current review of the 2008 standard, while recognizing the continued lack of a discernible threshold of exposure associated with neurocognitive effects, the CASAC commented regarding effects at very low Pb levels when expressing its view that the scientific evidence does not support revision to the Pb NAAQS. It stated that ''[a]lthough there is evidence that even very low Pb levels are related to measurable reductions in IQ in children, the extent to which the blood Pb levels observed in children are linked to ambient air Pb levels below the current standard (as opposed to other sources of Pb in the environment) has not been established'' (Frey, 2013b, Consensus Response to Charge Questions, pp. 7–8).[55]

The four submissions recommending a revised standard variously cite a number of studies as providing support for their view. Some of these studies have been reviewed in the ISA, some were published too late to be included in the ISA, and a few others were of a type that are not generally included in the ISA (*e.g.,* review articles).[56] As discussed in section I.C above, we have provisionally considered studies that were not in the ISA or in previous AQCDs (''new'' studies)[57] which some of these commenters cite in statements about evidence of effects at low exposures and in the presence of other pollutants. We conclude that these studies are consistent with the scientific conclusions reached in the ISA, including those related to blood Pb levels in studies from which effects on IQ have been reported and related to co-exposure with other metals. Taken in context, the information from these studies and these findings do not materially change any of the broad scientific conclusions of the ISA regarding the health effects and exposure pathways of Pb in ambient air on which the Administrator based her proposed conclusions as well as her final conclusions in this review, as described in section II.B.4 below. We additionally note that with regard to the inputs for the air-related IQ loss evidence-based framework, a key aspect of the Administrator's rationale for her proposed decision to retain the current primary standard (as described in section II.E.4 of the proposal), none of the cited studies indicate a steeper blood Pb-IQ slope or greater air-to-blood ratio than those assessed in the ISA and considered in the PA and the proposal.

We respectfully disagree with the comment from CHPAC that studies available since the cut-off date for the ISA contradict the PA conclusions regarding blood Pb levels in children and effects on cognitive function measures, such as IQ.[58] Of the studies cited in the comment that were published subsequent to the date for publication in the ISA, one is an analysis that relies on data from studies that were published prior to 2008 and assessed in the last review (Budtz-Jorgensen et al., 2013). These data were the subject of the pooled analysis by Lanphear et al (2005) which we assessed in both the last and the current review. As such, this commenter-cited publication does not present a new study of children with lower blood Pb levels; rather, it reanalyzes existing data using a different approach for a different purpose.[59] The other two of the commenter-cited publications are review articles that do not present information on specific blood Pb levels associated with IQ effects. Thus, we do not find these publications to be contrary to the discussion and associated conclusions in the PA or to indicate the current standard to be inadequate.

We further disagree with the suggestion in the CHPAC submission that the evidence related to co-exposures to other pollutants, such as metals, provides a basis for concluding that the current standard is not requisite. The ISA assessment of the strength of the evidence for co-exposures to other pollutants, such as other metals, to contribute to increased risk of a Pb-related health effects concluded the evidence to be suggestive, ''but overall the evidence was limited'' (ISA, sections 1.9.6 and 5.4). With regard to the articles cited by the CHPAC that have been published subsequent to the ISA, the general conclusions of these review articles (Henn et al., 2014; Grandjean and Landrigan, 2014) are consistent with conclusions of the ISA. As stated in the ISA, ''interactions between Pb and co-exposure with other metals were evaluated in recent epidemiologic and toxicological studies of health effects'' and ''[h]igh levels of other metals, such as Cd and Mn, were observed to result in greater effects for the associations between Pb and various health endpoints but evidence was limited due to the small number of studies'' (ISA, p. 5–43). We note that even in raising co-exposure as a concern, the comments recognize that the potential for such impacts is not well understood. Further, the comments do not explain how the limited information regarding this factor supports their conclusion that the current standard does not provide the requisite protection or leads to the specific revisions the comments suggest, and we find no such support in the current evidence.

We additionally disagree with the comment that the currently available evidence indicates that the current standard is not protective of effects such as low birth weight. For example, the

[55] The CASAC recognized the multimedia and legacy aspects of Pb that, unlike the case for other criteria air pollutants, complicate consideration of the risks of Pb concentrations in ambient air (Frey, 2013b, p. 1).

[56] Some studies cited by commenters are review articles or government reviews (*e.g.,* Henn et al., 2014; Grandjean and Landrigan, 2014; Jakubowski, 2011; NTP, 2011), which are not generally cited in the ISA because the ISA considers the original studies underlying a review article, rather than a review's interpretation of the studies. Further, in the case of government reviews, such reports generally review the literature for specific purposes of those government agencies (which differ from the focus for the ISA). Many of the scientific studies reviewed in these reports (as well as the other reviews), however, were considered relevant to review of the lead air quality criteria (based on the description of study selection for inclusion in the preamble to the ISA), and thus were assessed in this review.

[57] These studies are listed in a memorandum to the rulemaking docket (Kirrane, 2016).

[58] The PA recognized the complexity associated with considering the evidence regarding exposure levels associated with health effects, and in particular effects on cognitive function measures, including IQ, which the evidence base indicates to be the most sensitive endpoint. The PA observed that the evidence available in this review is generally consistent with that available in the last review with regard to blood Pb levels in young children at which such effects have been reported. Noting that blood Pb levels are a reflection of exposure history, particularly in early childhood, the PA concludes by extension that the currently available evidence does not indicate Pb effects at exposure levels appreciably lower than recognized in the last review. In so doing, the PA continued to focus in this review (as in the last review) on the evidence of effects in young children for which our understanding of exposure history is less uncertain (PA, pp. 3–21 to 3–26).

[59] This analysis uses the data from the same studies analyzed by Lanphear et al (2005) to extrapolate below the blood Pb concentrations measured in the studies and estimate a 95 percent lower confidence bound on the estimated blood Pb concentration associated with a 1 point decrement in IQ (Budtz-Jorgensen et al., 2013). Unlike the prior study by Lanphear et al (2005) and similar epidemiological analyses of IQ and blood Pb, which are intended to produce a quantitative description of the change in IQ associated with blood Pb concentrations in the studied children, this analysis is focused on estimating a lower bound confidence limit on the incremental concentration in blood Pb, as compared to zero, associated with a single point IQ decrement. Even if we were to interpret the results of the Budtz-Jorgensen et al (2013) analysis as providing another estimate of C–R function for IQ decrement based on the pooled dataset from Lanphear et al (2005), we note that that dataset is already represented among the four low blood Pb analyses on which we focused in identifying a slope estimate for use with the air-related IQ loss evidence-based framework, and as noted in section II.B.3 of the proposal, revision or replacement of the estimate for the pooled dataset has no impact on conclusions drawn from the framework (80 FR 29295, January 5, 2015).

CHPAC cites epidemiological studies reporting associations of maternal or cord blood Pb concentrations with reduced fetal growth (Xie et al., 2013; Nishioka et al., 2014), stating that these studies strengthen the association of decreased birth weight and maternal blood Pb levels. Although we would agree that these studies present an addition to the evidence base overall, they do not provide a basis for change in the conclusion of the ISA, which states, ''Some well-conducted epidemiologic studies report associations of maternal Pb biomarkers or cord blood Pb with preterm birth and low birth weight/fetal growth; however, the epidemiologic evidence is inconsistent overall and findings from experimental animal studies are mixed'' (ISA, p. 1–18). In citing these studies, in fact, the CHPAC also stated its view that the findings of these studies are consistent with a larger study that was assessed in the ISA; it did not explain how these studies support its view that the current standard provides inadequate protection from such effects, and we find no such support.

With regard to information related to Pb impacts in minority and low-income populations, which some comments suggested provided a basis for a more stringent standard, we note that we have considered the available information on such impacts, as recognized in section II.A.2.d above and summarized more fully in section II.B.4 of the proposal and in section 3.3 of the PA. As all of these documents have recognized, the ISA identifies non-white populations as at-risk populations, with this conclusion based primarily on findings of higher blood Pb levels in black compared to white populations (ISA, section 5.4).[60] Blood Pb levels have also been found to be higher in low SES groups as compared to higher SES[61] (ISA, sections 5.3.6, 5.2.4 and 5.4). However, as noted in the ISA, the number of studies examining the relationship of SES with Pb-related health effects is limited, and the results have differed with regard to finding increased risk with higher or lower SES (ISA, Table 5–1, p. 5–42). The comments generally identify impacts in minority and low income groups as a reason EPA should revise the standard, although they provide no explanation for how the currently available information leads to that conclusion or provides a basis for the alternative standards the comments suggest.[62] While our assessment of the health effects evidence in this review concluded there was adequate evidence for race or ethnicity (and suggestive evidence for SES) to contribute to increased risk of Pb-related health effects, we do not find this information to call into question the adequacy of protection provided by the current primary standard. Nor did the CASAC find this to be the case, based on its review of the scientific materials in this review, including three drafts of the ISA in which the evidence for these factors was presented. Further, to the extent such differences may be related to exposure contributions from air Pb and proximity to air sources,[63] we note that children that are exposed to air-related Pb in areas with elevated air Pb concentrations near or equal to the level of the standard are among those that were the focus of the 2008 decision, as recognized in sections II.A.1 and II.A.2.e above, and are the focus of the decision described in section II.B.4 below to retain the standard set in 2008.[64]

With regard to consideration of the potential for risk reduction from lower air concentrations, the PA stated that ''the uncertainties and limitations associated with many aspects of the estimated relationships between air Pb concentrations and blood Pb levels and associated health effects are amplified with consideration of increasingly lower air concentrations'' (PA, p. 4–35). Contrary to the suggestion by the CHPAC and the smelter company, the PA did not conclude that there would be public health benefits from a lower standard and that such benefits were not large enough to warrant revising the standard. Rather, the PA notes that ''[a]s recognized at the time of the last review, exposure and risk modeling conducted for [the REA] was complex and subject to significant uncertainties'' (PA, p. 3–67) and recognizes ''increasing uncertainty of risk estimates'' for air Pb concentrations below those associated with the current standard (PA, p. 4–35). The PA further stated that that ''there is appreciable uncertainty associated with drawing conclusions regarding whether there would be reductions in blood Pb levels and risk to public health from alternative lower levels of the standard as compared to the level of the current standard'' (PA, pp. 4–35 to 4–36). The CASAC stated that it agreed with this conclusion regarding ''[t]he obvious uncertainty'' articulated in the PA, additionally stating, as noted above, that ''[a]lthough there is evidence that even

[60] Recent data suggest that differences in blood Pb levels between young black and white children is decreasing over time (ISA, section 5.2.3, 5.4). Although more recent data are not available by age group, the CDC data through 2011–2012 indicate little or no difference between non-Hispanic blacks, Mexican Americans or all Hispanics and non-Hispanic whites at the central tendencies of the populations and reduced differences at the 95th percentile (CDC, 2015). Findings of some studies indicate that non-white populations may be at greater risk of Pb-related health effects although, as described in the ISA, this could be related to confounding by other factors (ISA, sections 5.3.7 and 5.4).

[61] As with differences among groups of different races and ethnicities, ''[t]he gap between SES groups with respect to Pb body burden appears to be diminishing,'' although blood Pb levels continue to be higher among lower-income children (ISA, p. 1–80, sections 1.9.6, 5.1, 5.2.1.1, 5.2.4 and 5.4), leading the ISA to conclude that the evidence is suggestive of SES as a risk factor for Pb-related health effects (as summarized in section II.A.2.d above).

[62] In making this statement, these commenters cite a 1988 study on blood Pb and early childhood scores on the BSID MDI infant cognitive development test (Bellinger et al., 1988). The study found that 18 and 24 month BSID MDI scores of the ''lower'' SES children were adversely affected at lower cord blood Pb levels than were scores of the ''higher'' SES children, finding significantly lower scores of the lower SES children with cord blood Pb levels of 6–7 μg/dL as compared to children of this SES group with cord blood Pb levels less than 3 μg/dL (Bellinger et al., 1988; USEPA, 1990a; USEPA, 2006). As the study cohort was mostly middle to upper-middle class, the ''lower'' SES group ''refers to [families of SES] less than the highest SES levels and is probably in fact [of SES levels] much closer to the median of the U.S. population than the term suggests'' (USEPA, 1990a, p. 53). The ISA considered these study findings in the context of considering available evidence on this issue in the current review (ISA, section 5.3.6; Bellinger et al., 1990). The ISA found that the available study results are limited, have differed with regard to finding increased risk with higher or lower SES and that ''they do not clearly indicate whether groups with different socioeconomic status differ in Pb-related changes for cognitive function'' (ISA, p. 5–34, Table 5–1, p. 5–42).

[63] As noted in section I.D above and described in more detail in the PA and ISA, sources of Pb to which children are exposed also include consumer goods, dust or chips of peeling Pb-containing paint and ingestion of Pb in drinking water conveyed through Pb pipes, as well as historically deposited Pb in urban soils (ISA, pp. pp. lxxix to lxxx).

[64] Additionally, the focus of the air-related IQ loss evidence-based framework on C–R functions observed for children with low blood Pb levels closer to those observed in U.S. children today reflects evidence-based conclusions from the last review, affirmed in this review, of a steeper slope for the C–R relationship at lower as compared to higher blood Pb levels. As noted in section II.A.2.d above, while children with higher blood Pb levels are at greater risk of Pb-related effects than children with lower blood Pb levels, on an incremental basis (*e.g.,* per μg/dL) the risk is greater for children at lower blood Pb levels. The 2008 revision of the primary Pb standard focused on the incremental impact of air-related Pb on young children and in so doing, recognized the greater incremental impact for those children with lower absolute blood Pb levels. Accordingly, the decision focused on those C–R studies involving the lowest blood Pb levels (as summarized in II.A.1 above). Although the comment did not indicate how information that some groups may be generally more highly exposed to Pb should be used, we note that for the Administrator to rely on C–R functions from analyses for higher blood Pb study groups (with a less steep slope) would lead to consideration of a higher standard level, and would not provide the desired protection for the sensitive group of children with lower blood Pb levels that are exposed to air-related Pb in areas with air Pb concentrations at the level of the standard (73 FR 67002–07, November 12, 2008; 80 FR 311–313, January 5, 2015).

very low Pb levels are related to measurable reductions in IQ in children, the extent to which the blood Pb levels observed in children are linked to ambient air Pb levels below the current standard (as opposed to other sources of Pb in the environment) has not been established'' and, accordingly (as noted below), that the current information does not provide support for lowering the primary standard (Frey, 2013b, Consensus Response to Charge Questions, pp. 6–8). These conclusions from the CASAC and the PA findings were among the considerations that led to the Administrator's proposed decision (summarized in section II.B.1 above) and her final decision in this review, as described in section II.B.4 below, that, based on the current scientific information, including information regarding at-risk populations, as well as uncertainties and limitations associated with the current information, the current primary standard provides the requisite protection of public health with an adequate margin of safety, including the health of at-risk populations.

The comment regarding a potential for increases in air Pb near sources of Pb emissions if the standard is not revised does not explain how such a potential provides support for revising the standard. The comment also suggests that EPA consider two alternative standard levels well below the current standard level while providing no explanation of why a revised standard with either of the suggested levels would be requisite. With regard to the potential for increases in air Pb near sources of Pb emissions if the standard is not revised, we note that such a concern, to the extent it applies to the current standard, would also pertain to any more stringent Pb standard except in the extreme case in which the standard is set such that there is no location with air quality conditions better than those that just meet the standard. As discussed in sections II.B.1 above and II.B.4 below, the Administrator has considered the current evidence and exposure/risk information with regard to the potential for a revised standard to offer additional protection, found there to be substantial uncertainty associated with such a potential, and concluded that the current standard is requisite. Regarding the possibility that air Pb concentrations could increase in some locations, we additionally note that the Clean Air Act and associated EPA permitting regulations restrict increases in air Pb concentrations (and in other pollutants for which there are NAAQS) in various circumstances, both in areas already meeting the NAAQS as well as those in nonattainment (*e.g.,* New Source Review regulations at 40 CFR part 51, subpart I, applicable in attainment and nonattainment areas; General Conformity regulations at 40 CFR 93.150–165, applicable in nonattainment and maintenance areas; and, the general anti-backsliding requirements under Section 110(l) of the Clean Air Act).

Regarding the view expressed by some commenters that the most restrictive standard assessed in the 2007 REA should be adopted, [65] or that the standard level should be revised to a concentration described in one comment as the average air Pb concentration in pristine locations, we note the greater uncertainty in risk estimates associated with air quality scenarios for air Pb concentrations increasingly below those of current conditions. Additionally, the PA described the ''increasing uncertainty recognized for air quality scenarios involving air Pb concentrations increasingly below the current conditions for each case study, recognizing that such uncertainty is due in part to modeling limitations deriving from uncertainty regarding relationships between ambient air Pb and outdoor soil/dust Pb and indoor dust Pb'' (PA, 4–34). Further, the PA concluded, and the CASAC agreed, that ''there is appreciable uncertainty associated with drawing conclusions regarding whether there would be reductions in blood Pb levels from alternative lower levels as compared to the level of the current standard' (Frey, 2013b, Consensus Response to Charge Questions, p. 6; PA, p.4–35 to 4–36). The CASAC further stated that ''there is not justification for modifying the current standard based on these data at this time'' (Frey, 2013b, Consensus Response to Charge Questions, p. 8). In reaching her proposed decision to retain the current standard, the Administrator took note of the PA conclusion and associated CASAC agreement and additionally recognized that ''the uncertainties and limitations associated with the many aspects of the estimated relationships between air Pb concentrations and blood Pb levels and associated health effects are amplified with consideration of increasingly lower air concentrations'' (80 FR 313). Finally, in the proposal, as in the final decision described in section II.B.3 below, the Administrator judges this uncertainty to be too great for the current evidence and exposure/risk information to provide a basis for revising the current standard. With regard to comments recommending consideration of technological feasibility in judging the requisiteness of the primary standard, we note, as we have described in section I.A above, the EPA may not consider technological feasibility or attainability in determining what standard is requisite to protect public health with an adequate margin of safety.

Comments on topics less directly related to consideration of the primary standard included recommendations for addressing data gaps and uncertainties to inform future reviews. Additionally, one comment focused on pathways by which Pb may be further distributed in the environment, recommending use of a ''more robust [monitoring] network to adequately estimate children's lead exposures from transient and other sources,'' emphasizing building demolition and Pb wheel weights. This comment also states that the PA overlooks the contribution from these and other sources and therefore may underestimate the number of children exposed to Pb from transient sources. Another comment described leaded aviation gasoline and airports as a source of Pb emissions but did not explain how such information was relevant to the Administrator's proposed decision that the current standard provided the requisite protection and should be retained without revision.

With regard to the need for research, the PA highlighted key uncertainties associated with reviewing and establishing NAAQS for Pb and areas for future health-related research, model development, and data gathering. The topic areas of key uncertainties, research questions and data gaps that were highlighted in the PA with regard to review of the health-based primary standard overlap with many raised by commenters. We encourage research in these areas, although we note that research planning and priority setting are beyond the scope of this action.

With regard to the monitoring network in place for Pb NAAQS

[65] The alternative more stringent primary standard suggested by the CHPAC was the most stringent assessed in the 2007 REA and included both a lower level and a shorter averaging time than those for the current standard. In establishing the current standard in 2008, the EPA considered these suggestions regarding level and averaging time, which were also made by the CHPAC at that time. The EPA's considerations with regard to averaging time in establishing the current standard in 2008 are summarized in section II.E.1 of the proposal and section 4.1.1.2 of the PA. The comments from the CHPAC repeat its recommendation from the last review and do not provide any additional information or explanation in support of its view on a revised averaging time. The EPA response to substantive comments on averaging time in the last review from the CASAC and the public, including the CHPAC, is described in the notice of final decision (73 FR 66991–996, November 12, 2008).

surveillance, the current regulations require air monitors in areas that are expected to or have been shown to experience or contribute to exceedance of the standards. As described in section I.E above, this includes requirements for monitors in areas with non-airport sources emitting 0.5 tpy or where an airport emits 1.0 or more tpy, based on either the most recent National Emissions Inventory or other scientifically justifiable methods and data (40 CFR part 58, appendix D, section 4.5). The establishment of the source-oriented monitoring requirement reflects our conclusion that monitoring should be presumptively required at sites near sources that have estimated Pb emissions in exceedance of a Pb ''emissions threshold'' (73 FR 67025). This monitoring requirement applies not only to existing industrial sources of Pb, but also to fugitive sources of Pb (*e.g.,* mine tailing piles, closed industrial facilities) and airports where leaded aviation gasoline is used. Additionally, as noted in section I.E above, to account for other sources that may contribute to a maximum Pb concentration in ambient air in excess of the Pb NAAQS, the monitoring regulations also grant the EPA Regional Administrator the authority to require additional monitoring ''where the likelihood of Pb air quality violations is significant or where the emissions density, topography, or population locations are complex and varied'' (40 CFR part 58, appendix D, section 4.5(c)).

In addition to this monitoring required for Pb NAAQS surveillance, state or local agencies may site additional monitors and there are also particulate matter monitoring networks that collect Pb data in specific particle size fractions in many urban areas (40 CFR part 58, appendix D, section 4.5). Further, as described in section I.E above,[66] monitoring data collected at NCore sites in large population areas, in combination with the data for all other non-source-oriented sites, including those in urban areas, indicate air Pb concentrations well below the Pb NAAQS (as summarized in section I.E above). Accordingly, we believe that the current Pb monitoring requirements are consistent with the currently available information regarding sources of Pb to the ambient air and areas with the potential for exceedance of the Pb standards. Further, as described below, the information available regarding the transient sources mentioned by the commenters does not indicate the potential for such transient sources to result in exceedances of the NAAQS.

As to the comment on the significance of building demolition or Pb wheel weights in contributing to environmental Pb exposure pathways, the ISA and PA considered the very limited available data pertaining to these issues. With regard to building demolition, for which the data are in terms of loading of dust containing Pb on alleys and sidewalks immediately following an event, the ISA concludes that the limited data ''suggest that building demolition may be a short-term source of Pb in the environment,'' and that ''it is unclear if demolition is related to long-term Pb persistence in the environment'' (ISA, p. 2–21).[67] Accordingly, we do not interpret the limited available information, which does not include measurements of air Pb concentrations, to indicate a potential for such occasional activities as demolition of buildings containing leaded paint to result in air Pb concentrations near or in exceedance of the NAAQS. [68] With regard to the comment on lead wheel weights, we note that the commenter states they are unaware of studies that have assessed the impact of Pb wheel weights on childhood blood Pb levels, as are we. The ISA examined the very limited data on potential contribution of Pb wheel weights to Pb near roadways; these data yield widely varying and uncertain estimates of associated Pb releases (ISA, section 2.2.2.6). Contrary to the commenter's assertion that the PA overlooks these potential Pb exposure pathways, the assessment and consideration of policy-relevant information in the PA [69] reflects these ISA findings based on consideration of the current information for these potential transient pathways. Specifically, the current information does not provide support for specific estimates of exposures associated with these pathways. Further, data for monitoring sites near roads find Pb concentrations well below the NAAQS (*e.g.,* ISA, Figure 2–20). Thus, we conclude that the current information does not provide support for changes to the current Pb monitoring regulations with regard to roadways or occasional activities such as building demolition.

4. Administrator's Conclusions

Having carefully considered the public comments, as discussed above, the Administrator believes that the fundamental scientific conclusions on the effects of Pb in ambient air reached in the ISA and PA, and summarized in sections II.B and II.C of the proposal, remain valid. Additionally, the Administrator believes the judgments she reached in the proposal (section II.E.4) with regard to consideration of the evidence and quantitative exposure/risk information remain appropriate. Thus, as described below, the Administrator concludes that the current primary standard provides the requisite protection of public health with an adequate margin of safety and should be retained.

In considering the adequacy of the current primary Pb standard, the Administrator has carefully considered the current policy-relevant evidence and conclusions contained in the ISA; the evaluation of this evidence and the exposure/risk information, rationale and conclusions presented in the PA; the advice and recommendations from the CASAC; and public comments. In the discussion below, the Administrator gives weight to the PA conclusions, with which the CASAC has concurred, as summarized in section II of the proposal, and takes note of key aspects of the rationale for those conclusions that contribute to her decision in this review.

As an initial matter, the Administrator recognizes the complexity involved in considering the adequacy of protection in the case of the primary Pb standard, which differs substantially from that involved in consideration of the health protection provided by the primary standards in other NAAQS reviews. For the pollutants in the other reviews, the more limited focus solely on the inhalation pathways of exposure is a relatively simpler context. Further, as

[66] The various air Pb monitoring networks are summarized in section I.E above and described in more detail in section 2.2.1 of the PA.

[67] Characterization of this activity by the study published subsequent to the ISA that was cited by the CHPAC (Jacobs et al., 2013) is consistent with findings from the limited number of studies included in the ISA (ISA, p. 2–21).

[68] We note that airborne dust release from demolition of large buildings in some areas may be regulated under various state and/or local programs (*e.g.,* demolition activities in some particulate matter non-attainment or maintenance areas may be subject to specific state implementation plan requirements on airborne dust releases).

[69] Consistent with the strength and specificity of information described in the ISA, the PA recognizes the loss of Pb wheel weights as an additional source of Pb emissions and notes the potential for previously deposited Pb to be resuspended into the air, without providing detailed consideration (PA, sections 2.1.2.2 and 2.1.2.4). Further, the input for air-to-blood ratio in the air-related IQ loss evidence-based framework, which the Administrator has used as a guide in her consideration of the adequacy of the current standard, does not restrict sources of Pb from consideration. Thus, such ratios, which are drawn from empirical studies, would be expected to reflect all sources contributing to children's blood Pb, including the transient sources identified by commenters to the extent they provide contributions (ISA, section 3.5; PA, section 3.1; 80 FR 298–300, January 5, 2015; 73 FR 66973–66975,67004, November 12, 2008).

described in the PA and noted in section II.B.1 above, the influence of multimedia and historical exposure on the internal biomarkers in Pb epidemiological studies contrasts with the epidemiological studies considered for other NAAQS pollutants which focus on generally current concentrations of those pollutants in ambient air. While the use of an internal biomarker strengthens conclusions regarding Pb as the causal agent in associations observed in epidemiological studies, the persistence of Pb and the role of multimedia and historical exposures limit the conclusions that can be drawn regarding the particular exposure circumstances eliciting the reported effects. Thus, as we lack studies that can directly assess current concentrations of Pb in ambient air (including in locations where the current standard is met) and the occurrence of health effects, we primarily consider the evidence for, and risk estimated from, models, based upon key relationships, such as those among ambient air Pb, Pb exposure, blood Pb and health effects. This information base, both with its strong, long-established evidence of the health effects of Pb in young children, and the associated limitations and uncertainties mentioned here, contributes to our conclusions regarding relationships between ambient air Pb conditions under the current standard and health effects.

The Administrator recognizes that in primary NAAQS reviews, our understanding of the relationships between the presence of a pollutant in ambient air and associated health effects is based on a broad body of information encompassing not only more established aspects of the evidence, but also aspects in which there may be substantial uncertainty. In the case of this review of the primary standard for Pb, she takes note of the increased uncertainty in characterizing the relationship of effects on IQ with blood Pb levels below those represented in the evidence base and in projecting the magnitude of blood Pb response to ambient air Pb concentrations at and below the level of the current standard. The PA recognizes this increased uncertainty, particularly in light of the multiple factors that play a role in such a projection (*e.g.,* meteorology, atmospheric dispersion and deposition, human physiology and behavior), each of which carry attendant uncertainties. These aspects of the scientific evidence and analyses, and the associated uncertainties, collectively contribute to the Administrator's recognition that for Pb, as for other pollutants, the available health effects evidence and associated information generally reflect a continuum, consisting of levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain.

With regard to the current evidence, as summarized in the PA and discussed in detail in the ISA, the Administrator takes note of the well-established body of evidence on the health effects of Pb, which has been augmented in some aspects since the last review and continues to support identification of neurocognitive effects in young children as the most sensitive endpoint associated with Pb exposure. For example, while the ISA continues to recognize cardiovascular effects in adults, in addition to neurodevelopmental effects in children, as being associated with the lowest blood Pb levels compared to other health effects (ISA, pp. xciii), the ISA also notes uncertainties regarding the timing, frequency, duration and level of Pb exposures contributing to the effects observed in adult epidemiologic studies and indicates that higher exposures in the past (rather than lower current exposures) may contribute to the development of health effects measured later in life (ISA, p. lxxxviii). Given the evidence-based identification of neurocognitive effects in young children as the most sensitive endpoint associated with Pb exposure, the Administrator has accordingly focused on nervous system effects in young children and particularly neurocognitive effects. In so doing, she finds that the evidence, while describing a broad array of health effects associated with Pb, continues to indicate that a standard that provides protection from neurocognitive effects in young children additionally provides protection from other health effects of Pb, such as those reported in adult populations.

The Administrator takes note of the PA finding that application of the air-related IQ loss evidence-based framework, developed in the last review, continues to provide a useful approach for considering and integrating the evidence on relationships between Pb in ambient air and Pb in young children's blood and risks of neurocognitive effects (for which IQ loss is used as an indicator). In so doing, as in the 2008 review, she notes that the framework, and the IQ loss estimates yielded by it for specific combinations of standard level, air-to-blood ratio and C–R function, does not provide an evidence- or risk-based bright line that indicates a single appropriate level for the standard. Further, the Administrator recognizes uncertainties associated with IQ estimates produced by the framework, noting the PA conclusion that the uncertainties increase with estimates associated with successively lower standard levels. She additionally takes note of the PA finding (described in section II.E.1 of the proposal) that the currently available evidence base, while somewhat expanded since the last review, is not appreciably expanded or supportive of appreciably different conclusions with regard to air-to-blood ratios or C–R functions for neurocognitive decrements in young children. The Administrator further notes the concurrence from the CASAC on both of these points and the lack of recommendations in public comments for a change to either of these inputs to the evidence-based framework. Thus, she judges the evidence base and related air-related IQ loss framework to be an appropriate tool for informing her decision on the adequacy of the current standard.

In light of the continuum referenced above, the Administrator additionally recognizes in this review, as in the 2008 review, the role of judgment in reaching conclusions regarding Pb health effects that are important from a public health perspective. Most specifically, the Administrator has considered the public health significance of a decrement of a very small number of IQ points in the at-risk population of young children, in light of associated uncertainties. With regard to making a public health policy judgment as to the appropriate protection against risk of air-related IQ loss and related effects, the Administrator believes, as did the Administrator at the time of the last review, that ideally air-related (as well as other) exposures to environmental Pb would be reduced to the point that no IQ impact in children would occur. She recognizes, however, that in the case of setting NAAQS, she is required to make a judgment as to what degree of protection is requisite (neither more nor less than necessary) to protect public health with an adequate margin of safety. As described in the proposal with regard to considering the public health significance of IQ loss estimates in young children, the Administrator gives weight to the comments of the CASAC and some public commenters in the last review which recognized a population mean IQ loss of 1 to 2 points to be of public health significance and recommended that a very high

percentage of the U.S. population be protected from such a magnitude of IQ loss (73 FR 67000, November 12, 2008). She additionally notes that the CASAC did not provide a different goal in the present review. The Administrator additionally notes that the EPA is aware of no new information or new commonly accepted guidelines or criteria within the public health community for interpreting public health significance of neurocognitive effects in the context of a decision on adequacy of the current Pb standard (PA, pp. 4–33 to 4–34), and no new information has been identified by public commenters.

With the objective identified by the CASAC in the 2008 review in mind, the Administrator recognizes, as was recognized at the time of the last review, that her judgment on the degree of protection against IQ impacts that should be afforded by the primary standard is particularly focused on consideration of impacts in the at-risk population and is not addressing a specific quantitative public health policy goal for air-related decrements in IQ that would be acceptable or unacceptable for the entire population of children in the U.S. As in the last review, the at-risk population to which she gives particular attention is the small subset of U.S. children living in close proximity to air Pb sources that contribute to elevated air Pb concentrations that equal the level of the standard). Accordingly, she is considering IQ impacts in this small subset of U.S. children that is expected to experience air-related Pb exposures at the high end of the national distribution of such exposures (as described in section II.E.4 of the proposal and summarized in section II.B.1 above), and not a projection of the average air-related IQ loss for the entire U.S. population of children. The evidence-based framework estimates, with which there are associated uncertainties and limitations (as described in section II.A.1 above), relate to this small subset of children exposed at the level of the standard. Based on these considerations, the Administrator judges the conceptual evidence-based framework to continue to be appropriate for her consideration of the public health protection afforded by the current standard. Further, she concurs with the PA findings (summarized in section II.E.1 of the proposal and briefly outlined in II.B.1 above) that the current evidence, as considered within the conceptual and quantitative context of the evidence-based framework, and current air monitoring information indicate that the current standard would be expected to satisfy the public health policy goal recommended by the CASAC in the last Pb NAAQS review, from which it did not indicate a departure in the present review.

In the context of the Administrator's use of the framework as a tool to inform her decision on the adequacy of the current standard, the EPA additionally notes that the maximum, not to be exceeded, form of the standard, in conjunction with the rolling 3-month averaging time, is expected to result in the at-risk population of children being exposed below the level of the standard most of the time (73 FR 67005, November 12, 2008). In light of this and the uncertainty in the relationship between time period of ambient level, exposure, and occurrence of a health effect, the air-related IQ loss considered for the current standard in applying the framework should not be interpreted to mean that a specific level of air-related IQ loss will occur in fact in areas where the standard is just met or that such a loss has been determined as acceptable if it were to occur. Instead, judgment regarding such an air-related IQ loss is one of the judgments that need to be made in using the evidence-based framework to provide useful guidance in the context of public health policy judgment on the degree of protection from risk to public health that is sufficient but not more than necessary, taking into consideration the patterns of air quality that would likely occur upon just meeting the standard and uncertainties in relating those patterns to exposures and effects.

In drawing conclusions regarding adequacy of the current standard based on considering application of the evidence-based framework, the Administrator further recognizes the degree to which IQ loss estimates drawn from the air-related IQ loss evidence-based framework reflect mean blood Pb levels that are below those represented in the currently available evidence for young children, as described in section II.B.4 of the proposal. The Administrator views such an extension below the lowest studied levels to be reasonable given the lack of identified blood Pb level threshold in the current evidence base for neurocognitive effects and the need for the NAAQS to provide a margin of safety. She additionally takes note, however, of the PA finding that the framework IQ loss estimates for standard levels lower than the current standard level represent still greater extrapolations from the current evidence base with corresponding increased uncertainty (PA, section 3.2, pp. 4–32 to 4–33). The Administrator also gives weight to the PA conclusion of greater uncertainty with regard to relationships between concentrations of Pb in ambient air and air-related Pb in children's blood, and with regard to estimates of the slope of the C–R function of neurocognitive impacts (IQ loss) for application of the framework to levels below the current standard, given the weaker linkage with existing evidence as discussed in the PA (PA, sections 3.1, 3.2 and 4.2.1). Thus, consistent with the conceptual continuum referenced above, the Administrator recognizes the increasing uncertainty with regard to likelihood of response and magnitude of the estimates at levels extending below the current standard.

With respect to exposure/risk-based considerations, as in the last review, the Administrator notes the complexity of the REA modeling analyses and the associated limitations and uncertainties. Based on consideration of the risk-related information for conditions just meeting the current standard, the Administrator takes note of the attendant uncertainties, discussed in detail in the PA (PA, sections 3.4 and 4.2.2), while finding that the quantitative risk estimates, with a focus on those for the generalized (local) urban case study, are roughly consistent with and generally supportive of estimates from the air-related IQ loss evidence-based framework. She further takes note of the PA finding of increasing uncertainty for air quality scenarios involving air Pb concentrations increasingly below the current conditions for each case study, due in part to modeling limitations that derive from uncertainty regarding relationships between ambient air Pb and outdoor soil/dust Pb and indoor dust Pb (PA, sections 3.4.3.1 and 3.4.7).

Based on the above evidence- and exposure/risk-based considerations and with consideration of advice from CASAC and public comment, the Administrator concludes that the current standard provides protection for young children from neurocognitive impacts, including IQ loss, that is consistent with advice from CASAC regarding IQ loss of public health significance. Based on consideration of the evidence and exposure/risk information available in this review with its attendant uncertainties and limitations, and information that might inform public health policy judgments, as well as advice from CASAC, including its concurrence with the PA conclusions that revision of the primary Pb standard is not warranted at this time, the Administrator further concludes that it is appropriate to retain

the current standard without revision. The Administrator bases these conclusions on consideration of the health effects evidence, including consideration of this evidence in the context of the air-related IQ loss evidence-based framework, and with support from the exposure/risk information, recognizing the uncertainties attendant with both. In so doing, she takes note of the PA description of the complexities and limitations in the evidence base associated with reaching conclusions regarding the magnitude of risk associated with the current standard, as well as the increasing uncertainty of risk estimates for lower air Pb concentrations. Inherent in the Administrator's conclusions are public health policy judgments on the public health implications of the blood Pb levels and risk estimated for air-related Pb under the current standard, including the public health significance of the Pb effects being considered, as well as aspects of the use of the evidence-based framework that may be considered to contribute to the margin of safety (as noted in section II.A.1 above and the 2008 decision preamble to the final rule, 73 FR 67007, November 12, 2008). These public health policy judgments include judgments related to the appropriate degree of public health protection that should be afforded to protect against risk of neurocognitive effects in at-risk populations, such as IQ loss in young children, as well as the appropriate weight to be given to differing aspects of the evidence and exposure/risk information, and how to consider their associated uncertainties. Based on these considerations and the judgments identified here, the Administrator concludes that the current standard provides the requisite protection of public health with an adequate margin of safety, including protection of at-risk populations, such as, in particular, young children living near Pb emissions sources where ambient concentrations just meet the standard.

In reaching this conclusion with regard to the adequacy of public health protection afforded by the existing primary standard, the Administrator recognizes that in establishing primary standards under the Act that are requisite to protect public health with an adequate margin of safety, she is seeking to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that primary standards be set at a zero-risk level, but rather at a level that avoids unacceptable risks to public health, even if the risk is not precisely identified as to nature or degree. The CAA requirement that primary standards provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting, as described in section I.A above. This requirement was also intended to provide a reasonable degree of protection from hazards that research has not yet identified.

In this context, the Administrator has considered conclusions drawn in the ISA and PA with regard to interpretation of the information concerning the broader array of health effects of Pb beyond those on the nervous system of young children. Based on the body of evidence in support of identification of neurocognitive effects in young children as the most sensitive endpoint associated with Pb exposure, as noted previously in this section and briefly summarized in section II.A.2 above, she judges that a standard providing protection from such effects additionally provides adequate protection against the risk of other health effects and she further concludes that consideration of the more limited and less certain information concerning Pb exposures associated with such other effects does not lead her to identify a need for any greater protection.

Further, the Administrator's conclusion that the current standard provides the requisite protection and that a more restrictive standard would not be requisite additionally recognizes that the uncertainties and limitations associated with the many aspects of the estimated relationships between air Pb concentrations and blood Pb levels and associated health effects are amplified with consideration of increasingly lower air concentrations. In reaching this conclusion, she additionally takes note of the PA conclusion, with which the CASAC has agreed, that based on the current evidence, there is appreciable uncertainty associated with drawing conclusions regarding whether there would be reductions in blood Pb levels and risk to public health from alternative lower levels of the standard as compared to the level of the current standard (PA, pp. 4–35 to 4–36; Frey, 2013b, Consensus Response to Charge Questions, p. 6). The Administrator judges this uncertainty to be too great for the current evidence and exposure/risk information to provide a basis for revising the current standard. Thus, based on the public health policy judgments described above, including the weight given to uncertainties in the evidence, the Administrator concludes that the current standard should be retained, without revision.

*C. Decision on the Primary Standard*

For the reasons discussed above, and taking into account information and assessments presented in the ISA and PA, the advice from CASAC, and consideration of public comments, the Administrator concludes that the current primary standard for Pb is requisite to protect public health with an adequate margin of safety, including the health of at-risk populations, and is retaining the standard without revision.

## III. Rationale for Decision on the Secondary Standard

This section presents the rationale for the Administrator's decision to retain the existing secondary Pb standard, which, as discussed more fully below, is based on a thorough review in the ISA of the latest scientific information, generally published through September 2011, on welfare effects associated with Pb and pertaining to the presence of Pb in the ambient air. This decision also takes into account (1) the PA's staff assessments of the most policy-relevant information in the ISA and staff analyses of potential ecological exposures and risk, upon which staff conclusions regarding appropriate considerations in this review are based; (2) the CASAC advice and recommendations, as reflected in discussions of drafts of the ISA and PA at public meetings, in separate written comments, and in the CASAC's letters to the Administrator; (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately; and (4) public comments on the proposal.

Section III.A provides background on the general approach for the review of the secondary NAAQS for Pb and brief summaries of key aspects of the current body of evidence on welfare effects associated with Pb exposures and the exposure/risk information considered in this review. Section III.B summarizes the basis for the proposed decision and advice from the CASAC, addresses public comments and presents the conclusions the Administrator has drawn from a full consideration of the information. Section III.C summarizes the Administrator's decision on the secondary standard.

*A. Introduction*

As provided in the Act, the secondary standard is to ''specify a level of air quality the attainment and maintenance of which in the judgment of the

Administrator . . . is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air'' (CAA, section 109(b)(2)). The secondary standard is not meant to protect against all known or anticipated Pb-related effects, but rather those that are judged to be adverse to the public welfare, and a bright-line determination of adversity is not required in judging what is requisite (78 FR 3212, January 15, 2013; 80 FR 65376, October 26, 2015). Thus, the level of protection from known or anticipated adverse effects to public welfare that is requisite for the secondary standard is a public welfare policy judgment to be made by the Administrator. In exercising that judgment, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. This section presents the rationale for the Administrator's decision to retain the existing secondary NAAQS for Pb, without revision. The Administrator's decision draws upon scientific information and analyses about welfare effects, exposure and risks, as well as judgments about the range of uncertainties that are inherent in the scientific evidence and analyses. This approach is consistent with the requirements of the NAAQS provisions of the Act.

In the last review, completed in 2008, the current secondary standard for Pb was revised substantially, consistent with the revision to the primary standard (73 FR 66964, November 12, 2008). The 2008 decision considered the body of evidence as assessed in the 2006 CD (USEPA, 2006a) as well as the 2007 Staff Paper assessment of the policy-relevant information contained in the 2006 CD and the screening-level ecological risk assessment (2006 REA; USEPA, 2007b), the advice and recommendations of CASAC (Henderson 2007a, 2007b, 2008a, 2008b), and public comment. At that time, the Staff Paper concluded, based on laboratory studies and current media concentrations in a wide range of locations, that it seemed likely that adverse effects were occurring from ambient air-related Pb, particularly near point sources, under the then-current standard (73 FR 67010, November 12, 2008). Given the limited data on Pb effects in ecosystems, and associated uncertainties, such as those with regard to factors such as the presence of multiple metals and historic environmental burdens, the EPA also considered the evidence of Pb effects on organisms with regard to implications for ecosystem effects. Taking into account the available evidence and information on media concentrations in a wide range of locations, the Administrator concluded that there was potential for adverse effects occurring under the then-current standard; however there were insufficient data to provide a quantitative basis for setting a secondary standard different from the primary (73 FR 67011, November 12, 2008). Therefore, citing a general lack of data that would indicate the appropriate level of Pb in environmental media that may be associated with adverse effects, as well as the comments of the CASAC Pb panel that a significant change to current air concentrations (*e.g.*, via a significant change to the standard) was likely to have significant beneficial effects on the magnitude of Pb exposures in the environment, the EPA revised the secondary standard substantially, consistent with revisions made to the primary standard (73 FR 67011, November 12, 2008).

Building on the approach and findings in the last review, this current review of the secondary standard considers the currently available scientific and technical information in the context of key policy-relevant questions. This review focuses on the consideration of the extent to which the body of scientific evidence now available calls into question the adequacy of the current standard. In considering the scientific and technical information, we draw on the ecological effects evidence presented in detail in the ISA and aspects summarized in the PA, along with the information associated with the screening-level risk assessment also in the PA. Thus, we have taken into account both evidence-based and risk-based considerations pertaining to the series of policy-relevant questions presented in the PA. These questions generally address the extent to which we are able to characterize effects and the likelihood of adverse effects in the environment under the current standard. Our approach to considering this information recognizes that the available welfare effects evidence generally reflects laboratory-based evidence of toxicological effects on specific organisms exposed to concentrations of Pb (ISA, section 6.5). Additionally, it is widely recognized that environmental exposures from atmospherically derived Pb are likely to be lower than those commonly assessed in laboratory studies and that studies of exposures similar to those in the environment are often accompanied by significant confounding and modifying factors (*e.g.*, other metals, acidification), increasing our uncertainty about the likelihood and magnitude of organism and ecosystem responses (ISA, Section 6.5).

1. Overview of Welfare Effects Information

Welfare effects include, but are not limited to, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and wellbeing'' (CAA, section 302(h)). In this section, we provide an overview of the key aspects of the current evidence of Pb-related welfare effects that is assessed in the ISA and the 2006 CD, drawing from the summary of policy-relevant aspects in the PA (PA, section 5.1) and section III.B of the proposed rulemaking (80 FR 314–317, January 5, 2015).

Lead has been demonstrated to have harmful effects on reproduction and development, growth, and survival in many species as described in the assessment of the evidence available in this review and consistent with the conclusions drawn in the last review (ISA, section 1.7; 2006 CD, sections 7.1.5 and 7.2.5). A number of studies on ecological effects of Pb are newly available in this review and are critically assessed in the ISA as part of the full body of evidence. The full body of currently available evidence reaffirms conclusions on the array of effects recognized for Pb in the last review (ISA, section 1.7). In so doing, in the context of pollutant exposures considered relevant the ISA determines [70] that causal [71] or likely causal [72] relationships exist at the individual and population level in both

[70] Since the last Pb NAAQS review, the ISAs, which have replaced CDs in documenting each review of the scientific evidence (or air quality criteria), employ a systematic framework for weighing the evidence and describing associated conclusions with regard to causality, using established descriptors: ''causal'' relationship with relevant exposure, ''likely'' to be a causal relationship, evidence is ''suggestive'' of a causal relationship, ''inadequate'' evidence to infer a causal relationship, and ''not likely'' to be a causal relationship (ISA, Preamble).

[71] In determining that a causal relationship exists for Pb with specific ecological or welfare effects, the EPA has concluded that ''[e]vidence is sufficient to conclude that there is a causal relationship with relevant pollutant exposures (*i.e.*, doses or exposures generally within one to two orders of magnitude of current levels)'' (ISA, p. lxii).

[72] In determining a likely causal relationship exists for Pb with specific ecological or welfare effects, the EPA has concluded that ''[e]vidence is sufficient to conclude that there is a likely causal association with relevant pollutant exposures . . . but uncertainties remain'' (ISA, p. lxii).

freshwater and terrestrial ecosystems for Pb with effects on reproduction and development in vertebrates and invertebrates; growth in plants and invertebrates; and survival in vertebrates and invertebrates (ISA, Table 1–3). With regard to saltwater ecosystems, the ISA concludes that the current evidence is inadequate to make causality determinations for most effects, while finding the evidence to be suggestive of a linkage between Pb and effects on reproduction and development in marine invertebrates (ISA, Table 1–3, sections 6.3.12 and 6.4.21). In drawing judgments regarding causality for the criteria air pollutants, the ISA places emphasis on ''evidence of effects at doses (*e.g.*, blood Pb concentration) or exposures (*e.g.*, air concentrations) that are relevant to, or somewhat above, those currently experienced by the population.'' The ISA notes that the ''extent to which studies of higher concentrations are considered varies . . . but generally includes those with doses or exposures in the range of one to two orders of magnitude above current or ambient conditions.'' Studies ''that use higher doses or exposures may also be considered . . . [t]hus, a causality determination is based on weight of evidence evaluation for health, ecological or welfare effects, focusing on the evidence from exposures or doses generally ranging from current levels to one or two orders of magnitude above current levels'' (ISA, pp. lx to lxi). Although considerable uncertainties are recognized in generalizing effects observed under particular, small-scale conditions, up to the ecosystem level of biological organization, the ISA also determines that a causal relationship is also likely at higher levels of biological organization between Pb exposures and community and ecosystem-level effects in freshwater and terrestrial systems (ISA, section 1.7.3.7).

As in prior reviews of the Pb NAAQS, this review is focused on those effects most pertinent to ambient air Pb exposures. Given the reductions in ambient air Pb concentrations over the past decades, these effects are generally those associated with the lowest levels of Pb exposure that have been evaluated. Additionally, we recognize the limitations on our ability to draw conclusions about environmental exposures from ecological studies of organism-level effects, as most studies were conducted in laboratory settings which may not accurately represent field conditions or the multiple variables that govern exposure.

The relationship between ambient air Pb and ecosystem response is important in making the connection between current emissions of Pb and the potential for adverse ecological effects. The limitations in the data available on this subject for the last review were significant. There is no new evidence since the last review that substantially improves our understanding of the relationship between ambient air Pb and measurable ecological effects. As stated in the last review, the role of ambient air Pb in contributing to ecosystem Pb has been declining over the past several decades. It remains difficult to apportion exposure between air and other sources to inform our understanding of the potential for ecosystem effects that might be associated with air emissions (ISA, section 6.4). Further, considerable uncertainties also remain in drawing conclusions from effects evidence observed under laboratory conditions with regard to effects expected at the ecosystem level in the environment (ISA, section 6.5). In summary, the ISA concludes that ''[r]ecent information available since the 2006 Pb AQCD, includes additional field studies in both terrestrial and aquatic ecosystems, but the connection between air concentration and ecosystem exposure continues to be poorly characterized for Pb and the contribution of atmospheric Pb to specific sites is not clear'' (ISA, section 6.5).

The bioavailability of Pb is also an important component of understanding the effects Pb is likely to have on organisms and ecosystems (ISA, section 6.3.3, 6.4.4 and 6.4.14). It is the amount of Pb that can interact within the organism that can lead to toxicity, and there are many factors which govern this interaction (ISA, sections 6.2.1 and 6.3.3). The bioavailability of metals varies widely depending on the physical, chemical, and biological conditions under which an organism is exposed (ISA, section 6.3.3). Studies newly available since the last Pb NAAQS review provide additional insight into factors that influence the bioavailability of Pb to specific organisms (ISA, section 6.3.3). On the whole, the current evidence, including that newly available in this review, supports previous conclusions regarding environmental conditions affecting bioavailability and the associated potential for adverse effects of Pb on organisms and ecosystems (ISA, section 6.3.3). Looking beyond organism-level evidence, the evidence of adversity in natural systems remains sparse due to the difficulty in determining the effects of confounding factors such as co-occurring metals or system characteristics that influence bioavailability of Pb in field studies. As summarized in the ISA, ''in natural environments, modifying factors affect Pb bioavailability and toxicity and there are considerable uncertainties associated with generalizing effects observed in controlled studies to effects at higher levels of biological organization'' and ''[f]urthermore, available studies on community and ecosystem-level effects are usually from contaminated areas where Pb concentrations are much higher than typically encountered in the environment'' (ISA, p. xcvi).

There is no new evidence since the last review that substantially improves our understanding of the relationship between ambient air Pb and measurable ecological effects beyond what was understood in the last review. As stated in the last review, the role of ambient air Pb in contributing to ecosystem Pb has been declining over the past several decades. It remains difficult to apportion exposure between air and other sources to better inform our understanding of the potential for ecosystem effects that might be associated with air emissions. As noted in the ISA, ''[t]he amount of Pb in ecosystems is a result of a number of inputs and it is not currently possible to determine the contribution of atmospherically-derived Pb from total Pb in terrestrial, freshwater or saltwater systems'' (ISA, section 6.5). Further, considerable uncertainties also remain in drawing conclusions from evidence of effects observed under laboratory conditions with regard to effects expected at the ecosystem level in the environment. In many cases it is difficult to characterize the nature and magnitude of effects and to quantify relationships between ambient concentrations of Pb and ecosystem response due to the existence of multiple stressors, variability in field conditions, and differences in Pb bioavailability at that level of organization (ISA, section 6.5). In summary, the ISA concludes that ''[r]ecent information available since the 2006 Pb AQCD, includes additional field studies in both terrestrial and aquatic ecosystems, but the connection between air concentration and ecosystem exposure continues to be poorly characterized for Pb and the contribution of atmospheric Pb to specific sites is not clear'' (ISA, section 6.5).

2. Overview of Risk Assessment Information

The risk assessment information available in this review and summarized

here is based on the screening-level risk assessment performed for the last review, described in the 2006 REA, 2007 Staff Paper and 2008 notice of final decision (73 FR 66964, November 12, 2008), as considered in the context of the evidence newly available in this review (PA, section 5.2). Careful consideration of the information newly available in this review, with regard to designing and implementing a full REA for this review, led us to conclude that performance of a new REA for this review was not warranted (REA Planning Document, section 3.3). The CASAC Pb Review Panel generally concurred with the conclusion that a new REA was not warranted for the secondary standard in this review (Frey, 2011b). Accordingly, the exposure/risk information considered in this review is drawn primarily from the 2006 REA as summarized in the PA, section 5.2 and Appendix 5A; REA Planning Document, section 3.1.

The 2006 screening-level assessment focused on estimating the potential for ecological risks associated with ecosystem exposures to Pb emitted into ambient air (PA, section 5.2; 2006 REA, section 7). Both a national-scale screen and a case study approach were used to evaluate the potential for ecological impacts that might be associated with atmospheric deposition of Pb (2006 REA, section 7.1.2). Detailed descriptions of the location-specific case studies and the national screening assessment, key findings of the risk assessment for each, and an interpretation of the results with regard to past air quality conditions are presented in the 2006 REA. This information, which is outlined below, is summarized more fully in section 5.2 of the PA and section III.C of the proposal for this review (80 FR 317–319, January 5, 2015).

In interpreting the results from the 2006 REA, the PA considers the availability of new evidence that may inform interpretation of risk under the now-current standard (PA, section 5.2). Factors that could alter our interpretation of risk would include new evidence of harm at lower concentrations of Pb, new linkages that enable us to draw more explicit conclusions as to the air contribution of environmental exposures, and new methods of interpreting confounding factors that were largely uncontrolled in the previous risk assessment. In general, however, such new evidence is limited, and the key uncertainties identified in the last review remain today. For example, with regard to new evidence of Pb effects at lower concentrations, it is necessary to consider that the evidence of adversity in natural systems due specifically to Pb is limited, in no small part because of the difficulty in determining the effects of confounding factors such as multiple metals and modifying factors influencing bioavailability in field studies, as noted in section III.A.1 above. Modeling of Pb-related exposure and risk to ecological receptors is subject to a wide array of sources of both variability and uncertainty resulting in differences in Pb bioavailability as well as exposure (USEPA, 2005b). Additionally, there are also significant difficulties in quantifying the role of air emissions under the current standard, which is significantly lower than the previous standard. As recognized in the PA, Pb deposited before the standard was enacted remains in soils and sediments, complicating interpretations regarding the impact of the current standard (PA, section 1.3.2). For example, media in ecosystems across the U.S. are still recovering from the past period of greater atmospheric emissions and deposition, as well as from Pb derived from nonair sources (PA, section 1.3.2).

As summarized in the PA and proposal, we have considered what the risk information from the 2006 REA analyses indicates regarding the potential for adverse welfare effects to result from levels of air-related Pb that would meet the now-current standard. The circumstances assessed in all but one of the case study locations, however, likely include a history of ambient air Pb concentrations that exceeded the NAAQS. Consequently, these analyses are not considered informative for predicting effects at the far lower concentrations associated with the current NAAQS. The nationwide surface water screen was likewise not particularly informative because potential confounding by both nonair inputs and resuspension of Pb related to historic sources was not easily accounted for. The remaining case study was a site remote from Pb sources for which atmospheric deposition was expected to be the primary contributor to media Pb concentrations without obvious confounding inputs. This case study, based on a summary review of published findings for the study site, concluded that atmospheric Pb inputs do not directly affect stream Pb levels because deposited Pb is almost entirely retained in the soil profile, with the soil serving as a Pb sink, appreciably reducing pore water Pb concentrations as it moves through the soil layers to streams. As a result, this case study (and the publications on which it was based) concluded that the contribution of dissolved Pb from soils to streams was insignificant (2006 REA, Appendix E). Additionally, we note that the 2006 CD, in considering the findings for this site and other terrestrial sites with Pb burdens derived primarily from long-range atmospheric transport, found that ''[d]espite years of elevated atmospheric Pb inputs and elevated concentrations in soils, there is little evidence that sites affected primarily by long-range Pb transport have experienced significant effects on ecosystem structure or function'' (2006 CD, p. AX7–98). The PA and proposal concluded that this information suggests that the now-lower ambient air concentrations associated with meeting the current standard would not be expected to directly impact stream Pb levels (PA, p. 6–10; 80 FR 319, January 5, 2015).

### *C. Conclusions on the Secondary Standard*

#### 1. Basis for the Proposed Decision

The basis for the proposed decision, which is described in section III.D of the proposal, is very briefly summarized here. In considering the welfare effects evidence and risk-based information with respect to the adequacy of the current secondary standard, the Administrator considered the array of evidence newly assessed in the ISA with regard to the degree to which this evidence supports conclusions about the effects of Pb in the environment that were drawn in the last review and the extent to which it reduces previously recognized areas of uncertainty. Further, she considered the current evidence and associated conclusions about the potential for effects to occur as a result of the much lower ambient Pb concentrations allowed by the current secondary standard (set in 2008) than those allowed by the prior standard, which was the focus of the last review. These considerations informed the Administrator's proposed decision to retain the current standard.

With regard to the evidence, the proposal noted there is very limited evidence to relate specific ecosystem effects with current ambient air concentrations of Pb through deposition to terrestrial and aquatic ecosystems and subsequent movement of deposited Pb through the environment (*e.g.*, soil, sediment, water, organisms). The potential for ecosystem effects of Pb from atmospheric sources under conditions meeting the current standard is difficult to assess due to limitations on the availability of information to fully characterize the distribution of Pb from the atmosphere into ecosystems over the long term, as well as limitations

on information on the bioavailability of atmospherically deposited Pb (as affected by the specific characteristics of the receiving ecosystem). Therefore, while there are newly available field studies in this review, ''the connection between air concentration and ecosystem exposure and associated potential for welfare effects continues to be poorly characterized for Pb'' (ISA, section 6.4). Such a connection is even harder to characterize with respect to the current standard than it was in the last review with respect to the previous, much higher standard.

With regard to the currently available risk and exposure information, which continues to be sufficient to conclude that the 1978 standard was not providing adequate protection to ecosystems, the proposal concluded that, when considered with regard to air-related ecosystem exposures likely to occur with air Pb levels that just meet the now-current standard, this current information also does not provide evidence of adverse effects under the current standard. Accordingly, in consideration of the risk information in combination with the current evidence and the associated data gaps and uncertainties, the Administrator proposed that the current standards be retained, without revision.

2. CASAC Advice in This Review

In its review of the draft PA, the CASAC agreed with staff's preliminary conclusions that the available information since the last review is not sufficient to warrant revision to the secondary standard (Frey, 2013b). On this subject, the CASAC letter said that ''[o]verall, the CASAC concurs with the EPA that the current scientific literature does not support a revision to the . . . Secondary Pb NAAQS'' (Frey, 2013b, p. 1). It additionally stated that ''[g]iven the existing scientific data, the CASAC concurs with retaining the current secondary standard without revision'' (Frey, 2013b, p. 2). The CASAC additionally noted areas for additional research to address data gaps and uncertainties (Frey, 2013b, p. 2).

3. Comments on the Proposed Decision

All of the public comments on the proposed decision to retain the current secondary standard, without revision, indicated support. These commenters include the NACAA, as well as both of the state agencies and nearly all of the industry organizations that submitted comments. Only a small subset of this group provided rationales for their concurrence with EPA's proposed decision. These commenters emphasized limitations and uncertainties in the welfare effects evidence, including particularly those with regard to relationships between ambient air Pb concentrations, levels of deposition, ecosystem exposures, and adverse public welfare effects. One commenter also noted the CASAC's concurrence with the EPA conclusion that the current evidence does not support revision to the standard, and that information newly available in this review does not substantially improve our understanding in the identified areas of uncertainty or that would indicate that the current standard is inadequate. The EPA generally agrees with these commenters and with the CASAC regarding the adequacy of the current secondary standard and the lack of support for revision of the standard.

4. Administrator's Conclusions

Based on the evidence and risk assessment information that is available in this review concerning the ecological effects and potential public welfare impacts of Pb emitted into ambient air, the Administrator concludes that the current secondary standard provides the requisite protection of public welfare from adverse effects and should be retained. In considering the adequacy of the current standard, the Administrator has considered the assessment of the available evidence and conclusions contained in the ISA; the staff assessment of and conclusions regarding the policy-relevant technical information, including screening-level risk information, presented in the PA; the advice and recommendations from CASAC; and public comments. In reaching her decision, the Administrator gives weight to the PA conclusions, with which CASAC has concurred, and takes note of key aspects of the rationale presented for those conclusions which contribute to her decision.

As she did in reaching her proposed decision, the Administrator notes that the body of evidence on the ecological effects of Pb, expanded in some aspects since the last review, continues to support identification of ecological effects in organisms relating to growth, reproduction, and survival as the most relevant endpoints associated with Pb exposure. In consideration of the appreciable influence of site-specific environmental characteristics on the bioavailability and toxicity of environmental Pb in our assessment, there is a lack of studies conducted under conditions closely reflecting the natural environment. The currently available evidence, while somewhat expanded since the last review, does not include evidence of significant effects at lower concentrations or evidence of higher-level ecosystem effects beyond those reported in the last review. There continue to be significant difficulties in relating effects evidence from laboratory studies to the natural environment and linking those effects to ambient air Pb concentrations. Further, as the proposal and the PA note, the EPA is aware of no new critical loads information that would inform our interpretation of the public welfare significance of the effects of Pb in various U.S. ecosystems (PA, section 5.1). In summary, while new research has added to the understanding of Pb biogeochemistry and expanded the list of organisms for which Pb effects have been described, there remains a significant lack of knowledge about the potential for adverse effects on public welfare from ambient air Pb in the environment and the exposures that occur from such air-derived Pb, particularly under conditions meeting the current standard (PA, section 6.2.1). Thus, the scientific evidence presented in detail and assessed in the ISA, inclusive of that newly available in this review, is not substantively changed, most particularly with regard to the adequacy of the now-current standard, from the information that was previously available and supported the decision for revision in the last review (PA, section 6.2.1).

With respect to exposure/risk-based considerations identified in the PA, the Administrator notes the complexity of interpreting the previous risk assessment with regard to the ecological risk of ambient air Pb associated with conditions meeting the current standard and the associated limitations and uncertainties of such assessments. The Administrator additionally takes note that the previous assessment is consistent with and generally supportive of the evidence-based conclusions about Pb in the environment, yet the limitations on our ability to apportion Pb between past and present air contributions and between air and nonair sources remain significant.

In summary, based on the considerations summarized above, the Administrator judges that the information available in this review of the Pb secondary standard, including the currently available welfare effects evidence and exposure/risk information, does not call into question the adequacy of the current standard to provide the requisite protection for public welfare (PA, section 6.3). In so doing, she also notes the advice from CASAC in this review, including that ''[g]iven the existing scientific data, the CASAC concurs with retaining the current secondary standard without revision.''

Thus, the Administrator concludes that the current standard is requisite and should be retained.

*C. Decision on the Secondary Standard*

For the reasons discussed above, and taking into account information and assessments presented in the ISA and PA, the advice from CASAC, and consideration of public comments, the Administrator concludes that the current secondary standard for Pb is requisite to protect public welfare from known or anticipated adverse effects and is retaining the standard without revision.

**IV. Statutory and Executive Order Reviews**

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

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

This action is 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 action does not impose an information collection burden under the PRA. There are no information collection requirements directly associated with revisions to a NAAQS under section 109 of the CAA and this action does not make any revisions to the NAAQS.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Rather, this action retains, without revision, existing national standards for allowable concentrations of Pb in ambient air as required by section 109 of the CAA. *See also American Trucking Associations* v. *EPA.* 175 F.3d at 1044–45 (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian tribes. This action does not change existing regulations; it retains the current NAAQS for Pb, without revision. The NAAQS protect public health, including the health of at-risk or sensitive groups, with an adequate margin of safety and protect public welfare from known or anticipated adverse effects. Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. We note, however, that the primary standard retained with this action provides protection for children and other at-risk populations against an array of adverse health effects, most notably including nervous system effects in children. The health effects evidence and risk assessment information for this action, which focuses on children, is summarized in sections II.A.2, II.A.3 and II.A.4, and described in the ISA and PA, copies of which are in the public docket for this action.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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

*I. National Technology Transfer and Advancement Act*

This action does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The action described in this document is to retain, without revision, the existing NAAQS for Pb.

The NAAQS decisions are based on an explicit and comprehensive assessment of the current scientific evidence and associated exposure/risk analyses. More specifically, the EPA expressly considers the available information regarding health effects among at-risk populations, including that available for low-income populations and minority populations, in decisions on the primary (health-based) NAAQS. Where low-income populations or minority populations are among the at-risk populations, the decision on the standard is based on providing protection for these and other at-risk populations and lifestages. Where such populations are not identified as at-risk populations, NAAQS that are established to provide protection to the at-risk populations would also be expected to provide protection to all other populations, including low-income populations and minority populations.

As discussed in sections II.A.2.d and II.B above, and in sections II.A and II.B of the proposal, the EPA expressly considered the available information regarding health effects among at-risk populations in reaching the decision that the existing primary (health-based) standard for Pb is requisite. The ISA and PA for this review, which include identification of populations at risk from Pb health effects, are available in the docket, EPA–HQ–OAR–2010–0108. Based on consideration of this information and the full evidence base, quantitative exposure/risk analyses, advice from the CASAC and consideration of public comments, the Administrator concludes that the existing NAAQS for Pb protect public health, including the health of at-risk or sensitive groups, with an adequate margin of safety and protect public welfare from known or anticipated adverse effects (as discussed in sections II.B.4 and III.B.4 above).

*K. Determination Under Section 307(d)*

Section 307(d)(1)(V) of the CAA provides that the provisions of section

307(d) apply to ''such other actions as the Administrator may determine.'' Pursuant to section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d).

*L. Congressional Review Act*

The EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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## List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 16, 2016.

**Gina McCarthy,**

*Administrator.*

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Part VI

## Commodity Futures Trading Commission

17 CFR Parts 1 and 23

Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants; Proposed Rule

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 1 and 23**

**RIN 3038–AE54**

# Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule; interpretations.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is publishing for public comment proposed rules and interpretations (''Proposed Rule'') addressing the cross-border application of certain swap provisions of the Commodity Exchange Act (''CEA''). Specifically, the proposed rule defines key terms for purposes of applying the CEA's swap provisions to cross-border transactions and addresses the cross-border application of the registration thresholds and external business conduct standards for swap dealers and major swap participants, including the extent to which they would apply to swap transactions that are arranged, negotiated, or executed using personnel located in the United States.

**DATES:** Comments must be received on or before December 19, 2016.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AE54, 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:* 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.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, 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 you believe is 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 § 145.9 of the CFTC's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of a 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 notice will be retained in the public comment file and will be considered as required under all applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:** Paul Schlichting, Assistant General Counsel, (202) 418–5884, *pschlichting@cftc.gov;* Laura B. Badian, Assistant General Counsel, (202) 418–5969, *lbadian@cftc.gov;* or Elise Bruntel, Counsel, (202) 418–5577, *ebruntel@cftc.gov;* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Scope of Rulemaking*

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Dodd-Frank'') [1] amended the Commodity Exchange Act (''CEA'') [2] to establish a new regulatory framework for swaps. Added in the wake of the 2008 financial crisis, which highlighted the potential for cross-border swap activities to have a substantial impact on the U.S. financial system, the new swap provisions expressly apply to activities that have a direct and significant connection with activities in, or effect on, U.S. commerce or that contravene Commission rules or regulations necessary or appropriate to prevent evasion.[3]

In response to requests from market participants, the Commission published

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] *See* 7 U.S.C. 2(i). Section 2(i) of the CEA states that the provisions of that chapter relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act) shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of that chapter that was enacted by the Wall Street Transparency and Accountability Act of 2010.

a policy statement and interpretive guidance regarding the cross-border application of the swap provisions of the CEA.[4] The Guidance offered an interpretation of the term ''U.S. person'' and a general, non-binding framework for the cross-border application of many substantive Dodd-Frank requirements, including requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') (collectively, ''SD/MSPs''). Given the complex and dynamic nature of the global swap market, the Guidance was intended as a flexible and efficient way to provide the Commission's views on cross-border issues raised by commenters, allowing the Commission to adapt in response to changes in the global regulatory and market landscape.[5] The Commission accordingly stated that it would review and modify its cross-border policies as the global swaps market continues to evolve and consider codifying the cross-border application of Dodd-Frank swap provisions in future rulemakings, as appropriate.[6]

In this release, the Commission is proposing to codify a central element of the Dodd-Frank regulatory framework for SDs and MSPs, incorporating various aspects of the Commission's recent cross-border rulemaking regarding the margin requirement,[7] including the definitions of ''U.S. person'' and ''guarantee'' and the concept of a Foreign Consolidated Subsidiary (''FCS''). Specifically, the Proposed Rule addresses when U.S. and non-U.S. persons, including FCSs and those whose swap obligations are guaranteed by a U.S. person, would be required to include their cross-border swap dealing transactions or swap positions in their SD or MSP registration threshold calculations, respectively,[8] and the extent to which SD/MSPs would be required to comply with the Commission's business conduct standards governing their conduct with swap counterparties (''external business conduct standards'') in cross-border transactions.[9]

The Proposed Rule also addresses issues related to a Commission request for comment on a 2013 staff advisory, which discussed the staff's view of the application of certain Dodd-Frank swap provisions to non-U.S. SDs if they use personnel located in the United States.[10] Specifically, the Proposed Rule addresses situations in which swap transactions are arranged, negotiated, or executed using personnel located in the United States (''ANE transactions''), including the types of activities that would fall within the scope of ANE transactions and the extent to which the SD registration threshold and external business conduct standards apply to ANE transactions.

As part of the proposed rule, the Commission is also proposing to define the key terms of ''U.S. person'' and ''Foreign Consolidated Subsidiary'' for broad cross-border application in a manner consistent with how the terms were defined in the Cross-Border Margin Rule.[11] If adopted, the Commission intends that these definitions would be relevant not only within the context of the proposed rule, but for purposes of any subsequent rulemakings specifically addressing the cross-border application of other substantive Dodd-Frank requirements, unless the context or a specific rule or regulation otherwise requires. The Commission believes that applying a single definition for these terms throughout the Commission's cross-border framework going forward would benefit market participants by eliminating complexity associated with the use of different definitions for different Dodd-Frank rules.

The Proposed Rule does not address the cross-border application of any substantive Dodd-Frank requirements beyond the SD/MSP registration thresholds and external business conduct standards. The Commission expects to address the cross-border application of other Dodd-Frank requirements, including the availability of substituted compliance, in subsequent rulemakings.

*B. Current Market Structure*

In determining how the Commission's SD/MSP registration thresholds should apply to market participants in cross-border transactions and the extent to which the Dodd-Frank swap requirements should apply to ANE transactions, the Commission was informed by its understanding of the current market practices of global financial institutions. Financial groups that are active in the swap market typically operate in multiple market centers[12] and carry out swap activity with counterparties around the world using a number of different operational structures. A financial group's business model, including its booking practices and how it carries out market-facing activities, reflects a range of business and regulatory considerations, which are weighed differently by, and have different effects on, each group.

Despite its geographic expanse, a global financial group effectively operates as a single business, with a highly integrated network of business lines and services conducted through various branches or affiliated legal entities that are under the control of the parent entity. While each branch or affiliate may serve a unique purpose, they are highly interdependent and inextricably linked, with affiliated entities within the corporate group providing financial or credit support for each other, such as in the form of a guarantee or the ability to transfer risk through inter-affiliate trades.[13]

A financial group may reflect all of its swaps in the financial statements of one entity (the ''booking entity''), realizing netting and operational benefits, a practice referred to as ''central booking.'' In this case, the booking entity retains all the risk associated with

[4] *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (Jul. 26, 2013) (''Guidance'').

[5] *Id.* at 45297, n.39.

[6] *See id.* The Commission notes that at the time that the Guidance was adopted, it was tasked with regulating a market that grew to a global scale without any meaningful regulation. Developing a regulatory framework to fit that market is necessarily an iterative process, one that requires adapting and responding to rapid and continual changes in the market. Therefore, the Commission expects that this proposed rulemaking will be followed by additional rulemakings affecting the cross-border application of the Commission's swap regulations.

[7] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016) (''Cross-Border Margin Rule'').

[8] *See* proposed rule § 1.3(ggg)(7) and 1.3(nnn). The SD and MSP registration thresholds are codified at 17 CFR 1.3(ggg)(4) and 1.3(hhh) through (mmm), respectively.

[9] *See* proposed rule § 23.452. The Commission's external business conduct standards are codified in 17 CFR part 23, subpart H (17 CFR 23.400 through 23.451).

[10] *See* Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347 (Jan. 8, 2014) (''Request for Comment''); CFTC Staff Advisory No. 13–69, Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013) (''Staff Advisory''), available at *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-69.pdf.* As stated therein, the Staff Advisory represented the views of the Division of Swap Dealer and Intermediary Oversight (''DSIO'') only, and not necessarily those of the Commission or any other office or division thereof. *Id.* at 2.

[11] *See* proposed rule § 1.3(aaaaa); Cross-Border Margin Rule, 81 FR 34818; 17 CFR 23.160(a).

[12] Data from swap data repositories (''SDR data'') indicate that the global swap market has several market centers, including New York, London, and Tokyo.

[13] Even in the absence of an explicit arrangement or guarantee, the parent entity may, for reputational or other reasons, choose or be compelled to assume the risk incurred by its affiliates, branches, or offices located overseas.

each swap, creating one swap portfolio. Alternatively, a financial group may book swaps in several different affiliates depending on the jurisdiction where the counterparty is located or, alternatively, where the financial group manages a particular type of risk or product. In the latter case, the swaps will be reflected in the financial statements of different affiliates. The risks related to the swaps, however, may not remain in the entity in which the swap is booked. Using arrangements such as inter-affiliate transactions or assignments, the risks related to a swap may be transferred to different entities within an affiliated group while the entity at which the swap is booked remains unchanged.[14]

Regardless of a financial group's booking practices, it typically engages in sales or trading functions in one or more market centers. Performing sales and trading functions in global market centers provides the financial group with access to counterparties in that jurisdiction. The financial group's presence in a particular market center also enables the group to more effectively engage in swaps in that locale on behalf of affiliates in other jurisdictions that are servicing counterparties in those jurisdictions.[15]

In this highly-integrated corporate structure, where financial groups engage in swap dealing activity with counterparties located in multiple jurisdictions, it is not uncommon for a swap to be traded through an affiliate in one jurisdiction (the ''market-facing affiliate'') and booked and risk-managed in another (the ''booking affiliate''). In such cases, a particular affiliate may become the market-facing affiliate because its trading desk has expertise in relevant products or because it has an established client network in the relevant jurisdiction or market hub.[16] However, although each affiliate carries out a distinct function in a given swap transaction, together they operate as an integrated dealing business.

Large U.S. financial services firms emphasize the importance of operating globally through a unified structure. For example, Goldman Sachs explains that one of its core businesses ''serves our clients who come to the firm to buy and sell financial products, raise funding and manage risk. We do this by acting as a market maker and offering market expertise on a global basis . . . . Through our global sales force, we maintain relationships with our clients, receiving orders and distributing investment research, trading ideas, market information and analysis. As a market maker, we provide prices to clients globally across thousands of products in all major asset classes and markets . . . . Much of this connectivity between the firm and its clients is maintained on technology platforms and operates globally wherever and whenever markets are open for trading.'' [17] Morgan Stanley explains that it provides financial services to clients globally, primarily through subsidiaries incorporated in the U.S., Europe and Asia, and it ''trades, invests and makes markets globally in listed swaps and futures and OTC cleared and uncleared swaps, forwards, options and other derivatives . . . .'' [18] Citigroup, one of the largest U.S. bank holding companies, describes its global presence as ''trading desks in over 30 countries and market access in 70 countries.'' [19] Citigroup also states that it manages its risk exposures from its activities across all these countries via its ''Centralized Risk Desk.'' [20]

In sum, the current swap market is global in scale and characterized by a high level of interconnectedness among market participants, with transactions negotiated, executed, and arranged between counterparties in different jurisdictions, (and booked and managed in still other jurisdictions). These market realities suggest that a cross-border framework that focuses only on the domicile of the market participant or location of counterparty risk would fail to effectively advance the policy objectives of the Dodd-Frank swap reforms, which were aimed at increasing market transparency and counterparty protections and mitigating the risk of financial contagion in the swap market.[21] At the same time, the Commission is also mindful that its policy choices should aim to enhance market efficiency and competition and the overall functioning of the global swap market. Accordingly, as described in detail below, in developing the Proposed Rule the Commission has strived to implement a cross-border framework that would achieve the important goals of the Dodd-Frank Act while mitigating any unnecessary burdens and avoiding disruption to market practices to the extent possible.

## II. Definitions

The Commission is proposing to define the key terms of ''U.S. person'' and ''Foreign Consolidated Subsidiary'' for purposes of applying the Dodd-Frank swaps provisions to cross-border transactions. Whether a market participant is a U.S. person or a Foreign Consolidated Subsidiary would, for instance, affect how the SD/MSP registration thresholds apply under the proposed rule.[22] If adopted, these definitions would also be relevant for purposes of any subsequent rulemakings specifically addressing the cross-border application of other substantive Dodd-Frank requirements, unless the context or a specific rule or regulation otherwise requires.

### *A. U.S. Person*

Under the Proposed Rule, a ''U.S. person'' would be defined as follows:

- Any natural person who is a resident of the United States (proposed § 1.3(aaaaa)(5)(i));

[14] The extent to which swap risk may be transferred without changing the booking entity may depend on relevant accounting rules, legal requirements, and other factors. Swap activities may also be carried out through branches located in separate jurisdictions rather than, or in addition to, affiliates that are domiciled in separate jurisdictions.

[15] From discussions with market participants, the Commission understands that financial groups typically prefer to operate their swap businesses and manage swap portfolios in the jurisdiction where the swap and the underlying asset have the deepest and most liquid markets. In operating their swap dealing businesses in these market centers, financial groups seek to take advantage of expertise in products traded in those centers and obtain access to greater liquidity, permitting them to more efficiently price such products or otherwise compete more effectively in the global swap market, including in jurisdictions different from the market center in which the swap is traded.

[16] The market-facing affiliate may in turn employ either its own personnel or the personnel of another affiliate or unaffiliated agent. Market-facing entities may use unaffiliated agents in order to conduct swap dealing activity anonymously or to provide clients with access to market hubs where they do not have their own operations.

[17] *See* The Goldman Sachs Group, Inc. 2013 Annual Report on Form 10–K at 3 (describing Institutional Client Services business, which includes swaps and other derivatives trading), available at *http://www.goldmansachs.com/investor-relations/financials/archived/10k/docs/2013-10-k.pdf.*

[18] *See* Morgan Stanley 2013 Annual Report on Form 10–K at 3, available at *https://www.morganstanley.com/about-us-ir/shareholder/10k2013/10k2013.pdf.*

[19] *See Global Equities,* Citigroup, discussion of equities product line (accessed Sept. 29, 2016), available at *http://www.citibank.com/icg/global_markets/product_solutions/global_equities/index.jsp.* While this description is in the context of equities trading and not necessarily swaps, it illustrates the integrated nature of the global operations of these firms and their affiliates and subsidiaries in different countries.

[20] *See id.*

[21] Nor would such a framework be consistent with CEA section 2(i), which provides that Dodd-Frank's swap provisions and the Commission's regulations thereunder apply to cross-border transactions under certain circumstances. *See Secs. Indus. & Fin. Mkts. Ass'n* v. *CFTC,* 67 F. Supp. 3d 373, 425–26 & n.35 (D.D.C. 2014).

[22] Consistent with the reliance standard articulated in the Commission's external business conduct rules, *see* 17 CFR 23.402(d), market participants would be allowed to reasonably rely on counterparty representations with respect to each of these definitions unless they have information that would cause a reasonable person to question the accuracy of the representation.

• Any estate of a decedent who was a resident of the United States at the time of death (proposed § 1.3(aaaaa)(5)(ii));

• Any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity described in proposed paragraph (aaaaa)(5)(iv) or (v) of § 1.3) (''legal entity''), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, including any branch of the legal entity [23] (proposed § 1.3(aaaaa)(5)(iii));

• Any pension plan for the employees, officers or principals of a legal entity described in proposed paragraph (aaaaa)(5)(iii) of § 1.3, unless the pension plan is primarily for foreign employees of such entity (proposed § 1.3(aaaaa)(5)(iv));

• Any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust (proposed § 1.3(aaaaa)(5)(v));

• Any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is owned by one or more persons described in proposed paragraphs (aaaaa)(5)(i) through (v) of § 1.3 who bear(s) unlimited responsibility for the obligations and liabilities of the legal entity, including any branch of the legal entity (proposed § 1.3(aaaaa)(5)(vi)); and

• Any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in proposed paragraphs (aaaaa)(5)(i) through (vi) of § 1.3 (proposed § 1.3(aaaaa)(5)(vii)).[24]

In line with commenter requests, this definition mirrors the definition of ''U.S. person'' recently adopted in the context of the Cross-Border Margin Rule.[25] As stated therein, the Commission believes that this definition offers a clear, objective basis for determining which individuals or entities should be identified as U.S. persons and that harmonizing with the definition in the Cross-Border Margin Rule is not only appropriate, but will reduce compliance costs for market participants in the long run.

The proposed U.S. person definition is generally consistent with the U.S. person interpretation set forth in the Guidance, with certain exceptions.[26] Notably, the proposed definition does not include a commodity pool, pooled account, investment fund, or other collective investment vehicle that is majority-owned by one or more U.S. persons (''U.S. majority-owned fund prong'').[27] The Commission understands that identifying and tracking a fund's beneficial ownership may pose a significant challenge in certain circumstances. Although the U.S. owners of such funds may be adversely impacted in the event of a counterparty default, the Commission believes that, on balance, the majority-ownership test should not be included in the definition of U.S. person.[28] In the interest of providing legal certainty, the proposed definition also does not include a catchall provision, thereby limiting the definition of ''U.S. person'' to persons enumerated in the rule.[29]

Finally, consistent with the Cross-Border Margin Rule, paragraph (vi) of the proposed U.S. person definition includes legal entities where one or more U.S. person owner(s) bear unlimited responsibility for the obligations and liabilities of the legal entity (''unlimited U.S. responsibility prong''). This paragraph represents a modified version of a similar concept from the Guidance, which interpreted ''U.S. person'' to include a legal entity ''directly or indirectly majority-owned'' by one or more U.S. person(s) that bear unlimited responsibility for the legal entity's liabilities and obligations.[30] Upon further consideration, the Commission believes that the amount of equity the U.S. owner(s) have in this legal entity would not be relevant because the U.S. person owner(s), by definition, serve as a financial backstop for all of the legal entity's obligations and liabilities regardless of whether they are majority or minority owners.[31]

In consideration of principles of international comity, the Commission proposes that the term ''U.S. person'' would not include international financial institutions. Consistent with Commission precedent,[32] the Commission interprets ''international financial institutions'' to include ''international financial institutions'' as defined in 22 U.S.C. 262r(c)(2) and institutions defined as ''multilateral development banks'' in the Proposal for the Regulation of the European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, Council of the European Union Final Compromise Text, Article 1(4a(a)) (March 19, 2012).[33]

[23] The Commission notes that the reference in proposed § 1.3(aaaaa)(5)(iii) and (vi) (indicating that legal entities would include any branch of the legal entity) is intended to make clear that the definition includes both foreign and U.S. branches of an entity. The Commission further notes that a branch does not have a legal identity apart from its principal entity. The proposed language is not intended to introduce any additional criteria for determining an entity's U.S. person status.

[24] *See* proposed rule § 1.3(aaaaa)(5). *See also* proposed rule § 1.3(aaaaa)(2) (defining ''non-U.S. person'' as any person that is not a U.S. person); 17 CFR 23.160(a)(10) (defining U.S. person for purposes of the Cross-Border Margin Rule). The Commission notes that an affiliate or a subsidiary of a U.S. person that is organized or incorporated in a non-U.S. jurisdiction would not be deemed a U.S. person solely by virtue of its affiliation with a U.S. person. As used herein, the term ''U.S. counterparty'' refers to a swap counterparty that is a ''U.S. person'' under the Proposed Rule.

[25] *See* 17 CFR 23.160(a)(10). *See also* Cross-Border Margin Rule, 81 FR at 34823–24. Unless expressly stated otherwise herein, the description of the U.S. person definition in the Cross-Border Margin Rule, including the Commission's interpretation of the principal place of business test regarding funds, would also apply in the context of the Proposed Rule.

[26] *See* Guidance, 78 FR at 45308–17 (setting forth the interpretation of ''U.S. person'' for purposes of the Guidance).

[27] *See id.* at 45313–14 (discussing the U.S. majority-ownership prong for purposes of the Guidance). The Guidance interpreted ''majority-owned'' in this context to mean the beneficial ownership of more than 50 percent of the equity or voting interests in the collective investment vehicle. *See id.* at 45314.

[28] Note that a fund fitting within the majority U.S. ownership prong may also be a U.S. person within the scope of paragraph (iii) of the Proposed Rule (entities organized or having a principal place of business in the United States). As the Commission clarified in the Cross-Border Margin Rule, whether a pool, fund or other collective investment vehicle is publicly offered only to non-U.S. persons and not offered to U.S. persons would not be relevant in determining whether it falls within the scope of the proposed U.S. person definition. *See* Cross-Border Margin Rule, 81 FR at 34824 n.62.

[29] *See* Guidance, 78 FR at 45316 (discussing the inclusion of the prefatory phrase ''include, but not be limited to'' in the interpretation of ''U.S. person'' in the Guidance).

[30] *See id.* at 45312–13 (discussing the unlimited U.S. responsibility prong for purposes of the Guidance).

[31] *See* Cross-Border Margin Rule, 81 FR at 34823–24.

[32] *See* Guidance, 78 FR at 45353 n.531 (incorporating the interpretation of ''international financial institutions'' included in Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30692 n.1180 (May 23, 2012) (''Entities Rule'')).

[33] The two definitions overlap but together include the following: The International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, Inter-American Investment Corporation, Council of Europe Development Bank, Nordic

Continued

*Request for Comment.* The Commission invites comment on all aspects of the Proposed Rule, including on whether and in what respects the Commission should further harmonize the U.S. person definition in the Proposed Rule to either the interpretation of U.S. person included in the Guidance or the U.S. person definition adopted by the Securities Exchange Commission (''SEC'') in rule 3a71–3(a)(4) under the Securities Exchange Act of 1934 (''Exchange Act'').[34]

*B. Foreign Consolidated Subsidiary (''FCS'')*

Under the Proposed Rule, the term ''Foreign Consolidated Subsidiary'' identifies a non-U.S. person that is consolidated for accounting purposes with an ultimate parent entity that is a U.S. person (a ''U.S. ultimate parent entity''). Consistent with the Cross-Border Margin Rule, the proposed rule would define ''Foreign Consolidated Subsidiary'' to mean a non-U.S. person in which an ultimate parent entity that is a U.S. person has a controlling financial interest, in accordance with U.S. generally accepted accounting principles (''U.S. GAAP''), such that the U.S. ultimate parent entity includes the non-U.S. person's operating results, financial position and statement of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. GAAP.[35] The proposed rule would define the term ''ultimate parent entity'' to mean the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. GAAP.[36]

The proposed FCS definition offers a clear, bright-line test for identifying non-U.S. persons whose swap activities present a greater supervisory interest relative to other non-U.S. market participants, due to the nature and extent of the FCS's relationship with its U.S. ultimate parent. As described above, the nature of modern finance is such that large financial institutions typically conduct their business operations through a highly integrated network of business lines and services conducted through multinational branches or subsidiaries that are under the control of the ultimate parent entity. Under this structure, U.S. and non-U.S. derivatives trading functions as a single enterprise, using funds, risk management, information systems and trading personnel across the entire consolidated entity in the most efficient manner in effectuating coordinated trading strategies, with the profits and losses from global trading operations aggregated in the consolidated financial statements of the ultimate parent entity. The Commission believes that the FCS definition appropriately encompasses those entities within this consolidated group that are subject to the financial control, and directly impact the financials, of the U.S. ultimate parent entity.

First, consolidation under U.S. GAAP is predicated on the financial control of the reporting entity.[37] Therefore, an entity within a financial group that is consolidated with its parent entity for accounting purposes in accordance with U.S. GAAP is subject to the financial control of that parent entity. Second, as the Commission previously stated, by virtue of consolidation with its parent entity's financial statement under U.S. GAAP, an FCS's swap activity creates direct risk to the U.S. parent.[38] That is, as a result of consolidation, the financial position, operating results, and statement of cash flows of an FCS are included in the financial statements of its U.S. ultimate parent and therefore affect the financial condition, risk profile, and market value of the parent. Because of that relationship, risks taken by FCSs can have a direct effect on the U.S. ultimate parent entity. Furthermore, the FCS's counterparties generally look to both the FCS and its U.S. ultimate parent for fulfillment of the FCS's obligations under the swap, even without any explicit guarantee.[39] In many cases, the Commission believes that the counterparty would not enter into the transaction with the subsidiary (or would not do so on the same terms), and the subsidiary would not be able to engage in a swaps business, absent this close relationship with the parent entity.

Under these circumstances, the Commission believes that it is appropriate to require FCSs to include relevant swaps for the SD/MSP registration calculation like a U.S. person (and U.S. Guaranteed Entity).[40]

Investment Bank, Caribbean Development Bank, European Investment Bank and European Investment Fund. Note that the International Bank for Reconstruction and Development, the International Finance Corporation and the Multilateral Investment Guarantee Agency are parts of the World Bank Group. The Commission's proposal is generally similar to the position adopted by the SEC, which excluded from its U.S. person definition the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans. *See* 17 CFR 240.3a71–3(a)(4)(iii); Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities; Republication, 79 FR 47278, 47306 (Aug. 12, 2014) (''SEC Cross-Border Rule'').

[34] Exchange Act rule 3a71–3(a)(4), 17 CFR 240.3a71–3(a)(4), defines ''U.S. person'' to mean any natural person resident in the United States; any partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States; any account (whether discretionary or non-discretionary) of a U.S. person; or any estate of a decedent who was a resident of the United States at the time of death.

Exchange Act rule 3a71–3(a)(4) defines ''principal place of business'' to mean the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. It also provides that, with respect to an externally managed investment vehicle, this location is the office from which the manager of the vehicle primarily directs, controls, and coordinates the investment activities of the vehicle.

[35] *See* proposed rule § 1.3(aaaaa)(1). *See also* 17 CFR 23.160(a)(1) (defining ''Foreign Consolidated Subsidiary'' for purposes of the Cross-Border Margin Rule). The Cross-Border Margin Rule defined the term ''Foreign Consolidated Subsidiary'' as limited to SDs and MSPs subject to the Commission's margin requirements (''Covered Swap Entities'' or ''CSEs''), using the term to distinguish non-U.S. CSEs with a U.S. ultimate parent entity from other non-U.S. CSEs. 81 FR at 34826–27. The proposed FCS definition similarly but more broadly distinguishes any non-U.S. person that is consolidated with a U.S. ultimate parent entity from other non-U.S. persons, regardless of whether it is a CSE.

[36] *See* proposed rule § 1.3(aaaaa)(3). *See also* 17 CFR 23.160(a)(6) (defining ''ultimate parent entity'' for purposes of the Cross-Border Margin Rule).

[37] There are two consolidation models. First, entities are subjected to the variable interest entity ('VIE') model. If the VIE model is not applicable, then entities are subjected to the voting interest model. Under the VIE model, a reporting entity has a controlling financial interest in a VIE if it has: (a) The power to direct the activities of the VIE that most significantly affect the VIE's economic performance, and (b) the obligation to absorb losses or the right to receive benefits that could be significant to the VIE. Under the voting interest model, a controlling financial interest generally exists if a reporting entity has a majority voting interest in another entity. In certain circumstances, the power to control may exist when one entity holds less than a majority voting interest (*e.g.,* because of contractual provisions or agreements with other shareholders). *See* Financial Accounting Standards Board, Accounting Standards Codification 810, *Consolidation*.

[38] Cross-Border Margin Rule, 88 FR at 34826–27.

[39] As Moody's Ratings states in a description of its bank assessment methodology, ''most [financial] groups can be expected to support banking entities within their consolidation.'' *See* Moody's Investors Service, Cross-Border Application of the Swap Dealer De Minimis Exception (Sept. 9, 2014) at 66, available at *https://www.moodys.com/microsites/gbrm2014/RFC.pdf*.

[40] The Commission notes that there are some important differences between a U.S. Guaranteed Entity and an FCS. *See* Cross-Border Margin Rule, 81 FR at 34827 (noting that, in contrast to U.S. Guaranteed CSEs, in the event of an FCS's default, the U.S. ultimate parent entity does not have a legal obligation to fulfill the obligations of the FCS. Rather that decision would depend on the business judgment of its parent). *See also supra* note 35 (describing the definition of FCS in the context of the Cross-Border Margin Rule).

A failure to treat these entities the same in this context could provide a U.S. financial group with an opportunity to avoid SD or MSP registration by conducting relevant swap activities through unregistered entities. However, as in the Cross-Border Margin Rule, the Commission would not necessarily treat FCSs the same as a U.S. person (or U.S. Guaranteed Entity) in the context of other Dodd-Frank swap provisions.[41] The Commission also recognizes that other affiliates, even though they are not consolidated with the U.S. ultimate parent entity for accounting purposes, could likewise be distinguished from other non-U.S. persons given the nature of their relationship with the U.S. person and the U.S. market.[42] The Commission believes that the consolidation test provides a workable definition that is tailored to focus on those affiliates that present greater supervisory concerns (relative to other non-U.S. persons).

*Request for Comment.* The Commission seeks comment on all aspects of the Proposed Rule's definition of ''Foreign Consolidated Subsidiary'' including on whether the proposed FCS definition appropriately captures persons that raise greater supervisory concerns relative to other non-U.S. persons whose swap obligations are not guaranteed by a U.S. person. If not, please explain and provide an alternative(s).

## III. ANE Transactions

### *A. Background*

In November 2013, DSIO issued a staff advisory providing that a non-U.S. swap dealer that regularly uses personnel or agents located in the United States to arrange, negotiate, or execute a swap with a non-U.S. person (''Covered Transactions'') would generally be required to comply with the ''Transaction-Level Requirements,'' as the term was used in the Guidance.[43] In January 2014, the Commission published a request for comment on all aspects of the Staff Advisory, including (1) the scope and meaning of the phrase ''regularly arranging, negotiating, or executing'' and what characteristics or factors distinguish ''core, front-office'' activity from other activities; (2) whether the Commission should adopt the Staff Advisory as Commission policy, in whole or in part; and (3) whether substituted compliance should be available for non-U.S. swap dealers with respect to Covered Transactions.[44]

The Commission received seventeen comment letters in response to the Request for Comment.[45] Most commenters challenged the Staff Advisory as inconsistent with CEA section 2(i)[46] or international comity.[47] They emphasized that the risk associated with Covered Transactions lies outside the United States[48] and that non-U.S. swap dealers involve U.S. personnel primarily for the convenience of their global customers.[49] They also characterized the Staff Advisory as impractical or unworkable, describing its key language (''regularly arranging, negotiating, or executing swaps'' and ''performing core, front-office activities'') as vague, open to broad interpretation, and potentially capturing activities that are merely ''incidental'' to the swap transaction.[50] They further argued that if the Staff Advisory were adopted as Commission policy, non-U.S. swap dealers would close U.S. branches and relocate personnel to other countries (or otherwise terminate agency contracts with U.S.-based agents) in order to avoid Dodd-Frank swap regulation or having to interpret and apply the Staff Advisory, thereby increasing market fragmentation.[51]

A few commenters, however, supported the Staff Advisory.[52] They argued that the Commission has jurisdiction over swap activities

[41] Although the proposed rule is focused on the cross-border application of the registration thresholds and external business conduct standards for SD/MSPs, the Commission expects to address how other substantive Dodd-Frank swap requirements (including the trading and clearing mandates and reporting requirements) would apply to FCSs in cross-border transactions in subsequent rulemakings. In doing so, the Commission will give due consideration to whether, and the extent to which, substituted compliance should be made available to FCSs' swap transactions.

[42] In particular, the Commission recognizes that, even absent consolidated financial statements, a U.S. parent entity may, for reputational reasons, determine that they must support their non-U.S. affiliates at times of crisis, with direct risk implications for the U.S. parent and U.S. market.

[43] *See supra* note 10. *See also* Guidance, 78 FR at 45333 (providing that the Transaction-Level Requirements include (i) Required clearing and swap processing; (ii) margining (and segregation) for uncleared swaps; (iii) mandatory trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards).

[44] *See* Request for Comment, 79 FR at 1348–49.

[45] *See* American Bankers Association Securities Association (''ABASA'') (Mar. 10, 2014); Americans for Financial Reform (''AFR'') (Mar. 10, 2014); Barclays Bank PLC (''Barclays'') (Mar. 10, 2014); Chris R. Barnard (''Barnard'') (Mar. 8, 2014); Better Markets Inc. (''Better Markets'') (Mar. 10, 2014); Coalition for Derivatives End-Users (''Coalition'') (Mar. 10, 2014); Commercial Energy Working Group (''CEWG'') (Mar. 10, 2014); European Commission (Mar. 10, 2014); European Securities and Markets Authority (''ESMA'') (Mar. 13, 2014); Institute for Agriculture and Trade Policy (''IATP'') (Mar. 10, 2014); Institute of International Bankers (''IIB'') (Mar. 10, 2014); International Swaps and Derivatives Association, Inc. (''ISDA'') (Mar. 7, 2014); Investment Adviser Association (''IAA'') (Mar. 10, 2014); Japanese Bankers Association (''JBA'') (Mar. 7, 2014); Japan Financial Markets Council (''JFMC'') (Mar. 4, 2014); Securities Industry and Financial Markets Association, Futures Industry Association, and Financial Services Roundtable (''SIFMA/FIA/FSR'') (Mar. 10, 2014); Société Générale (''SG'') (Mar. 10, 2014). The associated comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1452&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1_50.* Although the comment file includes records of 22 comments, five were either duplicate submissions or not responsive to the Request for Comment.

[46] *See, e.g.,* IAA at 2 n.4; IIB at 4–5 (transactions between two non-U.S. persons present no risk to the U.S. financial system and therefore do not have a ''direct and significant'' nexus to U.S. commerce); ISDA at 3–4, 10–13 (challenging the Commission's interpretation of ''direct and significant''); JFMC at 3; SIFMA/FIA/FSR at A–2–A–3 (section 2(i) should be interpreted in light of the Dodd-Frank goal of mitigating risk); SG at 8. *Accord* European Commission (the Staff Advisory does not clearly articulate how the standard it sets out is consistent with section 2(i)).

[47] *See, e.g.,* European Commission at 2 (the unavailability of substituted compliance would seem to depart from the G20 commitment to defer to foreign regulators when appropriate); IIB at 5–6; ISDA at 8–9; IAA at 4 (failure to grant substituted compliance reflects a lack of coordination with foreign regulators, leading to a less efficient use of regulatory resources and the potential for duplicative or conflicting regulations); JFMC at 3; SIFMA/FIA/FSR at A–13.

[48] *See, e.g.,* Barclays at 3 n.11; IIB at 4–5; ISDA at 6–7; SIFMA/FIA/FSR at 2, A–9–A–10; SG at 2 (adopting the Staff Advisory would extend the Commission's regulations ''to swaps whose risk lies totally offshore'' and that do not pose a high risk to the U.S. financial system).

[49] *See, e.g.,* Coalition at 2 (non-U.S. SDs use U.S. personnel to arrange, negotiate, or execute swaps because they have particular subject matter expertise for or due to the location of their clients across time zone); European Commission at 1; IIB at 7–8 n.18; IAA at 2; ISDA at 4; JFMC at 2–3; SIFMA/FIA/FSR at A–4; SG at 3 (a non-U.S. SD may use salespersons in the United States if the Covered Transaction is linked to a USD instrument).

[50] *See, e.g.,* Barclays at 4–5; European Commission at 3 (whether negotiation of a Master Agreement by U.S. middle office staff would trigger application of the Staff Advisory is unclear); IAA at 5 (''[T]he terms 'arranging' and 'negotiating' are overly broad and may encompass activities that are incidental to a swap transaction,'' such as providing market or pricing information); SIFMA/FIA/FSR at A–12 (arranging and negotiating trading relationships and legal documentation are ''middle- and back-office operations'' and should not be included); SG at 7–8 (''regularly'' is an arbitrary concept that cannot be made workable, and programming trading systems to interpret ''arranging, negotiating, or executing'' on a trade-by-trade basis would not be feasible).

[51] *See, e.g.,* ABASA at 2 (adopting the Staff Advisory would ''impose unnecessary compliance burdens on swap market participants, encourage them to re-locate jobs and activities outside the United States to accommodate non-U.S. client demands, and fragment market liquidity''); Coalition at 3 (emphasizing the impact on non-U.S. affiliates of U.S. end users, such as increased hedging costs and reduced access to registered counterparties); IIB at 7–8; ISDA at 4; JFMC at 3; SG at 8–9. *See also* IAA at 3 (expressing concern that non-U.S. clients may avoid hiring U.S. asset managers to avoid application of the Staff Advisory).

[52] *See* AFR; Better Markets; IATP.

occurring inside the United States [53] and expressed concern that the Commission's failure to assert such jurisdiction would create a substantial loophole, allowing U.S. financial firms to operate in the United States without Dodd-Frank oversight by merely routing swaps through a non-U.S. affiliate.[54] They further argued that arranging, negotiating, or executing swaps are functions normally performed by brokers, traders, and salesperson and are ''economically central to the business of swap dealing.'' [55] They added the focus on the ''regular'' use of personnel located in the United States to perform such core dealing activities would exclude ''entirely incidental'' interactions with U.S. personnel from triggering Dodd-Frank oversight.[56]

Commenters that disagreed with the Staff Advisory nevertheless offered a few suggestions for its modification, should the Commission determine to adopt it, including offering substituted compliance for Covered Transactions [57] or otherwise limiting the scope of applicable requirements.[58] Certain commenters, for instance, recommended that the applicable requirements be limited to pre-trade disclosure requirements (*e.g.,* disclosure of material information), arguing that applying relationship-wide external business conduct rules would require wholesale amendments to relationship documentations even where the specific communication is not material to the overall trading relationship.[59]

*B. Commission's Views Regarding ANE Transactions*

After considering the views of commenters on the Staff Advisory in response to the Commission's Request for Comment, the Commission is setting forth its views on whether persons engaged in ANE transactions or transactions arising from this activity fall within the scope of the Dodd-Frank Act. The Commission's analysis is guided by the definition of ''swap dealer'' under the CEA and Commission regulations.

Under both the CEA and Commission regulations, whether a person is a ''swap dealer'' is a functional test that focuses on whether the person engages in particular types of activities involving swaps.[60] In general, the swap dealer definition encompasses persons that engage in any of the following types of activity: (1) Holding oneself out as a dealer in swaps; (2) making a market in swaps; (3) regularly entering into swaps with counterparties as an ordinary course of business for one's own account; or (4) engaging in any activity causing oneself to be commonly known in the trade as a dealer or market maker in swaps.[61] Commission regulations further define the term to include specific activities indicative of acting as a swap dealer, such as (1) providing liquidity by accommodating demand for or facilitating interest in the swap, holding oneself out as willing to enter into swaps, or being known in the industry as being available to accommodate demand for swaps; (2) advising a counterparty as to how to use swaps to meet the counterparty's hedging goals, or structuring swaps on behalf of a counterparty; (3) having a regular clientele and actively advertising or soliciting clients in connection with swaps; (4) acting in a market maker capacity on an organized exchange or trading system for swaps, and (5) helping to set the prices offered in the market rather than taking those prices, although the fact that a person regularly takes the market price for its swaps does not foreclose the possibility that the person may be a swap dealer.[62] Neither the statutory definition of ''swap dealer'' nor the Commission's further definition of that term turns solely on risk to the U.S. financial system. Consistent with the focus of the ''swap dealer'' definition on a person's activity, the Commission does not believe that the location of counterparty credit risk associated with a dealing swap—which, as discussed above, is easily and often frequently moved across the globe—should be determinative of whether a person's dealing activity falls within the scope of the Dodd-Frank Act or whether the Commission has a regulatory interest in the dealing activity. The appropriate inquiry also considers whether a non-U.S. person is engaged in the United States in any of the indicia of dealing activity set forth in the definition of ''swap dealer.''

In the Commission's view, and as further explained below, arranging, negotiating, or executing swaps are functions that fall within the scope of the ''swap dealer'' definition. That the counterparty risks may reside primarily outside the United States is not determinative. To the extent that a person uses personnel located in the United States (whether its own personnel or personnel of an agent) to arrange, negotiate, or execute its swap dealing transactions, the Commission believes that such person is conducting a substantial aspect of its swap dealing activity within the United States and therefore, falls within the scope of the Dodd-Frank Act.

The Commission further believes that to the extent that ANE transactions raise regulatory concerns of the type that the Dodd-Frank Act is intended to address, applying specific Dodd-Frank swap requirements to ANE transactions may be appropriate. In establishing a comprehensive regulatory regime for swaps under the Dodd-Frank Act, Congress intended to advance several

[53] *See* AFR at 2 (CEA section 2(i) clearly sets the statutory jurisdiction of CFTC rules to include all activities conducted inside the United States); Better Markets at 3 (the Staff Advisory ''represents the only reasonable interpretation of Congress's mandate to regulate swaps transactions with a 'direct and significant connection with activities in, or effect on, commerce of the United States'''); IATP at 1 (''It should be self-evident that the swaps activities in the United States of non-U.S. persons fall under the Commission's jurisdiction.'').

[54] *See* AFR at 3 (failure to adopt the Staff Advisory ''could mean that U.S. firms operating in the U.S. would face different rules for the same transactions as compared to competitor firms also operating in the very same market and location, perhaps literally next door, who had arranged to route transactions through a nominally foreign subsidiary''); Better Markets at 3 (allowing registered swap dealers to book transactions overseas but otherwise handle the swap inside the United States would ''create a gaping loophole,'' resulting in ''keystroke off-shoring of the bookings, but otherwise the on-shoring of the core activities associated with the transaction'').

[55] *See* AFR at 2–3, 5; Better Markets at 5 (brokers, structurers, traders, and salesmen ''collectively comprise the general understanding of the core front office'').

[56] *See* AFR at 2–3, 5 (terms '''arranging, negotiating, or executing' would appear to exclude purely clerical and incidental functions such as notating or recording the sale of a swap for consolidated risk management or bookkeeping purposes''). *See also id.* at 5 (definition of ''regularly'' should be tied to an expectation that U.S. personnel are available on request to arrange, negotiate, and execute swaps).

[57] *See, e.g.,* Coalition at 5; ESMA at 1; IAA at 3–4; ISDA at 9–10; SIFMA/FIA/FSR at A–13, SG at 6–7.

[58] *See, e.g.,* Barclays at 3 n.11 (transaction-level requirements focused on risk mitigation, market integrity, or transparency should not apply to Covered Transactions); Barnard at 2 (transaction-level requirements should not apply to Covered Transactions with non-U.S. counterparties that are not guaranteed or conduit affiliates); IIB at 9–10.

[59] *See, e.g.,* Barclays at 3 (''Applying the pre-trade disclosure requirements promotes the Commission's interests in regulating activities of U.S. based personnel or agents of Commission registered entities and in protecting counterparties. Such concerns may be raised by the activities of such individuals even if the risk arising from those swaps transactions is borne by entities outside the United States.''); IIB at 10–12 (''Non-U.S. counterparties may reasonably expect the protection of the sales practice rules applicable in the jurisdiction of the personnel responsible for committing the non-U.S. swap dealer to the swap.''); SIFMA/FIA/FSR at A–10–A–12 (''[O]nly direct communications by personnel located in the United States with counterparties that commit the SD to the execution of the transaction should trigger application of the requirements under the Staff Advisory.'' (Emphasis omitted)).

[60] *See* 7 U.S.C. 1a(49); 17 CFR 1.3(ggg); Entities Rule, 77 FR at 30598.

[61] *See* Entities Rule, 77 FR at 30597; 7 U.S.C. 1a(49)(A); 17 CFR 1.3(ggg)(1).

[62] *See* Entities Rule, 77 FR at 30608.

fundamental policy objectives, including reducing risk, increasing market transparency and promoting market integrity within the financial system. A person that, in connection with its dealing activity, engages in market-facing activity using personnel located in the United States is conducting a substantial aspect of its dealing business in the United States.[63] Even if the financial risks are borne by entities residing outside the United States, this activity indicates a level of involvement, and intention to participate, in the U.S. swap market that may raise concerns regarding customer protection, market transparency and financial contagion intended to be addressed by the Dodd-Frank Act. Accordingly, it would undermine the policy objectives of the Dodd-Frank Act to deem persons that, in connection with their dealing activity, engage in ANE transactions or transactions arising from this activity to fall entirely outside the scope of the Dodd-Frank Act solely because the transactions involve two non-U.S. counterparties.

In making a determination as to whether a particular Dodd-Frank swap requirement (including those specifically applicable to swap dealers) should apply to an ANE transaction, the Commission would consider the extent to which the underlying regulatory objectives would be advanced in light of other policy considerations, including the potential for undue market distortions and international comity. As indicated above, the Proposed Rule addresses the application of the SD registration threshold and external business conduct standards to ANE transactions. The Commission intends to address application of other Dodd-Frank swap requirements to ANE transactions in subsequent cross-border rulemakings as necessary and appropriate.

*C. Proposed Interpretation Regarding the Scope of ANE Transactions*

For purposes of the proposed rule, the Commission uses the terms ''arrange'' and ''negotiate'' to refer to market-facing activity normally associated with sales and trading, as opposed to internal, back-office activities, such as ministerial or clerical tasks, performed by personnel not involved in the actual sale or trading of the relevant swap.[64] Accordingly, the terms would not encompass activities such as swap processing, preparation of the underlying swap documentation (including negotiation of a master agreement and related documentation), or the mere provision of research information to sales and trading personnel located outside the United States. In line with Commission precedent, ''executed'' would refer to the market-facing act of becoming legally and irrevocably bound to the terms of the transaction under applicable law.[65]

In applying the proposed rule, the Commission would look to the activities of personnel assigned to (on an ongoing or temporary basis) or regularly working in a U.S. location.[66] Such personnel may be working directly for the dealing entity itself or a third-party that is acting for or on behalf of (*i.e.,* as an agent of) the dealing entity, including a U.S. affiliate of the dealing entity. The proposed definition would also include the market-facing activity of personnel normally associated with sales and trading even if the personnel are not formally designated as sales persons or traders. As an anti-evasionary measure, a transaction would be viewed as falling within the scope of the Dodd-Frank Act if personnel located in the United States direct other personnel to arrange, negotiate, or execute the transaction for or on behalf of a dealing entity.

Swap transactions arranged, negotiated, or executed by personnel located in the United States implicate the Commission's supervisory interests regardless of the reason such U.S. personnel were involved. For example, a swap would not fall outside the scope of the Dodd-Frank Act because a counterparty sought to enter into the swap outside of its jurisdiction's regular trading hours. Additionally, the Commission believes permitting such an exception would only incentivize dealing entities to wait until after hours to enter into a swap, creating the potential for a substantial loophole.

Finally, as the SEC noted in its cross-border rulemaking addressing ANE transactions, the Commission would not view a swap as falling outside the scope of the ANE transactions solely as a result of algorithmic trading.[67] That is, a swap transaction involving algorithmic trading could be viewed as having been arranged, negotiated, or executed using personnel located in the United States if such personnel specify the trading strategy or techniques carried out through algorithmic trading or automated electronic execution of swaps.[68] Therefore, performance of such activity by personnel located in the United States may fall within the scope of the Dodd-Frank Act and trigger the application of certain swap requirements thereunder.

The Commission's proposed approach to the determination of when a swap is an ANE transaction reflects its consideration of the comments received in response to the Request for Comment and is generally aligned with the SEC's approach to this determination in the context of security-based swaps.[69] In response to commenters and in the interest of aligning with the SEC, to the extent that the proposed rule applies to ANE transactions, application of the proposed rule would not be limited to swaps ''regularly'' arranged, negotiated, or executed using U.S. personnel. Accordingly, a dealing entity may need to establish operational structures to identify swaps for which relevant personnel performing market-facing activity in connection with the transaction are located in the United States. The Commission believes, however, that the proposed rule's focus on personnel assigned to or regularly working in a U.S. location would exclude incidental activity and mitigate the burden of such an analysis, as the Commission expects that market

[63] As discussed above, the financial group affiliate may use the trading desk of an affiliate that possesses expertise in relevant products or personnel of an affiliate with an established client network in relevant market hubs. The financial group affiliate may also use the personnel of an unaffiliated agent to conduct its swap dealing activity, typically where it is seeking to trade anonymously or to provide clients with access to market hubs where it does not have its own operation.

[64] A swap transaction may be ''arranged'' by personnel located in the United States regardless of whether the counterparty initiated the transaction or whether the counterparty's business was solicited.

[65] *Cf.* 17 CFR 23.200(e) (defining ''execution'' to mean an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law); 23.200(d) (further defining ''executed'' to mean the completion of the execution process).

[66] The Proposed Rule would accordingly not capture the activities of personnel assigned to a non-U.S. location if such personnel are only incidentally present in the United States when they arrange, negotiate, or execute a transaction (*e.g.,* an employee of a non-U.S. person happens to be traveling within the United States to attend a conference). Nor would the Proposed Rule include a transaction solely on the basis that a U.S.-based attorney is involved in negotiations regarding the terms of the transaction.

[67] *See* Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception, 81 FR 8598, 8623 (Feb. 19, 2016) (''SEC ANE Rule''). The Commission would also not view a swap as falling outside the scope of ANE transactions because it resulted from automated electronic execution.

[68] The activities or location of personnel responsible solely for coding the algorithm, however, as opposed to specifying the trading strategy or techniques that the algorithm is to follow, would not be relevant.

[69] *See supra* note 67.

participants have means of identifying personnel involved in market-facing activity, either for regulatory compliance purposes or to facilitate compensation.[70] The Commission further expects that, to the extent that the Proposed Rule applies to ANE transactions, additional burdens on potential SDs could be reduced given that the Commission's proposed approach to determining whether a swap falls within the scope of ANE transactions is substantively identical to the SEC's approach to ANE transactions.[71]

The Commission's treatment of ANE transactions is intended to capture activity that raises a substantial regulatory interest while still promoting a framework that is clear and workable for market participants. By focusing on market-facing activity carried out by personnel located in the United States, the Commission believes its interpretation adequately captures the Commission's inherently strong regulatory interest in dealing activity occurring within its jurisdiction while enabling market participants to apply the definition in a relatively efficient manner.

*Request for Comment.* The Commission invites comment on all aspects of the Proposed Rule, including the following:

1. The Commission invites comment on whether its interpretation of ANE transactions is appropriately tailored to capture activity that raises a substantial regulatory interest and sufficiently clear and workable for market participants. Is the Commission's focus on and discussion of market-facing activity understandable and effective in excluding activities that are merely incidental to the swap transaction? Will the Commission's interpretation pose any operational challenges? Please explain and provide specific recommendations for modifications or clarifications.

2. Under what other circumstances, if any, should the Commission determine that U.S. personnel are directing a system for the algorithmic trading within the scope of its interpretation of ANE transactions?

## IV. Cross-Border Application of the Swap Dealer Registration Threshold

In accordance with CEA section 1a(49)(D), the Commission has exempted from designation as an SD any entity that engages in a de minimis quantity of swap dealing with or on behalf of its customers.[72] Specifically, Commission regulation 1.3(ggg)(4) provides that a person shall not be deemed to be an SD as a result of its swap dealing activity involving counterparties unless, during the preceding 12 months, the aggregate gross notional amount of the swap positions connected with those dealing activities exceeds the de minimis threshold.[73] Commission regulation 1.3(ggg)(4) further requires that, in determining whether its swap dealing activity exceeds the de minimis threshold, a person must include the aggregate notional value of the swap positions connected with the dealing activities of its affiliates under common control (''aggregation requirement'').[74]

The Commission is now proposing rules to address how the de minimis threshold should apply to the cross-border swap dealing transactions of U.S. and non-U.S. persons.[75] Specifically, the proposed rule identifies when a potential SD's cross-border dealing activities should be included in its de minimis calculation and when they may properly be excluded. As discussed in the sections below, whether a potential SD would include a particular swap in its de minimis calculation would depend on whether the potential SD is classified as either a U.S. person or a non-U.S. person whose obligations under the relevant swap are guaranteed by a U.S. person (''U.S. Guaranteed Entity'')[76] (section A); a Foreign Consolidated Subsidiary (section B); or a non-U.S. person that is neither an FCS nor a U.S. Guaranteed Entity (''Other Non-U.S. Person'') (section C). Section D addresses the cross-border application of the aggregation requirement. Section E provides an overall summary of the Commission's proposed approach. If adopted, the Proposed Rule would supersede the Guidance with respect to the cross-border application of the SD de minimis threshold.

In developing the proposed cross-border approach to applying the SD and MSP registration thresholds,[77] the Commission attempted to target those entities that—due to the nature of their relationship with a U.S. person or U.S. financial market—most directly implicate the purposes of the Dodd-Frank registration scheme. The proposed rule is also designed to apply the registration thresholds in a consistent manner to differing organizational structures that serve similar economic functions so as to avoid creating substantial regulatory loopholes. At the same time, the Commission is mindful of the impact of its choices on market efficiency and competition, as well as the importance of international comity when exercising the Commission's authority. The Commission believes that the proposed rule reflects a measured approach that advances the goals underlying the SD and MSP registration schemes, consistent with the Commission's

[70] Dealing entities may also facilitate their compliance by establishing appropriate policies and procedures, including by requiring dealing activity to be arranged, negotiated, and executed by personnel located outside the United States.

[71] One commenter on the SEC's proposed approach, which closely tracked its final rule, observed that it created ''a definable standard that will bring clarity to the application of security-based swap requirements to security-based swap dealers, and is appropriate and consistent with the expectations of the parties as to when U.S. security-based swap requirements will apply.'' SIFMA/FSR (SEC July 13, 2015) at 2 (stating also that the commenters ''strongly believe that the Commission has taken the correct approach in focusing on market-facing activity of sales and trading personnel in defining the 'arrange, negotiate, or execute' nexus that subjects security-based swap activity to the Commission's regulations based on location of conduct'').

[72] *See* 7 U.S.C. 1a(49)(D) (directing the Commission to establish a de minimis exception from the SD definition). *See also* 17 CFR 1.3(ggg)(4); Entities Rule, 77 FR 30596.

[73] *See* 17 CFR 1.3(ggg)(4)(i)(A). The de minimis threshold is currently set at a phase-in level of $8 billion, with an ultimate threshold of $3 billion. Pursuant to Commission regulation 1.3(ggg)(4)(ii), following publication of a staff report on the de minimis exception, the Commission may either terminate the phase-in level, and thereby institute the $3 billion threshold, or propose an alternative threshold through rulemaking. *See* 17 CFR 1.3(ggg)(4)(ii). Commission staff published for public comment a preliminary report on the de minimis exception in November 2015, with comments due by January 19, 2016. *See* Swap Dealer De Minimis Exception Preliminary Report (Nov. 18, 2015), available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.* The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1634.* Note that Commission regulation 1.3(ggg)(4) also contains separate de minimis exceptions related to transactions in which the counterparty is a ''special entity'' or ''utility special entity.'' *See* 17 CFR 1.3(ggg)(4)(i)(A)–(B). *See also* 17 CFR 1.3(ggg)(6) (identifying swaps that are not considered in determining whether a person is a swap dealer).

[74] *See* 17 CFR 1.3(ggg)(4)(i)(A). For purposes of the Proposed Rule, the Commission construes ''affiliates under common control'' by reference to the Entities Rule, which defined control as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. *See* 77 FR at 30631 n.437. Accordingly, any reference in the Proposed Rule to ''affiliates under common control'' with a person would include affiliates that are controlling, controlled by, or under common control with such person.

[75] *See* proposed rule § 1.3(ggg)(7).

[76] The preamble of this release uses the term ''U.S. Guaranteed Entity'' for convenience only. Whether a non-U.S. person would be considered a U.S. Guaranteed Entity would vary on a swap-by-swap basis, such that a non-U.S. person may be considered a U.S. Guaranteed Entity for one swap and not another, depending on whether the non-U.S. person's obligations under the swap are guaranteed by a U.S. person.

[77] *See* section V, *infra,* for a discussion of the Commission's proposed cross-border approach to applying the MSP registration thresholds.

statutory authority, while mitigating market distortions and inefficiencies.

*A. U.S. Persons and U.S. Guaranteed Entities*

Under the Proposed Rule, a U.S. person would include all of its swap dealing transactions in its de minimis threshold calculation without exception. As discussed in section II.A above, the term ''U.S. person'' encompasses a person who, by virtue of being domiciled or organized in the United States (or in the case of the unlimited U.S. responsibility prong, because U.S. person owner(s) serve as a financial backstop for all of the legal entity's obligations and liabilities), raises the concerns intended to be addressed by the Dodd-Frank Act, regardless of the U.S. person status of its counterparty. Additionally, a person's status as a U.S. person would be determined at the entity level and thus a U.S. person would include the swap dealing activity of foreign branches or operations that are part of the same legal person. The Commission notes that the proposed rule's requirement that a U.S. person include all of its swap dealing transactions in its de minimis calculation is consistent with the Guidance.[78]

The proposed rule would also require a non-U.S. person that is not an FCS to include in its de minimis calculation swap dealing transactions with respect to which it is a U.S. Guaranteed Entity. The Commission believes that this result is appropriate because the swap of a non-U.S. person whose swap obligations are guaranteed by a U.S. person is identical, in relevant aspects, to a swap entered into directly by a U.S. person.[79] As a result of the guarantee, the U.S. guarantor bears risk arising out of the swap as if it had entered into the swap directly. The U.S. guarantor's financial resources in turn enable the non-U.S. affiliate to engage in dealing activity, because the affiliate's counterparties will look to both the U.S. Guaranteed Entity and its U.S. guarantor to ensure performance of the swap. Absent the guarantee from the U.S. person, a counterparty may choose not to enter into the swap or may not do so on the same terms. In this way, the U.S. Guaranteed Entity and the U.S. guarantor effectively act together to engage in the dealing activity.

Furthermore, treating U.S. Guaranteed Entities differently from U.S. persons could create a substantial regulatory loophole, incentivizing U.S. persons to conduct their dealing business with non-U.S. counterparties through non-U.S. affiliates, with a U.S. guarantee, to avoid application of the Dodd-Frank swap dealer requirements. Allowing transactions that have a similar economic reality with respect to U.S. commerce to be treated differently depending on how the parties structure their transactions could undermine the effectiveness of the Dodd-Frank swap provisions and related Commission regulations. Applying the same standard to similar transactions instead helps to limit those incentives and regulatory implications.

*B. Foreign Consolidated Subsidiaries*

Under the proposed rule, a Foreign Consolidated Subsidiary would include all of its swap dealing transactions in its de minimis threshold calculation, without exception.[80] The Commission believes that the swap dealing transactions of an FCS should be treated in the same manner as swap dealing transactions of a U.S. person (and U.S. Guaranteed Entity) for purposes of the de minimis threshold calculation, given the nature of the relationship between the FCS and its U.S. ultimate parent entity. As discussed in section II.B. above, an FCS is under the financial control of its U.S. ultimate parent entity. Further, by virtue of consolidated reporting under U.S. GAAP, the swap activity of an FCS creates a direct risk for the U.S. ultimate parent entity. The Commission is also concerned that offering FCSs disparate treatment compared to U.S. persons could incentivize U.S. entities to conduct swap activities with non-U.S. counterparties through consolidated non-U.S. subsidiaries in order to avoid application of the Dodd-Frank Act SD requirements, creating the potential for a substantial regulatory loophole.

*C. Other Non-U.S. Persons*

Under the proposed rule, whether an Other Non-U.S. Person would include a particular swap in its de minimis calculation would depend on the status of the counterparty. Specifically, as further explained below, an Other Non-U.S. Person would be required to include in its de minims threshold calculation its dealing activities with U.S. Persons, U.S. Guaranteed Entities, and FCSs, but not with Other Non-U.S. Persons (''Other Non-U.S. counterparties''). Additionally, Other Non-U.S. Persons would not be required to include in their de minimis threshold calculation any transaction that is executed anonymously on a swap execution facility (''SEF''), designated contract market (''DCM''), or foreign board of trade (''FBOT'') and cleared through a registered or exempt derivatives clearing organization (''DCO'').

1. U.S. Counterparties that are U.S. Persons or U.S. Guaranteed Entities

Under the proposed rule, an Other Non-U.S. Person would generally include in its de minimis calculation all swap dealing transactions with U.S. counterparties, subject to the exception for transactions executed anonymously on a SEF, DCM, or FBOT and cleared (discussed in section 4 below). As a general rule, the Commission believes that all potential SDs should include in their de minimis calculations any swap with a U.S. counterparty.[81] As discussed in section II.A. above, the term ''U.S. person'' encompasses persons that inherently raise the concerns intended to be addressed by the Dodd-Frank Act regardless of the U.S. person status of their counterparty. In the event of a default or insolvency of an Other Non-U.S. SD with more than a de minimis level of swap dealing, the SD's U.S. counterparties could be adversely affected. A credit event, including funding and liquidity problems, downgrades, default or insolvency at an Other Non-U.S. Person SD could therefore have a direct adverse impact on its U.S. counterparties, which could in turn create the risk of disruptions to the U.S. financial system.

The Commission notes that the proposed rule's requirement that an Other Non-U.S. Person include in its de minimis calculation all swap dealing

[78] *See* Guidance, 78 FR at 45326.

[79] For purposes of this proposed rulemaking, ''guarantee'' has the same meaning as defined in Commission regulation 23.160(a)(2) (cross-border application of the Commission's margin requirements for uncleared swaps), except that application of the proposed definition of ''guarantee'' would not be limited to uncleared swaps. Under this definition, a ''guarantee'' would include arrangements, pursuant to which one party to a swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the swap. For these purposes, a party to a swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the swap. This ''guarantee'' definition also encompasses any arrangement pursuant to which the guarantor itself has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the swap. *See* Cross-Border Margin Rule, 81 FR 34818.

[80] To the extent that a non-U.S. person is both an FCS and a U.S. Guaranteed Entity with respect to a particular swap, the non-U.S. person would only be required to include the swap in its SD de minimis calculation once. *See* proposed rule § 1.3(ggg)(7).

[81] As discussed above, the definition of ''U.S. person'' includes any foreign branch. *See* proposed rule § 1.3(aaaaa)(5)(iii), (vi) (defining ''U.S. person'' to include ''any branch of the legal entity'').

transactions with U.S. person counterparties (subject to the exception for swaps executed anonymously on a SEF, DCM, or FBOT and cleared, discussed in section 4 below) is largely consistent with the Guidance, except with respect to the treatment of swaps with foreign branches of U.S. SDs. Under the Guidance, a non-U.S. person that is not a ''guaranteed affiliate'' or a ''conduit affiliate'' (as those terms are interpreted in the Guidance) [82] would generally include in its de minimis threshold calculations all swap transactions with counterparties that are U.S. persons, except transactions with foreign branches of U.S. SDs.[83] This exception was primarily driven by concerns that, absent such an exception, non-U.S. counterparties would avoid transacting with U.S. SDs.[84]

Upon further consideration, however, the Commission believes that incorporating a similar exception into the proposed rule could create a substantial regulatory loophole. As discussed above, a foreign branch is an integral part of a U.S. person, such that a transaction involving a foreign branch of a U.S. SD poses risk to the U.S. SD itself and, consequently, the U.S. financial system. Allowing Other Non-U.S. Persons to engage in potentially unlimited swap dealing with foreign branches of U.S. SDs without having to register as SDs could therefore result in a substantial amount of dealing activity with U.S. counterparties occurring outside the comprehensive Dodd-Frank swap regime, undermining the effectiveness of the proposed rule.

Under the proposed rule, an Other Non-U.S. Person would also include in its de minimis threshold calculation swap dealing transactions with a non-U.S. person that is a U.S. Guaranteed Entity, subject to an exception for transactions executed anonymously on a SEF, DCM, or FBOT and cleared.[85] The Commission notes that the guarantee of a swap is an integral part of the swap and that, as discussed above, counterparties may not be willing to enter into a swap with a U.S. Guaranteed Entity in the absence of the guarantee. The Commission also recognizes that, given the highly-integrated corporate structures of global financial groups described above, financial groups may elect to conduct their swap dealing activity in a number of different ways, including through a U.S. person or through a non-U.S. affiliate that benefits from a recourse guarantee from a U.S. person. Therefore, in order to avoid creating a substantial regulatory loophole, the Commission believes that swaps of an Other Non-U.S. Person with a U.S. Guaranteed Entity should receive the same treatment as swaps with a U.S. person and should therefore be included in the Other Non-U.S. Person's SD de minimis calculation. If Other Non-U.S. Persons were not required to include such transactions in their SD de minimis threshold calculations, they could engage in a significant level of swap dealing activity with U.S. Guaranteed Entities without being required to register as SDs. Treating swaps of Other Non-U.S. Persons with U.S. Guaranteed Entities differently than their swaps with U.S. persons could thereby undermine the effectiveness of the Dodd-Frank swap provisions and related Commission regulations.

2. Counterparties That Are FCSs

Under the proposed rule, an Other Non-U.S. Person would include in its de minimis threshold calculation swap dealing transactions with a non-U.S. person that is an FCS, subject to an exception for transactions executed anonymously on a SEF, DCM, or FBOT and cleared. As discussed above, the default or insolvency of an Other Non-U.S Person could have a direct adverse effect on an FCS, which through the interconnection to its U.S. ultimate parent, could have knock-on effects, potentially leading to disruptions to the U.S. financial system. The Commission believes that such risk would be significant to the extent that the Other Non-U.S. Person's dealing activities with FCSs, U.S. persons and U.S. Guaranteed Entities [86] exceed the de minimis threshold.

3. Other Non-U.S. Counterparties

Under the proposed rule, an Other Non-U.S. Person would not include in its de minimis calculation its swap dealing transactions with an Other Non-U.S. Person. This approach reflects the Commission's recognition of foreign jurisdictions' strong supervisory interest in the swap transactions between Other Non-U.S. Persons, both of which are domiciled and operate abroad. Consistent with comity principles, the Commission believes that it would be appropriate to except this class of swap transactions from counting against the de minimis threshold.

Further, the proposed rule would not require an Other Non-U.S. Person to include a swap transaction with an Other Non-U.S. Person counterparty in its de minimis threshold calculation even if the swap is arranged, negotiated, or executed by personnel located in the United States. Although, as stated above, a non-U.S. person that engages in ANE transactions is performing dealing activity in the United States, the Commission preliminarily does not believe that requiring Other Non-U.S. Persons to include ANE transactions in their de minimis threshold calculations would be necessary to advance the policy objectives of the Dodd-Frank swap regime when taking the proposed rule in context. In particular, the Commission preliminarily believes that the proposal to require FCSs to include all of their swap dealing transactions in their de minimis threshold calculations would capture a substantial portion of dealing activity engaged in by non-U.S. persons in which the Commission has a strong regulatory interest, such that the level of ANE transactions engaged in by Other Non-U.S. Persons may be comparatively insignificant. Additionally, Other Non-U.S. Persons that engage in ANE transactions could either be registered already by virtue of their swap transactions with U.S. persons or, if the proposed rule is adopted, be required to register as SDs by virtue of their swap transactions with U.S. persons, U.S. Guaranteed Entities or FCSs.

4. Swaps Executed Anonymously on a SEF, DCM, or FBOT and Cleared

The Commission believes that when an Other Non-U.S. Person enters into a swap that is executed anonymously on a registered SEF, DCM, or FBOT and the swap is cleared through a registered or exempt DCO, the Other Non-U.S. Person may exclude the swap from its de minimis threshold calculation.[87] The Commission recognizes that, under these circumstances, the Other Non-U.S. Person would not have the necessary information about its counterparty to determine whether the swap should be included in its de minimis threshold calculation. The Commission therefore believes that in this case the practical

[82] *See* Guidance, 78 FR at 45318, n.257–58. The Guidance uses the terms ''conduit affiliate'' and ''affiliate conduit'' interchangeably.

[83] *See id.* at 45318–19.

[84] *See id.* at 45324.

[85] To the extent that the swap is with a non-U.S. counterparty that is both an FCS and a U.S. Guaranteed Entity with respect to a particular swap, the Other Non-U.S. Person would only be required to include the swap in its SD de minimis calculation once. *See* proposed rule § 1.3(ggg)(7).

[86] *Id.*

[87] The Commission clarifies that an Other Non-U.S. Person would also be able exclude from its de minimis threshold calculation any swap that is executed anonymously on a foreign trading platform that is subject to relief from the requirement to register as a SEF or DCM, provided the swap is cleared through a registered or exempt DCO.

difficulties make it reasonable for the swap to be excluded altogether.[88]

*D. Aggregation Requirement*

As stated above, Commission regulation 1.3(ggg)(4) requires that, in determining whether its swap dealing transactions exceed the de minimis threshold, a person must include the aggregate notional value of any swap dealing transactions entered into by its affiliates under common control. Consistent with CEA section 2(i), the Commission interprets the aggregation requirement in Commission regulation 1.3(ggg)(4) in a manner that applies the same aggregation principles to all affiliates in a corporate group, whether they are U.S. or non-U.S. persons. Accordingly, under the proposed rule, a potential SD, whether a U.S. or non-U.S. person, would aggregate all swaps connected with its dealing activity with those of persons controlling, controlled by, or under common control with [89] the potential SD to the extent that these affiliated persons are themselves required to include those swaps in their own de minimis thresholds, unless the affiliated person is itself a registered SD. The Commission notes that this interpretation, which mirrors the approach taken in the Guidance,[90] ensures that the aggregate notional value of applicable swap dealing transactions of all such unregistered U.S. and non-U.S. affiliates does not exceed the de minimis level.

Stated in general terms, the Commission interprets the aggregation requirement to allow both U.S. persons and non-U.S. persons in an affiliated group to engage in swap dealing activity up to the de minimis threshold. When the affiliated group meets the de minimis threshold in the aggregate, one or more affiliate(s) (a U.S. affiliate or a non-U.S. affiliate) would have to register as an SD so that the relevant swap dealing activity of the unregistered affiliates remains below the threshold. The Commission recognizes the borderless nature of swap dealing activities, in which a dealer may conduct swap dealing business through its various affiliates in different jurisdictions, and believes that this interpretation would address the concern that an affiliated group of U.S. and non-U.S. persons engaged in swap dealing transactions with a significant connection to the United States may not be required to register solely because such swap dealing activities are divided among affiliates that all individually fall below the de minimis threshold.

*E. Summary*

In summary, under the proposed rule, in making its de minimis calculation:

- A U.S. person would include all of its swap dealing transactions.
- A non-U.S. person would include all swap dealing transactions with respect to which it is a U.S. Guaranteed Entity.
- A Foreign Consolidated Subsidiary would include all of its swap dealing transactions.
- An Other Non-U.S. Person would include all of its swap dealing transactions with counterparties that are U.S. persons, U.S. Guaranteed Entities, or FCSs, unless the swap is executed anonymously on a registered SEF, DCM, or FBOT and cleared. It would not, however, include any of its swap dealing transactions with Other Non-U.S. Persons, even if they constitute ANE transactions.
- All potential SDs, whether U.S. or non-U.S. persons, would aggregate their swap dealing transactions with those of persons controlling, controlled by, or under common control with the potential SD to the extent that those affiliates are themselves required to include those swaps in their own de minimis thresholds, unless the affiliated person is a registered SD.

*Request for Comment.* The Commission invites comment on all aspects of Proposed Rule, including the following:

1. The Commission invites comment on the appropriateness, necessity, and potential impact of requiring Other Non-U.S. Persons to include ANE transactions in their de minimis threshold calculations. Should the Commission further harmonize with the SEC by requiring Other Non-U.S. Persons to include ANE transactions in their de minimis threshold calculations? [91] What effect would a determination not to impose such a requirement have on market liquidity and competitiveness? To what degree would U.S. swap dealers be adversely affected? Would a determination not to impose such a requirement create a substantial loophole or otherwise expose the U.S. financial system to unregulated risk? Do ANE transactions conducted by Other Non-U.S. Persons, particularly those not currently registered as SDs by virtue of their transactions with U.S. persons, form a significant segment of the U.S. swap market? The Commission is particularly interested in data or estimates regarding the current level of ANE transactions entered into by Other Non-U.S. Persons, including whether and how many Other Non-U.S. Persons that are not currently registered as SDs would exceed the current de minimis threshold as a result of being required to include ANE transactions in their de minimis threshold calculations.

2. The Commission invites comment on whether and to what extent the Proposed Rule should incorporate certain exceptions for non-U.S. persons that were included in the Guidance.[92] Specifically, should the proposed rule permit Other Non-U.S. Persons to exclude from their de minimis threshold calculations:

a. Swap transactions with foreign branches of U.S. SDs? If so, why and how should the Commission interpret the term ''foreign branch of a U.S. swap dealer'' (*e.g.,* consistent with the Guidance,[93] consistent with the SEC's definitions of ''foreign branch'' and ''transaction conducted through a foreign branch'' in Exchange Act rules,[94] or an alternative approach)?

[88] The Commission also believes that when an Other Non-U.S. Person clears a swap through a registered or exempt DCO, such Other Non-U.S. Person would not have to include the resulting swap (*i.e.,* the novated swap) in its de minimis threshold calculation. A swap that is submitted for clearing is extinguished upon novation and replaced by new swap(s) that result from novation. *See* Commission regulation 39.12(b)(6). *See also* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69361 (Nov. 8, 2011). Where a swap is created by virtue of novation, such swap does not implicate swap dealing, and therefore it would not be appropriate to include such swaps in determining whether a non-U.S. person should register as an SD.

[89] The Commission clarifies that for this purpose, the term ''affiliates under common control'' would include parent companies and subsidiaries.

[90] *See* 78 FR at 45323.

[91] *See* SEC ANE Rule, 81 FR at 8621.

[92] *See* 78 FR at 45324 (providing that non-U.S. persons that are not guaranteed or conduit affiliates would generally not count toward their de minimis threshold calculations their swap dealing transactions with (i) a foreign branch of a U.S. swap dealer, (ii) a guaranteed affiliate of a U.S. person that is a swap dealer, and (iii) a guaranteed or conduit affiliate that is not a swap dealer and itself engages in de minimis swap dealing activity and which is affiliated with a swap dealer).

[93] *See id.* at 45328–31 (discussing the scope of the term ''foreign branch'' and Commission's consideration of whether a swap is with a foreign branch of a U.S. bank).

[94] The SEC defined the term ''foreign branch'' in Exchange Act rule 3a71–3(a)(2), 17 CFR 240.3a71–3(a)(2), to mean any branch of a U.S. bank if (i) the branch is located outside the United States; (ii) the branch operates for valid business reasons; and (iii) the branch is engaged in the business of banking and is subject to substantive banking regulation in the jurisdiction where located. The SEC defined the term ''transaction conducted through a foreign branch'' in Exchange Act rule 3a71–3(a)(3), 17 CFR 240.3a71–3(a)(3), to mean a security-based swap transaction that is arranged, negotiated, and executed by a U.S. person through a foreign branch of such U.S. person if (A) the foreign branch is the counterparty to such security-based swap transaction; and (B) the security-based swap transaction is arranged, negotiated, and executed on behalf of the foreign branch solely by persons

Continued

b. Any swap transactions with U.S. Guaranteed Entities? If so, why and under what circumstances?

3. The Commission is concerned that a non-U.S. person that is affiliated with a U.S. SD could act as a conduit or an extension of the affiliated U.S. SD by entering into market-facing swaps in a foreign jurisdiction and then transferring some or all of the risk of such swaps to its affiliated U.S. SD through one or more inter-affiliate swaps. Furthermore, under the Proposed Rule, an Other Non-U.S. Person would not be required to include its market-facing swaps with Other Non-U.S. counterparties in its SD de minimis threshold. The Commission invites comment as to whether Other Non-U.S. Persons should be required to include market-facing swaps with non-U.S. persons in their de minimis threshold calculations if any of the risk of such swaps is transferred to an affiliated U.S. SD through one or more inter-affiliate swaps and as to whether it would be too complex or costly to monitor and implement.[95] If so:

a. Should an Other Non-U.S. Person that is consolidated with an affiliated U.S. SD for financial reporting purposes and that transfers some or all of the risk of a swap with an Other Non-U.S. counterparty, directly or indirectly, to its affiliated U.S. SD (an ''SD conduit'') be required to count outward-facing swap as to which it acts as a conduit toward its SD or MSP registration threshold?

b. Should an Other Non-U.S. Person be considered an SD Conduit only when it ''regularly'' acts as an SD Conduit, and if so, how would the Commission determine whether it ''regularly'' acts as an SD Conduit?

c. Would it be appropriate to require an SD Conduit to include a market-facing swap in its de minimis threshold calculation in its entirety, for ease of calculation, even if not all of the risk arising out of that swap is transferred to an affiliated U.S. SD through inter-affiliate swaps? Is the Commission's assumption that a formula to calculate the percentage of risk would be too costly and burdensome to implement correct? If not, please propose such a workable formula. Alternatively, should an SD Conduit be required to include all of its swap dealing transactions (and not just those as to which it acts as an SD conduit) in its SD or MSP registration threshold?

d. The Commission understands that a non-U.S. person may aggregate all or a group of its market-facing swaps and then transfer all or a portion of the risk of such swaps as one position to the affiliated U.S. SD. In that case, the Commission understands that it would not be burdensome for the non-U.S. person to disaggregate the netted swap, as the non-U.S. person's trading system would aggregate these trades initially, and therefore should be able to perform a disaggregation function. Is the Commission's understanding correct?

e. Should the proposed rule be modified to require that Other Non-U.S. Persons include swaps in their SD or MSP registration thresholds if their counterparty is acting as an SD Conduit?

f. Should swaps where either one of the counterparties is acting as an SD conduit be subject to other Dodd-Frank requirements (in addition to SD and MSP registration thresholds) in future rulemakings?

## V. Cross-Border Application of the Major Swap Participant Registration Thresholds

CEA section 1a(33) defines ''major swap participant'' to include persons that are not SDs but that nevertheless pose a high degree of risk to the U.S. financial system by virtue of the ''substantial'' nature of their swap positions.[96] In accordance with the Dodd-Frank Act and CEA section 1a(33)(B), the Commission adopted rules further defining ''major swap participant'' and providing that a person would not be deemed an MSP unless its swap positions exceed one of several thresholds.[97] The thresholds were designed to take into account default-related credit risk, the risk of multiple market participants failing close in time, and the risk posed by a market participant's swap positions on an aggregate level.[98] The Commission also adopted interpretive guidance that, for purposes of the MSP analysis, an entity's swap positions would be attributable to a parent, other affiliate, or guarantor to the extent that the counterparty has recourse to the parent, other affiliate, or guarantor and the parent or guarantor is not subject to capital regulation by the Commission, SEC, or a prudential regulator (''attribution requirement'').[99]

The Commission is now proposing rules to address the cross-border application of the MSP thresholds to the swap positions of U.S. and non-U.S. persons.[100] Applying CEA section 2(i) and principles of international comity, the proposed rule identifies when a potential MSP's cross-border swap positions should apply toward the MSP thresholds and when they may be properly excluded. As discussed in the sections below, whether a potential registrant would include a particular swap in its MSP calculations would depend on whether the potential registrant is a U.S. person, a U.S. Guaranteed Entity,[101] or a Foreign Consolidated Subsidiary (section A) or an Other Non-U.S. Person [102] (section B). Section C addresses the cross-border application of the attribution requirement. Section D provides an overall summary of the rule. If adopted, the Proposed Rule would supersede the Commission's Cross-Border Guidance with respect to the cross-border application of the MSP thresholds.

### *A. U.S. Persons, U.S. Guaranteed Entities, and Foreign Consolidated Subsidiaries*

Under the proposed rule, all of a U.S. person's swap positions would apply

located outside the United States. *See also* SEC Cross-Border Rule, 79 FR 47278.

[95] The Commission notes that the Commission's final margin rule requires CSEs to collect initial margin from certain affiliates that are not subject to comparable initial margin collection requirements on their own outward-facing swaps with financial end-users, which addresses some of the credit risks associated with the outward-facing swaps. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 703 (Jan. 6, 2016) (''Final Margin Rule'').

[96] *See* 7 U.S.C. 1a(33)(A) (defining ''major swap participant'' to mean any person who is not an SD and either (i) maintains a substantial position in swaps for any of the major swap categories, subject to certain exclusions; (ii) whose outstanding swaps create substantial counterparty exposure that could have serious effects on the U.S. financial system; or (iii) is a highly leveraged financial entity that is not subject to prudential capital requirements and that maintains a substantial position in swaps for any of the major swap categories. *See also* 17 CFR 1.3(hhh)(1); 156 Cong. Rec. S5907 (daily ed. July 15, 2010) (colloquy between Senators Hagen and Lincoln, discussing how the goal of the major participant definitions was to ''focus on risk factors that contributed to the recent financial crisis, such as excessive leverage, under-collateralization of swap positions, and a lack of information about the aggregate size of positions'').

[97] *See* 17 CFR 1.3(hhh)–(mmm). *See also* Dodd Frank Act section 712(d)(1) (directing the Commission and the SEC, in consultation with the Board of Governors of the Federal Reserve System, to jointly further define, among other things, the term ''major swap participant''); 7 U.S.C. 1a(33)(B) (directing the Commission to further define ''substantial position'' at the threshold the Commission deems prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the U.S. financial system); Entities Rule, 77 FR 30596.

[98] *See* 77 FR at 30666 (discussing the guiding principles behind the Commission's definition of ''substantial position'' in 17 CFR 1.3(jjj)); id. at 30683 (noting that the Commission's definition of ''substantial counterparty exposure'' in 17 CFR 1.3(lll) is founded on similar principles as its definition of ''substantial position'').

[99] *Id.* at 30689.

[100] *See* proposed rule § 1.3(nnn).

[101] *See* notes 76 and 79, *supra.*

[102] As indicated above, for purposes of the Proposed Rule, an ''Other Non-U.S. Person'' refers to a non-U.S. person that is neither an FCS nor a U.S. Guaranteed Entity. *See* section IV, *supra.*

toward the MSP thresholds without exception. As discussed in the context of the Proposed Rule's approach to applying the SD de minimis registration threshold, by virtue of it being domiciled or organized in the United States, or the inherent nature of its connection to the United States, all of a U.S. person's activities have a significant nexus to U.S. markets, giving the Commission a particularly strong regulatory interest in their swap activities. Accordingly, the Commission believes that all of a U.S. person's swap positions, regardless of where they occur or the U.S. person status of the counterparty, present risk to the stability of the U.S. financial system and U.S. entities, including those that may be systemically important, and thus should apply toward the MSP thresholds.

For related reasons, the proposed rule would also require a non-U.S. person that is not an FCS to include in its MSP calculations each swap position with respect to which it is a U.S. Guaranteed Entity. As explained in context of the SD de minimis threshold calculation, the Commission believes that the swap positions of a non-U.S. person whose swap obligations are guaranteed by a U.S. person are identical, in relevant aspects, to those entered into directly by a U.S. person and thus present risks to the stability of the U.S. financial system or of U.S. entities. Treating U.S. Guaranteed Entities differently from U.S. persons could also create a substantial regulatory loophole, allowing transactions that have a similar connection to or impact on U.S. commerce to be treated differently depending on how the parties are structured and thereby undermining the effectiveness of the Dodd-Frank swap provisions and related Commission regulations.

The proposed rule would also require an FCS to include all of its swap positions in its MSP calculations.[103] As discussed in the context of applying the SD de minimis threshold, by virtue of its relationship to its U.S. ultimate parent, the risk associated with an FCS's swap positions have a direct impact on the financial position and risk profile of its U.S. parent. Accordingly, should the FCS or its counterparty default on a swap, the financial stability of the U.S. ultimate parent entity would be directly impacted, raising the types of regulatory concerns that MSP registration is intended to address. The Commission is also concerned that offering disparate treatment to FCSs compared to U.S. persons could create a substantial regulatory loophole, incentivizing U.S. financial groups to conduct their swap activities with non-U.S. counterparties through non-U.S. subsidiaries and thereby undermining the effectiveness of the Dodd-Frank swap provisions and related Commission regulations.

*B. Other Non-U.S. Persons*

Under the proposed rule, an Other Non-U.S. Person would include all of its swaps with U.S. persons, U.S. Guaranteed Entities, and Foreign Consolidated Subsidiaries in its MSP calculations, with a limited exception for transactions executed anonymously on a SEF, DCM, or FBOT and cleared.[104] As discussed above, the default or insolvency of the Other Non-U.S. Person would have a direct adverse effect on a U.S. counterparty and, by virtue of the U.S. person's significant nexus to the U.S. financial system, potentially could result in adverse effects or disruption to the U.S. financial system as a whole, particularly if the Other Non-U.S. Person's swap positions are substantial enough to exceed an MSP registration threshold.

The default or insolvency of the Other Non-U.S. Person would also present a financial impact to the U.S. financial system where the counterparty is an FCS because its U.S. ultimate parent would be directly impacted. The Other Non-U.S. Person's default could also impact the United States through a U.S. Guaranteed Entity. Although the default on that swap may not directly affect the U.S. guarantor on that swap, the default could affect the U.S. Guaranteed Entity's ability to meet its other obligations, for which the U.S. guarantor may also be liable. The Commission is also concerned that offering Other Non-U.S. Persons disparate treatment with respect to their swap positions with U.S. Guaranteed Entities compared to their swap positions with FCSs could incentivize Other Non-U.S. Persons to favor transacting with U.S. Guaranteed Entities solely in order to avoid application of the Dodd-Frank swap provisions.

The Commission therefore has a strong regulatory interest in ensuring that Other Non-U.S. Persons are subject to the Dodd-Frank MSP requirements to the extent that their swap positions with U.S. Guaranteed Entities and FCSs exceed a registration threshold. Accordingly, the Commission believes that requiring Other Non-U.S. Persons to include their swap positions with FCSs and U.S. Guaranteed Entities as well as U.S. persons appropriately captures swap positions that present a risk to the U.S. financial system, ensuring that MSP regulation applies once that risk exceeds the relevant thresholds. However, as discussed in the context of the SD de minimis threshold, where the swap is executed anonymously on a SEF, DCM, or FBOT and cleared, the Commission believes that the practical difficulties involved in determining the status of the potential MSP's counterparty would make it reasonable for the swap position to be excluded altogether.[105]

Where the counterparty is an Other Non-U.S. Person, however, the proposed rule would not require an Other Non-U.S. Person to include the swap position in its MSP calculations, as the Commission does not believe the swap would present the type of risk to the U.S. financial system that MSP registration is intended to address.[106] Further, the Commission clarifies that under the Proposed Rule, an Other Non-

[103] To the extent that a non-U.S. person is both an FCS and a U.S. Guaranteed Entity with respect to a particular swap, the non-U.S. person would only be required to include the swap position in its MSP calculations once. *See* proposed rule § 1.3(nnn).

[104] To the extent that the Other Non-U.S. Person's swap position is with a non-U.S. counterparty that is both an FCS and a U.S. Guaranteed Entity with respect to a particular swap, the Other Non-U.S. Person would only be required to include the swap position in its MSP calculations once. *See* proposed rule § 1.3(nnn).

[105] *See* section IV.C.4, *supra.*

[106] The Commission notes that the Guidance provided that non-U.S. persons that are not guaranteed affiliates generally could exclude from their MSP threshold calculations swap positions with either a foreign branch of a U.S. SD or a guaranteed affiliate that is an SD if either (i) the potential non-U.S. MSP is a non-financial entity or (ii) the potential non-U.S. MSP is a financial entity *and* the swap is either cleared or the swap documentation requires the foreign branch or guaranteed affiliate to collect daily variation margin with no threshold. *See* Guidance, 78 FR at 45324–25. The Commission has determined that a similar exception in the Proposed Rule with regard to the swap positions of Other Non-U.S. Persons would be unnecessary and inappropriate because (1) two of the three prongs of the statutory MSP definition apply regardless of whether the potential MSP is a financial entity, *see* 7 U.S.C. 1a(33)(A)(i)–(ii), and (2) although subjecting a swap to the clearing or margin requirements may mitigate some of the risk of the swap, the risk is not entirely eliminated, and the mitigation effect of the clearing and margin requirements is taken into account in calculating the relevant MSP thresholds. *See* 17 CFR 1.3(jjj)(3)(iii) (defining ''substantial position'' such that the potential future exposure associated with positions that are subject to central clearing by a registered or exempt DCO is equal to 0.1 times the potential future exposure that would otherwise be calculated). Accordingly, the Commission believes that such swaps create the potential for systemic risk within the meaning of the MSP definition and that allowing such exclusion would allow market participants to inappropriately avoid the Dodd-Frank registration and other associated requirements that are designed to mitigate that risk. The Commission further believes that the Proposed Rule has the added benefit of aligning more closely with the SEC in this regard, which should serve to reduce compliance costs associated with MSP registration.

U.S. Person would not be required to include its swap position with an Other Non-U.S. Person counterparty in its MSP calculations solely by reason of such swap being arranged, negotiated, or executed by personnel located in the United States. As stated above, arranging, negotiating, or executing swaps are functions that fall within the scope of the ''swap dealer'' definition. In contrast, the definition of MSP focuses primarily on credit risk and thus, the Commission does not believe that including ANE transactions in this context would address the regulatory concerns underlying the MSP registration requirement.

*C. Attribution Requirement*

In the Entities Rule, the Commission and the SEC (collectively, ''Commissions'') provided a joint interpretation that an entity's swap positions in general would be attributed to a parent, other affiliate, or guarantor for purposes of the MSP analysis to the extent that the counterparties to those positions have recourse to the parent, other affiliate, or guarantor in connection with the position, such that no attribution would be required in the absence of recourse.[107] Even in the presence of recourse, however, the Commissions stated that attribution of a person's swap positions to a parent, other affiliate, or guarantor would not be necessary if the person is already subject to capital regulation by the Commission or the SEC or is a U.S. entity regulated as a bank in the United States (and is therefore subject to capital regulation by a prudential regulator).[108]

The Commission is also proposing to address the cross-border application of the attribution requirement in a manner consistent with the Entities Rule and CEA section 2(i) and generally comparable to the approach adopted by the SEC.[109] Specifically, the Commission believes that the swap positions of an entity, whether a U.S. or non-U.S. person, should not be attributed to a parent, other affiliate, or guarantor for purposes of the MSP analysis in the absence of recourse. Even in the presence of recourse, attribution would not be required if the entity that entered into the swap directly is subject to capital regulation by the Commission or the SEC or is regulated as a bank in the United States.[110]

If recourse is present, however, and the entity subject to a recourse guarantee (''guaranteed entity'') is not subject to capital regulation (as described above), whether the attribution requirement would apply would depend on the U.S. person status of the person to whom there is recourse (*i.e.,* the U.S. person status of the guarantor). Specifically, a U.S. person guarantor would attribute to itself any swap position of a guaranteed entity, whether a U.S. person or a non-U.S. person, for which the counterparty to the swap has recourse against that U.S. person guarantor. The Commission believes that when a U.S. person acts as a guarantor of a swap position, the recourse guarantee creates risk within the United States of the type that MSP regulation is intended to address, regardless of the U.S. person status of the guaranteed entity or its counterparty.[111]

A non-U.S. person would attribute to itself any swap position of an entity for which the counterparty to the swap has recourse against the non-U.S. person *unless* all relevant persons (*i.e.,* the non-U.S. person guarantor, the entity subject to the recourse guarantee, and its counterparty) are Other Non-U.S. Persons. In this regard, the Commission believes that when a non-U.S. person provides recourse with respect to the swap position of a particular entity, the economic reality of the swap position is substantially identical, in relevant respects, to a position entered into directly by the non-U.S. person. Additionally, the Commission believes that guaranteed entities would be able to enter into significantly more swap positions (and take on significantly more risk) as a result of the guarantee than they would otherwise, amplifying the risk of the non-U.S. person guarantor's inability to carry out its obligations under the guarantee. Given that, as discussed above, the Commission believes that the swap positions of U.S. persons, FCSs, and U.S. Guaranteed Entities present the types of risk that MSP regulation is intended to address, the Commission has a strong regulatory interest in ensuring that the attribution requirement applies to non-U.S. persons that provide recourse guarantees to U.S. persons, FCSs, and U.S. Guaranteed Entities. Accordingly, the Commission believes that a non-U.S. person should be required to attribute to itself the swap positions of any entity for which it provides a recourse guarantee unless it, the guaranteed entity, and its counterparty are Other-Non-U.S. Persons.

D. Summary

In summary, under the proposed rule, in making its MSP threshold calculations:

- A U.S. person would include all of its swap positions.
- A non-U.S. person would include all swap positions with respect to which it is a U.S. Guaranteed Entity.
- A Foreign Consolidated Subsidiary would include all of its swap positions.
- An Other Non-U.S. Person would include all of its swap positions with counterparties that are U.S. persons, U.S. Guaranteed Entities, or FCSs, unless the swap is executed anonymously on a registered SEF, DCM, or FBOT and cleared. It would not, however, include any of its swap positions with Other Non-U.S. counterparties.
- All swap positions that are subject to recourse should also be attributed to a guarantor, whether it is a U.S. person or a non-U.S. person, unless the guarantor, the guaranteed entity, and its counterparty are Other Non-U.S. Persons.

*Request for Comment.* The Commission invites comment on all aspects of the proposed rule, including the following:

1. The Commission invites comment on whether it should provide an exception for Other Non-U.S. Persons similar to that included in the Guidance for non-U.S. persons that are not guaranteed affiliates trading with either a foreign branch of a U.S. SD or a guaranteed affiliate that is an SD.[112] Would such an exception be appropriate or otherwise consistent with the proposed rule? Why or why not?

2. In its rulemaking addressing the cross-border application of the MSP thresholds, the SEC determined not to require a non-U.S. person to include in its major security-based swap participant threshold calculations any security-based swap positions for which they (as opposed to their counterparty)

[107] *See* 77 FR at 30689.

[108] *Id.* (positions of U.S. entities regulated as banks in the United States would be subject to capital and other requirements, making it unnecessary to separately address the risks associated with guarantees of those positions via MSP regulation). *See also id.* at n.1134 (''As a result of this interpretation, holding companies will not be deemed to be major participants as a result of guarantees to certain U.S. entities that already are subject to capital regulation. The Commissions intend to address guarantees provided to non-U.S. entities, and guarantees by non-U.S. holding companies, in separate releases.'').

[109] *See* SEC Cross-Border Rule, 79 FR at 47346–48.

[110] The Commission further clarifies that the swap positions of an entity that is required to register as an MSP, or whose MSP registration is pending, would not be subject to the attribution requirement.

[111] *See* Entities Rule, 77 FR at 30689 (attribution is intended to reflect the risk posed to the U.S. financial system when a counterparty to a position has recourse against a U.S. person).

[112] *See* note 106, *supra.*

benefit from a guarantee creating a right of recourse against a U.S. person.[113] The SEC argued that if the non-U.S. person were to default, it would not pose a direct risk to its counterparty's U.S. guarantor, as the non-U.S. person's failure under the swap would not trigger any obligations under the guarantee of the swap. The Commission invites comment on whether it should adopt a similar approach and whether such an approach would be consistent with the Proposed Rule.

3. Should the Commission modify its interpretation with regard to the attribution requirement to further harmonize with the approach presented in the Guidance [114] and adopted by the SEC [115] and provide that attribution of a person's swap positions to a parent, other affiliate, or guarantor would not be required if the person is subject to capital standards that are comparable to and as comprehensive as the capital regulations and oversight by a home country supervisor or regulator? If so, should the home country capital standards be deemed comparable and comprehensive if they are consistent in all respects with the Capital Accord of the Basel Committee on Banking Supervision (''Basel Accord'')?

## VI. Cross-Border Application of the External Business Conduct Standards for Swap Dealers and Major Swap Participants

Pursuant to CEA section 4s(h), the Commission has adopted rules establishing business conduct standards governing the conduct of SD/MSPs in transacting with swap counterparties.[116] Broadly speaking, the external business conduct standards are designed to enhance counterparty protections by expanding the obligations of SD/MSPs with respect to their counterparties.[117] Among other things, SDs and/or MSPs are required to conduct due diligence on their counterparties to verify their eligibility to trade; provide disclosure of material information about the swap to their counterparties; provide a daily mid-market mark for uncleared swaps; and, when recommending a swap to a counterparty, make a determination as to the suitability of the swap for the counterparty based on reasonable diligence concerning the counterparty.[118]

The Commission is now proposing a rule to address the cross-border application of the external business conduct standards, including the extent to which they would apply to ANE transactions.[119] Specifically, under the proposed rule, U.S. SD/MSPs, other than with respect to transactions conducted through foreign branches of U.S. SD/MSPs, would be required to comply with the Commission's applicable external business conduct standards regardless of the status of the counterparty as a U.S. person (or as a foreign branch of a U.S. SD/MSP) [120] without substituted compliance. This requirement reflects the Commission's view that the Dodd-Frank's external business conduct standards should apply fully to registered SD/MSPs domiciled and operating in the United States because their swap activities are particularly likely to affect the integrity of the swaps market in the United States and give rise to concerns about the protection of participants in those markets.[121]

Foreign branches of U.S. SD/MSPs as well as non-U.S. SD/MSPs (including FCSs and U.S. Guaranteed Entities) would be required to comply with all of the Commission's applicable external business conduct standards, without substituted compliance, to the extent that the counterparty is a U.S. person (other than a foreign branch of a U.S. SD/MSP).[122] Given the focus of the Dodd-Frank counterparty protection mandate on U.S. persons, the Commission believes that the external business conduct standards should apply fully to all swap transactions with U.S. persons that are not foreign branches of a U.S. SD/MSP.

With respect to transactions with counterparties that are foreign branches of U.S. SD/MSPs or non-U.S. persons (including FCSs and U.S. Guaranteed Entities), however, non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs would generally *not* be required to comply with the external business conduct rules, subject to one narrow exception: foreign branches of U.S. SDs and non-U.S. SDs that use personnel located in the United States to arrange, negotiate, or execute such transactions would be required to comply with Commission regulations 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) and 23.433 (Fair Dealing), without substituted compliance.[123] This position reflects the Commission's belief that, in general, imposing its customer protection standards on transactions between a foreign branch of a U.S. SD/MSP or a non-U.S. SD/MSP, on the one hand, and a counterparty that is a non-U.S. person or the foreign branch of a U.S. SD/MSP on the other, would generally not be necessary to advance the goals of the Dodd-Frank customer protection regime. However, to the extent that such SDs use personnel located in the United States to arrange, negotiate, or execute the swap transaction, the Commission believes that its interest in ensuring the

[113] *See* SEC Cross-Border Rule, 79 FR at 47345 & n.593.

[114] *See* 78 FR at 45326.

[115] *See* SEC Cross-Border Rule, 79 FR at 47347–48.

[116] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012); 17 CFR 23.400–51.

[117] The term ''counterparty'' is defined for purposes of the external business conduct standards in 17 CFR 23.401 to include any person who is a prospective counterparty to a swap, as appropriate to subpart H.

[118] Note that certain external business conduct standards apply only to SDs and not MSPs. *See, e.g.,* 17 CFR 23.434 (recommendations to counterparties—institutional suitability); § 23.440 (requirements for swap dealers acting as advisors to Special Entities).

[119] The rule text for the cross-border application of external business conduct standards is proposed as § 23.452.

[120] As used in this preamble, the term ''U.S. SD/MSP'' refers to a U.S. person that is an SD or MSP and the term ''Non-U.S. SD/MSP'' refers to a non-U.S. person that is an SD or MSP.

[121] The Commission observes that, where a swap between a non-U.S. SD/MSP (or foreign branch of a U.S. SD/MSP) and a U.S. person is executed anonymously on a registered DCM or SEF and cleared by a registered or exempt DCO, the external business conduct standards are not applicable. *See, e.g.,* 17 CFR 23.402(b)–(c) (requiring swap dealers and MSPs to obtain and retain certain information only about each counterparty whose identity is known to the swap dealer or MSP prior to the execution of the transaction); § 23.430(e) (not requiring SD/MSPs to verify counterparty eligibility when a transaction is entered on a DCM or SEF and the swap dealer or MSP does not know the identity of the counterparty prior to execution); § 23.431(c) (not requiring disclosure of material information about a swap if initiated on a DCM or SEF and the swap dealer or MSP does not know the identity of the counterparty prior to execution). Because a registered FBOT is analogous to a DCM, the Commission is of the view that the requirements likewise would not be applicable where such a swap is executed anonymously on a registered FBOT and cleared.

[122] Although the Commission recognizes that foreign branches of U.S. SD/MSPs are part of the same legal entity as their U.S. principal, and that, from the standpoint of risk, there is no difference between a swap with a U.S. SD/MSP and a swap with its foreign branch, the Commission believes that for purposes of the external business conduct standards, which are oriented toward customer protection, a foreign branch of a U.S. SD/MSP should be treated the same as a non-U.S. SD/MSP. The Commission proposes to interpret the term ''foreign branch of a U.S. person'' that is a swap dealer (or MSP) as used in proposed rule § 23.452 in a manner that is consistent with the Guidance. *See* Guidance, 78 FR at 45328–31 (discussing the scope of the term ''foreign branch'' and the Commission's consideration of whether a swap is with a foreign branch of a U.S. bank).

[123] *See* section III for a discussion of the terms arrange, negotiate, and execute. The Commission notes that the external business conduct standards apply in connection with transactions in swaps as well as in connection with swaps that are offered but not entered into. *See* 17 CFR 23.400. Accordingly, Commission regulations 23.410 and 23.433 would apply where a non-U.S. SD uses personnel located in the United States to offer a swap even if that swap is not ultimately entered into.

integrity of U.S. markets is implicated. By limiting application of the external business conduct standards to ANE transactions to the antifraud and fair dealing requirements, the proposed rule is tailored to ensure a basic level of counterparty protections while, consistent with the principles of international comity, recognizing the supervisory interests of the relevant foreign jurisdictions in applying their own sales practices requirements to transactions involving counterparties that are non-U.S. persons or foreign branches of a U.S. SD/MSP. This approach recognizes the supervisory interests of the local jurisdiction with respect to swaps conducted within that jurisdiction and that broadly imposing U.S. external business conduct standards with respect to such transactions would not be necessary to advance the goals of the Dodd-Frank customer protection regime.

If adopted, the proposed rule would supersede the Guidance with respect to the cross-border application of the external business conduct standards.

*Request for Comment.* The Commission invites comment on all aspects of the proposed rule, including the following:

1. The Commission invites comment regarding its determination to distinguish transactions entered into by foreign branches of U.S. persons that are SDs (or MSPs) for purposes of the cross-border application of the external business conduct standards.[124] Should transactions involving foreign branches of U.S. SD/MSPs be treated in the same manner as transactions involving U.S. persons with respect to these requirements? Why or why not? Should the Commission, as proposed, interpret the term ''foreign branch of a U.S. person'' that is an SD (or MSP) in a manner consistent with the Guidance or incorporate an alternative approach, such as the definition of ''foreign branch'' in the SEC's Exchange Act rules?[125]

2. The Commission invites comment regarding the circumstances under which a swap transaction should be considered as being ''with a foreign branch of a U.S. person'' that is an SD (or MSP) as opposed to being with the U.S. person itself. Specifically, should the Commission, as proposed, adopt an interpretation consistent with the Guidance[126] or should it incorporate an alternative approach, such the how the SEC defines ''transaction conducted through a foreign branch'' in the context of its Exchange Act rules?[127]

3. The Commission invites comment on the proposed treatment of non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs. Whether and to what extent should their swap transactions with foreign branches of U.S. SD/MSPs and non-U.S. persons be subject to the external business conduct standards? Should they be required to comply with the external business conduct standards with respect to their transactions with foreign branches of U.S. SD/MSPs or non-U.S. persons? If so, should substituted compliance be available? Relatedly, should transactions conducted through foreign branches of U.S. SD/MSPs receive the same treatment as other transactions conducted by U.S. SD/MSPs? Is limiting the scope of applicable requirements for ANE transactions entered into by foreign branches of U.S. SDs or non-U.S. SDs to the antifraud and fair dealing requirements appropriate, or should other external business conduct requirements in subpart H of part 23 of the Commission's regulations also apply? Why or why not?

## VII. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[128] The Commission previously established definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[129] The proposed regulation addresses when U.S. persons and non-U.S. persons would be required to include their cross-border swap dealing transactions or swap positions in their SD or MSP registration threshold calculations, respectively, as specified in the Proposed Rule,[130] and the extent to which SDs or MSPs would be required to comply with the Commission's external business conduct standards in connection with their cross-border swap transactions or swap positions.[131]

The Commission previously determined that SDs and MSPs are not small entities for purposes of the RFA.[132] The Commission believes, based on its information about the swap market and its market participants, that (1) the types of entities that may engage in more than a de minimis amount of swap dealing activity such that they would be required to register as an SD—which generally would be large financial institutions or other large entities—would not be ''small entities'' for purposes of the RFA; and (2) the types of entities that may have swap positions such that they would be required to register as an MSP would not be ''small entities'' for purposes of the RFA. Thus, to the extent such entities are large financial institutions or other large entities that would be required to register as SDs or MSPs with the Commission by virtue of their cross-border swap dealing transactions and swap positions, they would not be considered small entities.[133]

Under the proposed rule, to the extent that there are any affected small entities under the proposed rule, they will need to assess how they are classified under the proposed rule (*i.e.,* U.S. person, FCS, U.S. Guaranteed Entity, and Other Non-U.S. Person) and monitor their swap activities in order to determine whether they are required to register as an SD under the proposed rule. The Commission believes that market participants would only incur incremental costs, which are expected to be marginal, in modifying their existing systems and policies and procedures resulting from changes to the status quo made by the proposed rule.[134]

Accordingly, for the foregoing reasons, the Commission finds that

[124] *See* note 122, *supra.*

[125] *See* note 94, *supra.*

[126] *See* note 122, *supra.*

[127] *See* note 94, *supra.*

[128] *See* 5 U.S.C. 601 *et seq.*

[129] *See* 47 FR 18618 (Apr. 30, 1982) (finding that designated contract markets, future commission merchants, commodity pool operators and large traders are not small entities for RFA purposes).

[130] *See* proposed rule § 1.3(aaaaa), (ggg)(7), and (nnn).

[131] *See* proposed rule § 23.452.

[132] *See* Entities Rule, 77 FR at 30701; Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (noting that like future commission merchants, swap dealers will be subject to minimum capital requirements, and are expected to be comprised of large firms, and that major swap participants should not be considered to be small entities for essentially the same reasons that it previously had determined large traders not to be small entities).

[132] *See* 77 FR at 30701.

[133] The SBA's Small Business Size Regulations, codified at 13 CFR 121.201, identifies (through North American Industry Classification System codes) a small business size standard of $38.5 million or less in annual receipts for Sector 52, Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities. Entities affected by the Proposed Rule are generally large financial institutions or other large entities that would be required to include their cross border dealing transactions or swap positions towards the SD and MSP registration thresholds, respectively, as specified in the Proposed Rule.

[134] The proposed regulation addresses the cross-border application of the registration and external business conduct regulations. The Proposed Rule does not change the current registration requirements or external business conduct requirements.

there will not be a substantial number of small entities impacted by the proposed rule. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 [135] (''PRA'') imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any ''collection of information,'' as defined by the PRA. Among its purposes, the PRA is intended to minimize the paperwork burden to the private sector, to ensure that any collection of information by a government agency is put to the greatest possible uses, and to minimize duplicative information collections across the government. The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained, [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [136] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[137]

The proposed rule would result in an amendment to existing collections of information, ''Registration of Swap Dealers and Major Swap Participants,'' Office of Management and Budget (''OMB'') Control No. 3038–0072, as discussed below. The Commission, therefore, is submitting this proposed rulemaking to OMB for its review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. If the proposed rule is adopted, the responses to these collections of information would be mandatory. 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 issued by OMB.

The proposed rule provides for the cross-border application of the SD/MSP registration thresholds and external business conduct standards. The Commission estimates that if the proposed rule is adopted, 14 unregistered non-U.S. persons may be classified as FCSs and required to register as new SDs because their swap dealing transactions would be in excess of the SD de minimis threshold.[138] The Commission would increase the number of respondents under collection 3038–0072 accordingly. The proposed rule would not otherwise trigger any new recordkeeping, disclosure, or reporting requirements or cause any incremental burden under the PRA.

*Information Collection Comments.* The Commission invites the public and other Federal agencies to comment on any aspect of the reporting burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to 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 automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov*. Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *http://RegInfo.gov*. OMB is required to make a decision concerning the collections 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.

*C. Cost-Benefit Considerations*

As detailed above, the Commission is proposing rules that would define certain key terms for purposes of the Dodd-Frank swap provisions and address the cross-border application of the SD and MSP registration thresholds and the Commission's external business conduct standards, including the extent to which such requirements would apply to ANE transactions.

The baseline against which the costs and benefits of this proposed rule are compared is the status quo, *i.e.,* the swap market as it exists today, with SD/MSP registration thresholds and external business conduct rules applied to cross-border transactions in a manner consistent with the Guidance and the Cross-Border Margin Rule.[139] In considering the costs and benefits of the proposed rule against this baseline, the Commission notes that the Commission's existing swap requirements, including the registration thresholds and external business conduct standards, were adopted pursuant to the requirements of the Dodd-Frank Act and have cross-border application by virtue of CEA section 2(i). A significant portion of the costs and benefits associated with the proposed rule are therefore inherent in the statute itself and were addressed in the cost-benefit considerations of the underlying registration rules and external business conduct standards at the time they were adopted. This cost-benefit discussion accordingly focuses on the central purpose and effect of the proposed rule, determining whether and to what extent the underlying SD/MSP registration thresholds and external business conduct standards should apply in a cross-border context, consistent with CEA section 2(i), the regulatory objectives of the Dodd-Frank Act, and principles of international comity.

The costs associated with the key elements of the Commission's proposed cross-border approach to the SD and MSP registration thresholds—requiring market participants to classify themselves as U.S. persons, U.S. Guaranteed Entities, Foreign Consolidated Subsidiaries, or Other Non-U.S. Persons and to apply the rule accordingly—fall into a few categories. Market participants would incur costs determining which category of market participant (*e.g.,* an FCS or an Other Non-U.S. Person) they fall into (''assessment costs''), tracking their swap activities or positions to determine whether they should be included in their registration threshold calculations (''monitoring costs''), and, to the degree

[135] 44 U.S.C. 3501 *et seq.*

[136] *See* 44 U.S.C. 3502.

[137] *See* 5 CFR 1320.3.

[138] *See* the Appendix to Cost-Benefit Considerations, *infra,* for an explanation of the Commission's estimate.

[139] Although the Guidance is non-binding, the Commission understands that market participants have developed policies and practices consistent with the views expressed therein.

that their activities or positions exceed the relevant threshold, registering with the Commission as an SD or MSP (''registration costs'').

Entities required to register as SDs as a result of the proposed rule would also incur costs associated with complying with the relevant Dodd-Frank requirements applicable to registrants, such as the capital, margin, and business conduct requirements (''programmatic costs'').[140] While only new registrants would be assuming these programmatic costs for the first time, the obligations of entities that are already registered as SDs may also change in the future as an indirect consequence of the proposed rule. Although the Proposed Rule does not address the cross-border application of any Dodd-Frank requirements other than the registration thresholds and external business conduct standards, the Commission expects that the proposed rule's classification scheme for market participants (as U.S. Persons, FCSs, etc.) and associated definitions (which closely track the approach adopted in the Cross-Border Margin Rule) would apply for purposes of future cross-border rulemakings. Accordingly, existing SDs may find that their cross-border compliance obligations with respect to other substantive Dodd-Frank requirements change in the future compared to the status quo as a result of having to adjust their classification (*e.g.,* from non-U.S. person to FCS). As a result, the full extent of the programmatic costs associated with the proposed rule would be influenced by the scope and effect of future rulemakings addressing the cross-border application of substantive requirements under the Dodd-Frank Act.

In developing the proposed rule, the Commission took into account the potential for creating or accentuating competitive disparities between market participants, which could contribute to market inefficiencies, including market fragmentation or decreased liquidity, as more fully discussed below. Significantly, competitive disparities may arise between U.S.-based financial groups and non-U.S. based financial groups as a result of differences in how the SD/MSP registration thresholds apply to the various classifications of market participants. For instance, dealing subsidiaries with a U.S. ultimate parent entity (*i.e.,* FCSs)—which would be required to include all of their swap dealing transactions in their de minimis threshold calculations and therefore be more likely to trigger the SD registration threshold relative to Other Non-U.S. Persons—may be at a competitive disadvantage compared to Other Non-U.S. Persons when trading with non-U.S. counterparties, as non-U.S. counterparties may prefer to trade with non-registrants in order to avoid application of the Dodd-Frank swaps regime.[141] Again, the full competitive impact of the Proposed Rule will be influenced by future cross-border rulemakings, as well as the scope and implementation timelines associated with any related rules adopted by other jurisdictions.

Other factors also create inherent challenges associated with attempting to assess costs and benefits of the Proposed Rule. To avoid the prospect of being regulated as an SD or MSP, or otherwise falling within the Dodd-Frank swap regime, some market participants may restructure their businesses or take other steps (*e.g.,* limiting their counterparties to Other Non-U.S. Persons) to avoid exceeding the relevant registration thresholds. The degree of comparability between the approaches adopted by the Commission and foreign jurisdictions and the potential availability of substituted compliance, whereby a market participant may comply with a Dodd-Frank swap dealer requirement by complying with a comparable requirement of a foreign financial regulator, may also affect the competitive impact of the proposed rule.

The Commission nevertheless believes that the proposed rule's approach is necessary and appropriately tailored, consistent with CEA section 2(i) and principles of international comity, to ensure that the regulatory objectives of the Dodd-Frank registration requirements and external business conduct standards are preserved while still establishing a workable approach that recognizes foreign regulatory interests and minimizes competitive disparities and market inefficiencies to the degree possible. Furthermore, as mentioned above, the Commission expects to apply the definitions and classification scheme for market participants resulting from the proposed rule in future cross-border rulemakings; having a uniform set of definitions should mitigate the costs of cross-border compliance with the Dodd-Frank swap regime in the long run.

In the sections that follow, the Commission discusses the costs and benefits associated with the proposed rule, as well as reasonable alternatives. Section 1 begins by addressing the assessment costs associated with the rule, which derive in part from the defined terms used in the proposed rule (the proposed definitions of ''U.S. Person'' and ''Foreign Consolidated Subsidiary,'' as well as the definition of ''guarantee'' adopted in the Cross-Border Margin Rule) and which, as mentioned above, are expected to be relevant outside the context of the cross-border application of the registration thresholds. Sections 2 and 3 consider the costs and benefits associated with the proposed rule's determinations regarding how each classification of market participants (U.S. Persons, U.S. Guaranteed Entities, FCSs, and Other Non-U.S. Persons) should apply to the SD and MSP registration thresholds, respectively. Sections 4, 5, and 6 address the monitoring, registration, and programmatic costs associated with the proposed cross-border approach to the SD (and, as appropriate, MSP) registration thresholds, respectively. Section 7 addresses the costs and benefits associated with the proposed cross-border approach to the external business conduct standards, while Section 8 discusses the factors established in section 15(a) of the CEA. Discussion of the Commission's cost-benefit considerations concludes with an Appendix providing an estimate of the number of new SDs that are expected to register as a result of the Proposed Rule as well as the number of currently registered non-U.S. SDs that the Commission estimates would be classified as FCSs.

The Commission invites comment regarding the nature and extent of any costs and benefits that could result from adoption of the Proposed Rule and, to the extent they can be quantified, monetary and other estimates thereof.

1. Assessment Costs

As discussed above, in applying the proposed cross-border approach to the SD and MSP registration thresholds, market participants would be required to first classify themselves as either a U.S. person, an FCS, a U.S. Guaranteed

[140] The Commission's discussion of programmatic costs and registration costs does not address MSPs. No entities are currently registered as MSPs, and the Commission does not expect that this status quo would change as a result of the Proposed Rule given the general similarities between the Proposed Rule's approach to the MSP registration threshold calculations and the Guidance. For an estimate of the number of market participants that may be required to register as SDs as a result of the Proposed Rule, see the accompanying Appendix below.

[141] Dodd-Frank swap requirements may impose significant direct costs on participants falling within the SD/MSP definitions that are not borne by other market participants, including costs related to capital and margin requirements, regulatory reporting requirements, and business conduct requirements. To the extent that foreign jurisdictions adopt comparable requirements, these costs would be mitigated.

Entity, or an Other Non-U.S. Person. This classification scheme is also generally applicable in the context of the proposed approach to the external business conduct standards,[142] and the Commission further expects to rely on a similar classification scheme in the context of future rulemakings relating to the cross-border application of other substantive Dodd-Frank requirements.

The Commission expects that the costs to affected market participants of assessing which classification they and their counterparties fall into would generally be marginal and incremental. In most cases, the Commission believes an entity will have performed an initial determination or assessment of its status under either the Cross-Border Margin Rule (which uses substantially similar definitions of ''U.S. person,'' ''Foreign Consolidated Subsidiary,'' and ''guarantee'') or the Guidance (which interprets ''U.S. person'' in a manner that is similar but not identical to the proposed definition of ''U.S. person''). Additionally, the proposed rule would allow market participants to rely on representations from their counterparties with regard to their classifications.[143]

Even with respect to market participants that have not previously determined their status under the Cross-Border Margin Rule or the Guidance, or that may need to reevaluate their status, the Commission believes that their assessment costs would be small as a result of the Proposed Rule's reliance on relatively clear, objective definitions of the terms ''U.S. person,'' ''Foreign Consolidated Subsidiary,'' and ''guarantee.'' Specifically, the Commission believes that the costs of assessing whether a market participant is a ''U.S. person'' would be small as a result of certain key differences between the Proposed Rule's U.S. person definition and the ''U.S. person'' interpretation in the Guidance.[144] Similarly, with respect to the determination of whether a market participant falls within the ''Foreign Consolidated Subsidiary'' definition,[145] the Commission believes that assessment costs would be small as the definition relies on a familiar consolidation test already used by affected market participants in preparing their financial statements under U.S. GAAP.[146]

Additionally, the proposed rule relies on the definition of ''guarantee'' provided in the Cross-Border Margin Rule, which is limited to arrangements in which one party to a swap has rights of recourse against a guarantor with respect to its counterparty's obligations under the swap.[147] Although non-U.S. persons that are not FCSs will need to know whether they are U.S. Guaranteed Entities with respect to the relevant swap on a swap-by-swap basis for purposes of the SD and MSP registration calculations, the Commission believes that this information will already be known by non-U.S. persons.[148] Accordingly, the Commission believes that the costs associated with assessing whether an entity or its counterparty is a U.S. Guaranteed Entity (for the purpose of the registration calculations or any subsequent rulemakings) would be small.

Finally, the Commission believes that proposing consistent U.S. person and Foreign Consolidated Subsidiary definitions, which would apply across all of the Commission's future cross-border rulemakings (unless the specific rule or regulation otherwise provides or the context otherwise requires), would also further reduce costs (including assessment costs) over time by applying a consistent definition across all of the Commission's cross-border swaps rules.[149]

*2. Cross-Border Application of the Swap Dealer Registration Threshold*

a. U.S. Persons and U.S. Guaranteed Entities

Under the proposed rule, a U.S. person would include all of its swap dealing transactions in its de minimis calculation, without exception. As discussed above, that would include any swap dealing transactions conducted through a U.S. person's foreign branch, as such swaps are directly attributed to, and therefore impact, the U.S. person. Given that this requirement mirrors the Guidance in this respect, the Commission believes that the proposed rule would have a minimal impact on the status quo with regard to the number of registered or potential U.S. SDs.[150]

The proposed rule would also require U.S. Guaranteed Entities (that are not FCSs) [151] to include all of their dealing transactions in their de minimis threshold calculation without exception. This approach, which recognizes that a U.S. Guaranteed Entity's swap dealing transactions may have the same potential to impact the U.S. financial system as a U.S. person's dealing transactions, closely parallels the approach taken in the Guidance with respect to ''guaranteed affiliates.'' [152] However, as explained in

[142] The proposed rule's cross-border application of the external business conduct standards would also require SD/MSPs to determine whether a swap is a transaction through a foreign branch. *See* section VI, *supra.*

[143] The Commission believes that these assessment costs for the most part have already been incurred by potential SD/MSPs as a result of adopting policies and procedures consistent with the Guidance and Cross-Border Margin Rule (which had similar classifications), both of which permitted counterparty representations.

[144] As discussed further in section II.A, the proposed U.S. person definition does not include the U.S. majority-owned funds prong that was included in the U.S. person interpretation in the Guidance, which should lower assessment costs. The proposed definition also includes a modified version of the unlimited U.S. responsibility prong in the Guidance, which applied only to legal entities whose unlimited U.S. owners were majority owners. Removing the majority ownership requirement from the unlimited U.S. responsibility prong may lower assessment costs, as compared to the Guidance. Additionally, the Proposed Rule also makes clear that the ''U.S. person'' definition does not capture international financial institutions. Further, the proposed definition does not include the catchall provision that was included in the Guidance, which should further increase legal certainty and reduce assessment costs.

[145] The ''Foreign Consolidated Subsidiary'' definition is discussed further in section II.B.

[146] The Commission also considered certain alternatives to the proposed FCS definition—such as relying on International Financial Reporting Standards in addition to or instead of U.S. GAAP or including a non-U.S. person whose U.S. parent meets standards for consolidation, but does not prepare consolidated financial statements under U.S. GAAP—but believes these alternatives add complexity, without any substantial benefits.

[147] *See* note 79, *supra.*

[148] Because a guarantee has a significant effect on pricing terms and on recourse in the event of a counterparty default, the Commission believes that the guarantee would already be in existence and that a non-U.S. person therefore would have knowledge of its existence before entering into a swap.

[149] The Commission recognizes that this benefit would not be fully realized until such future rulemakings are adopted.

[150] As discussed in the Appendix, the Commission is not estimating the number of new U.S. SDs, as the methodology for including swaps in a U.S. person's SD registration calculation does not diverge from the approach included in the Guidance (*i.e.,* a U.S. person must include all of its swap dealing transactions in its de minimis threshold calculation). As further explained in the Appendix, the Commission does not expect an increase in the number of SDs resulting from the Proposed Rule's definition of U.S. person and therefore assumes that no new U.S. SDs would register as U.S. SDs as a result of the Proposed Rule.

[151] In order to avoid double counting, in the event that the swap of an FCS is guaranteed by a U.S. person, the swap would only be counted under the provision of the Proposed Rule that applies to FCSs. *See* proposed rule § 1.3(ggg)(7)(i)(B) and (C).

[152] Under the Guidance, a ''guaranteed affiliate'' would generally include all swap dealing activities in its de minimis threshold calculation without exception. The Guidance interpreted ''guarantee'' to generally include ''not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations with respect to its swaps.'' *See* the Guidance at 45320. In contrast, the term ''guarantee'' in this proposed rulemaking has the same meaning as defined in Commission regulation 23.160(a)(2) (cross-border application of the Commission's margin requirements for uncleared

Continued

the accompanying Appendix, the Commission believes that there are few U.S. Guaranteed Entities at this time.[153] Accordingly, the Commission believes that, in this respect, any increase in costs associated with the Proposed Rule would be small.

b. Foreign Consolidated Subsidiaries

Under the proposed rule, a Foreign Consolidated Subsidiary would include all of its swap dealing transactions in its de minimis threshold calculation without exception. The Guidance did not differentiate FCSs from Other Non-U.S. Persons, and therefore FCSs would generally only include in their de minimis threshold calculations their swap dealing transactions with U.S. persons (excluding foreign branches of U.S. SDs) and with certain guaranteed affiliates.[154]

However, as noted in section II.B, the Commission believes that it would be appropriate to distinguish FCSs from Other Non-U.S. Persons in determining the cross-border application of the SD de minimis threshold to such entities, as well as with respect to the Dodd-Frank swap provisions more generally. As discussed above, by virtue of the close integration between the FCS and its U.S. ultimate parent, counterparties look to both the FCS and its U.S. parent for fulfillment of the FCS's obligations under the swap, even without any explicit guarantee. Therefore, the Commission believes that it is appropriate to require FCSs to include all of their swap dealing transactions in their SD de minimis calculation. In addition, allowing an FCS to exclude non-U.S. swap dealing transactions from its calculation could incentivize U.S. financial groups to book their non-U.S. dealing transactions into an FCS, avoiding swap regulation.

Under the Proposed Rule, the FCS definition is used to distinguish non-U.S. persons with a U.S. ultimate parent entity from Other Non-U.S. Persons for purposes of determining how Dodd-Frank swap provisions should apply. The full market impact of the Proposed Rule's shift of some non-U.S. persons to FCSs cannot be determined at this time in the absence of further rulemakings addressing the cross-border application of substantive requirements under the Dodd-Frank Act. However, to the extent that future cross-border rulemakings apply more stringent requirements to swap transactions with FCSs, non-U.S. counterparties may seek to avoid transacting with such dealers, fragmenting swaps market liquidity into two pools—one for U.S. persons and FCSs and the other for non-U.S. persons (that are not FCSs). Nevertheless, as discussed above, the Commission believes that the proposal to require FCSs to include all of their swap dealing activity in their de minimis threshold calculations is necessary and appropriate to ensure the policy objectives of the Dodd-Frank Act are preserved and not undermined by a substantial regulatory loophole.

c. Other Non-U.S. Persons

Under the proposed rule, Other Non-U.S. Persons would be required to include in their de minimis threshold calculations swap dealing activities with U.S. persons (including foreign branches of U.S. SDs), U.S. Guaranteed Entities, and FCSs. The proposed rule would not, however, require Other Non-U.S. Persons to include swap dealing transactions with Other Non-U.S. Persons. Additionally, Other Non-U.S. Persons would not be required to include in their de minimis calculation any transaction that is executed anonymously on a SEF, DCM, or FBOT and cleared.

The Commission believes that requiring Other Non-U.S. Persons to include their swap dealing transactions with U.S. persons in their de minimis calculations is necessary to advance the goals of the Dodd-Frank SD registration regime, which focuses on U.S. market participants and the market. As discussed above, the Commission considered incorporating an exception from the Guidance allowing non-U.S. persons to exclude from their de minimis thresholds transactions with foreign branches of U.S. SDs but determined that, given the integral nature of the foreign branch to a U.S. person, such an exception would create a potentially significant regulatory loophole, allowing a substantial amount of dealing activity with U.S. counterparties to occur outside the comprehensive Dodd-Frank swap regime.

Under the proposed rule, Other Non-U.S. Persons would not be required to include any swap dealing transactions with Other Non-U.S. Persons in their SD de minimis threshold calculations, including ANE transactions. Although a non-U.S. person that engages in ANE transactions is performing dealing activity in the United States, the Commission does not believe that requiring non-U.S. persons to include ANE transactions in their de minimis threshold calculations would be necessary to advance the policy objectives of the Dodd-Frank swap regime when taking the Proposed Rule in context, particularly the proposal to require FCSs to include all of their swap dealing transactions in their de minimis threshold calculations.

The Commission recognizes that the proposed rule's cross-border approach to the de minimis threshold calculation could contribute to competitive disparities arising between U.S.-based financial groups and non-U.S. based financial groups. Potential SDs that are U.S. persons or that have a U.S. ultimate parent entity (FCSs) would be required to include all of their swap transactions. In contrast, potential non-U.S. SDs with a non-U.S. ultimate parent entity whose obligations under the relevant swap are not subject to a U.S. guarantee (Other Non-U.S. Persons) would be permitted to exclude swaps with Other Non-U.S. Persons, including ANE transactions. As a result, potential SDs with a U.S. ultimate parent entity may be at a competitive disadvantage, as more of their swap activity would apply toward the de minimis threshold and trigger the SD registration threshold relative to Other Non-U.S. Persons. To the extent that a currently unregistered non-U.S. person would be required to register as an SD under the proposed rule, its non-U.S. counterparties (clients and dealers) may possibly cease transacting with it in order to operate outside the Dodd-Frank swap regime.[155] Additionally, unregistered non-U.S. dealers may be able to offer swaps on more favorable terms to non-U.S. counterparties than U.S. competitors (*i.e.,* U.S. SDs, FCSs,

swaps), except that application of the proposed definition of ''guarantee'' would not be limited to uncleared swaps. *See* note 79, *supra.*

[153] The proposed rule would require U.S. Guaranteed Entities that are not FCSs to include all of their dealing transactions in their de minimis calculation. However, the Commission believes that there are few U.S. Guaranteed Entities (that are not FCSs). The Commission notes that the Proposed Rule uses a narrower definition of guarantee (compared to the Guidance), which would result in relatively fewer U.S. Guaranteed Entities than if a broader definition were used. In addition, the Commission believes that, as a practical matter, few non-U.S. persons that are not FCSs obtain guarantees of their obligations under swaps (which would generally need to be obtained from an unaffiliated U.S. person). Although the Commission believes that there are few U.S. Guaranteed Entities at this time, the Commission has covered this infrequent situation in the Proposed Rule as a prophylactic measure.

[154] The Commission believes that some FCSs would have been ''guaranteed affiliates'' as described in the Guidance at the time that it was initially issued, but the Commission understands that many financial groups ceased providing guarantees with regard to their affiliated entities' swap activities subsequent to the issuance of the Guidance, such that FCSs would have adopted policies and practices consistent with the Guidance's treatment of non-U.S. persons (that are not guaranteed or conduit affiliates).

[155] Additionally, some unregistered dealers may opt to withdraw from the market, thereby contracting the number of dealers competing in the swaps market, which may have an effect on competition and liquidity.

and U.S. Guaranteed Entities) because they are not required to register (and therefore would not be subject to the Dodd-Frank swap dealer regime).[156] As noted above, however, the Commission believes that these competitive disparities would be mitigated to the extent that foreign jurisdictions impose comparable requirements. Furthermore, the Commission reiterates its belief that the cross-border approach to the SD registration threshold taken in the Proposed Rule is appropriately tailored to further the policy objectives of the Dodd-Frank Act while mitigating unnecessary burdens and disruption to market practices to the extent possible.

3. Cross-Border Application of the Major Swap Participant Registration Thresholds

As described in section V, the Proposed Rule would approach the cross-border application of the MSP registration thresholds in a similar manner as the SD de minimis registration threshold. Specifically, the proposed rule would require U.S. persons, U.S. Guaranteed Entities, and FCSs to include all of their swap positions in their MSP calculations without exception. As further explained in section V, in the Commission's view this result is appropriate because the Commission believes that swap positions with U.S. persons, U.S. Guaranteed Entities, and FCSs can in each case have a significant effect on the U.S. financial system and therefore should be treated in a similar manner for purposes of the MSP registration calculation.

For related reasons discussed in section V.B, the proposed rule would also require Other Non-U.S. Persons to include in their MSP calculations all of their swap positions with U.S. persons, U.S. Guaranteed Entities, and FCSs, with a limited exception for transactions executed anonymously on a SEF, DCM, or FBOT and cleared. The Commission believes that swap positions with U.S. persons, U.S. Guaranteed Entities, and FCSs can in each case have a significant effect on the U.S. financial system and therefore should be treated in a similar manner.[157] Other Non-U.S. Persons would not, however, be required to include swap positions with Other Non-U.S. Persons in their MSP calculations, as the Commission does not believe these swaps would present the type of risk to the U.S. financial system that the MSP definition and registration requirements are intended to address.

The Commission notes that no entities are currently registered as MSPs. The Commission also does not believe that the proposed cross-border approach to the MSP registration thresholds would result in significant costs to market participants compared to the status quo (*i.e.,* would not cause any market participants to register as MSPs) given the general similarities between the proposed rule's approach to the MSP registration threshold calculations and the corollary approach provided in the Guidance.[158]

4. Monitoring Costs

Under the proposed rule, market participants would need to continue to monitor their swap activities in order to determine whether they are, or continue to be, required to register as an SD or MSP. Given that market participants are believed to have developed policies and practices consistent with the cross-border approach to the SD/MSP registration thresholds expressed in the Guidance, the Commission believes that market participants would only incur incremental costs in modifying their existing systems and policies and procedures in response to the proposed rule (*e.g.,* determining which swaps activities or positions would be required to be included in the registration threshold calculations).[159]

For example, the Commission notes that FCSs are likely to have adopted policies and practices in line with the Guidance approach to non-U.S. persons that are not guaranteed or conduit affiliates and therefore may only be currently counting (or be provisionally registered by virtue of) their swap dealing transactions with U.S. persons, other than foreign branches of U.S. SDs.[160] Although an FCS would be required under the proposed rule to include all swaps connected with its dealing activities in its de minimis calculation, without exception, the Commission believes that any increase in monitoring costs for FCSs would be de minimis, both initially and on an ongoing basis, because they already have systems that track swap dealing transactions with certain counterparties in place, which includes an assessment of their counterparties' status.[161]

5. Registration Costs

As a result of the proposed rule's classification scheme for market participants (*e.g.,* as U.S. persons, FCSs, U.S. Guaranteed Entities, and Other Non-U.S. Persons, as described above) and the proposed requirement that they apply the SD registration threshold accordingly, the Commission recognizes that some market participants would be required to register as SDs with the Commission who were previously not required to register. In considering the costs and benefits of the proposed rule, the Commission has estimated that approximately 14 unregistered non-U.S. persons may be required to register as SDs as a result of the proposed rule. The basis for this estimated increase in the number of SDs is discussed below in the accompanying Appendix. The Commission previously estimated registration costs in its rulemaking on registration of SDs;[162] however, the costs that may be incurred should be mitigated to the extent that these new SDs are affiliated with an existing SD, as most of these costs have already been realized by the consolidated group. The Commission has not included any discussion of registration costs for MSPs because it believes that few (if any) market participants will be required to

[156] These non-U.S. dealers also may be able to offer swaps on more favorable terms to U.S. persons, giving them a competitive advantage over U.S. competitors with respect to U.S. counterparties.

[157] In addition, the Commission considered whether to include an exclusion similar to that discussed in the Guidance (which provides that non-U.S. persons that are not ''guaranteed affiliates'' generally could exclude from their MSP threshold calculations swap positions with either a foreign branch of a U.S. SD or a guaranteed affiliate that is an SD if either (i) the potential non-U.S. MSP is a non-financial entity or (ii) the potential non-U.S. MSP is a financial entity *and* the swap is either cleared or the swap documentation requires the foreign branch or guaranteed affiliate to collect daily variation margin with no threshold). Although including corollary exclusions in the Proposed Rule might result in reduced compliance costs, the Commission preliminarily believes that such exclusions are unnecessary and inappropriate for the reasons discussed above. *See* note 106, *supra.* The Commission further does not believe that the decision not to include such an exception would result in any new MSPs. The Commission is also seeking comment in section V with regard to whether to adopt the SEC approach of not requiring a non-U.S. person to include in its MSP threshold calculations any swap positions for which they (as opposed to the non-U.S. person's counterparty) benefit from a guarantee creating a right of recourse against a U.S. person. *See* note 113, *supra,* and accompanying text.

[158] *See also* note 157, *supra.*

[159] Although the cross-border approach to the MSP registration threshold calculation in the Proposed Rule is not identical to the approach included in the Guidance, *see* note 106, *supra,* the Commission believes that any resulting increase in monitoring costs resulting from the Proposed Rule would be incremental and de minimis.

[160] Although the Guidance provided that non-U.S. persons (that are not guaranteed or conduit affiliates) should generally include all of their swap dealing transactions with U.S. persons (excluding foreign branches of a U.S. SD) as well as swaps with certain guaranteed affiliates in their de minimis threshold calculations, the Commission understands that at the current time guaranteed affiliates, as defined in the Guidance, likely no longer exist or are few in number.

[161] *See* section VII.C.1, *supra,* for a discussion of assessment costs.

[162] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2623–25 (Jan. 19, 2012).

register as an MSP under the Proposed Rule, as noted above.

6. Programmatic Costs

As noted above, if the proposed rule is adopted, certain market participants would likely be required to register as SDs and would become subject to various requirements imposed on swap dealers under the Dodd-Frank Act and related Commission's regulations. To the extent that the proposed rule acts as a ''gating'' rule by affecting which entities engaged in cross-border swaps activities must comply with the SD requirements, the Proposed Rule could result in increased costs for particular entities that otherwise would not register as an SD and comply with the swap provisions.[163]

Market participants that are already registered (or provisionally registered) as SDs or MSPs prior to adoption of the proposed rule (if it is adopted) could also be affected by the proposal. In particular, the Commission is proposing rules that would define certain key terms for purposes of the Dodd-Frank swaps provisions (including future cross-border rulemakings). Therefore, the proposal could affect the treatment of market participants that are already registered (or provisionally registered) across the Commission's entire cross-border framework and attendant costs and benefits in addition to those that are registering for the first time. The proposal also addresses the cross-border application of the Commission's external business conduct standards, including the extent to which such requirements would apply to swap transactions that are arranged, negotiated, or executed by registered SDs or MSPs using personnel located in the United States.

Further, as a result of the proposed rule, certain other market participants would be categorized differently under the proposal than they were under the Guidance, which could affect how they are treated across the Commission's entire cross-border framework and attendant costs and benefits.[164] Although the exact treatment of market participants across the Commission's cross-border framework is not set out in this proposal, the Commission will address specific costs that market participants will incur in each specific future rulemaking.

7. Cross-Border Application of External Business Conduct Requirements

As discussed in section VI above, the proposed rule addresses the cross-border application of the Commission's external business conduct standards to transactions in which at least one of the counterparties is an SD/MSP, including the extent to which they would apply to ANE transactions. Under the proposed rule, U.S. SD/MSPs (other than foreign branches of U.S. SD/MSPs) would be required to comply with the Commission's external business conduct standards without substituted compliance. As discussed above, this requirement reflects the Commission's view that the Dodd-Frank external business conduct standards should apply fully to registered SDs and MSPs domiciled and operating in the United States because their swap activities are particularly likely to affect the integrity of the swaps market in the United States and raise concerns about the protection of participants in those markets. The Commission does not expect that this requirement would impose any additional costs on market participants in comparison to the status quo given that the Commission's external business conduct standards already apply to U.S. SD/MSPs under the Commission's external business conduct standards rulemaking.[165]

Non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs would only be required to comply with the external business conduct standards if (1) the counterparty is a U.S. person (other than a foreign branch of a U.S. SD/MSP) or (2) a non-U.S. SD or foreign branch of a U.S. SD uses personnel located in the United States to arrange, negotiate, or execute the transaction (or a swap that is offered but not entered into), in which case the antifraud [166] and fair dealing [167] requirements would apply. The proposal to require non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs to comply with the external business conduct standards where the counterparty is a U.S. person (other than a foreign branch of a U.S. SD/MSP) reflects the Commission's recognition that the Dodd Frank Act's counterparty protection mandate focuses on protecting U.S. market participants, such that the external business requirements should apply fully to U.S. persons without substituted compliance regardless of the location from which the SD/MSP may be operating. The exception for counterparties that are foreign branches of U.S. SD/MSPs reflects the Commission's belief that, even though the foreign branch is an integral part of the U.S. SD/MSP, a foreign regulatory regime may have a heightened interest in enforcing its own sales practice requirements to transactions occurring within its jurisdiction. Furthermore, this limited exception should reduce competitive disparities between such foreign branches and FCSs when transacting with non-U.S. clients. Again, the Commission does not expect that, in this regard, the proposed rule would impose any additional costs on market participants in comparison to the status quo, particularly given that the proposed rule does not significantly deviate from the Commission's existing cross-border policy in this respect, as described in the Guidance.[168]

The proposed rule goes beyond the scope of the Guidance, however, by making clear that non-U.S. SDs and foreign branches of U.S. SDs would be required to comply with the antifraud and fair dealing external business conduct standards with respect to ANE transactions. This requirement would therefore impose additional compliance costs relative to the status quo not only on existing non-U.S. SDs and foreign branches of U.S. SDs, which likely currently do not comply with the external business conduct standards with respect to their transactions with non-U.S. persons or foreign branches of U.S. SD/MSPs, but any non-U.S. persons that are required to register by virtue of the proposed rule's approach to the SD registration threshold. As discussed above, where swaps are arranged, negotiated or executed in the United States, the Commission has a strong supervisory interest both in protecting involved counterparties against fraud, manipulation and other abusive practices of an SD and in requiring that the SD communicate in a fair and balanced manner with these counterparties based on principles of fair dealing and good faith. Taking the proposed rule as a whole, however, the Commission does not believe that application of the remaining external business conduct standards would be necessary to advance the goals of the

[163] As noted above, the Commission believes that, if the Proposed Rule is adopted, few (if any) market participants would be required to register as an MSP under the Proposed Rule, and therefore it has not included a separate discussion of programmatic costs for registered MSPs in this section.

[164] As discussed below in the accompanying Appendix, the Commission has estimated that out of a total of 54 provisionally registered non-U.S. SDs entities, 17 would be classified as an FCS under the Proposed Rule.

[165] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 FR 9734 (Feb. 17, 2012). The Commission's discussion of cost-benefit considerations is at 77 FR at 9805–22.

[166] *See* 17 CFR 23.410.

[167] *See* 17 CFR 23.433.

[168] Under the approach described in the Guidance, non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs generally would not comply with the business conduct standards to the extent that their counterparty is a foreign branch of a U.S. SD/MSP or a non-U.S. person.

Dodd-Frank Act. Accordingly, by limiting application of the external business conduct standards to ANE transactions to the antifraud and fair dealing requirements, the Proposed Rule is appropriately tailored to ensure a basic level of counterparty protections while, consistent with the principles of international comity, recognizing the supervisory interests of the relevant foreign jurisdictions in applying their own sales practices requirements to transactions involving counterparties that are non-U.S. persons (or foreign branches of U.S. SD/MSPs) and avoiding potentially unnecessarily duplicative requirements.

8. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

The Commission believes the proposed rule would support protection of market participants and the public. By focusing on and capturing swap dealing transactions and swap positions involving U.S. persons and non-U.S. persons with a strong nexus to the United States (*e.g.,* FCSs and U.S. Guaranteed Entities), the Proposed Rule's approach to the cross-border application of the SD and MSP registration threshold calculations works to ensure that, consistent with CEA section 2(i) and the policy objectives of the Dodd-Frank Act, significant participants in the U.S. market are subject to the CEA's swap regime. The proposed cross-border approach to the external business conduct standards, including applying the antifraud and fair dealing requirements to ANE transactions, similarly ensures that the Dodd-Frank market protections apply to swap activities that are particularly likely to affect the integrity of and raise concerns about the protection of participants in the U.S. market while, consistent with principles of international comity, recognizing the supervisory interests of the relevant foreign jurisdictions in applying their own sales practices requirements to transactions involving non-U.S. SD/MSPs and foreign branches of U.S. SD/MSPs with non-U.S. persons and foreign branches of U.S. SD/MSPs.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

To the extent that the proposed rule leads additional entities to register as SDs, the Commission believes that the proposed rule could enhance the financial integrity of the markets by bringing significant U.S. swaps market participants under Commission oversight, which may reduce market disruptions and foster confidence and transparency in the U.S. market. The Commission recognizes that the Proposed Rule's cross-border approach to the SD and MSP registration thresholds may create competitive disparities among market participants, based on the degree of their connection to the United States, that could contribute to market inefficiencies, including market fragmentation and decreased liquidity, as certain market participants may reduce their exposure to the U.S. market. As a result of reduced liquidity, counterparties may pay higher prices, in terms of bid-ask spreads (or in the case of swaps, the cost of the swap and the cost to hedge). Such competitive effects and market inefficiencies may, however, be mitigated by global efforts to harmonize approaches to swap regulation and by the large inter-dealer market, which may link the fragmented markets and enhance liquidity in the overall market. On balance, the Commission believes that the proposed rule's approach is necessary and appropriately tailored to ensure that the purposes of the Dodd-Frank swap regime and its registration requirements are advanced while still establishing a workable approach that recognizes foreign regulatory interests and minimizes competitive disparities and market inefficiencies to the degree possible. The Commission further believes that the proposed rule's cross-border approach to the external business conduct standards will promote the financial integrity of the markets by fostering transparency and confidence in the major participants in the U.S. swap markets.

c. Price Discovery

The Commission recognizes that the proposed rule's approach to the cross-border application of the SD and MSP registration thresholds could also have an effect on liquidity, which may in turn influence price discovery. As liquidity in the swaps market is lessened and fewer dealers compete against one another, bid-ask spreads (cost of swap and cost to hedge) may widen and the ability to obtain the 'true' price of a swap may be hindered. However, as noted above, these negative effects would be mitigated as jurisdictions harmonize their swaps initiative and global financial institutions continue to manage their swaps books (*i.e.,* moving risk with little or no cost, across an institution to market centers, where there is the greatest liquidity). The Commission does not believe that the proposed rule's approach to the external business conduct standards, however, will have a measurable impact on price discovery.

d. Sound Risk Management Practices

The Commission believes that the proposed rule's approach could promote the development of sound risk management practices by ensuring that significant participants in the U.S. market are subject to Commission oversight (via registration), including in particular important counterparty disclosure and recordkeeping requirements that will encourage policies and practices that promote fair dealing while discouraging abusive practices in U.S. markets.

e. Other Public Interest Considerations

The Commission has not identified any public interest considerations related to the costs and benefits of the proposed rule.

*Request for Comment.* The Commission invites comment on all aspects of the costs and benefits associated with the proposed rule, including the following:

1. Is the Commission's assumption that few, if any, market participants will be required to register as MSPs as a result of the proposed rule (as compared to the status quo) correct? If not, please provide an estimate of the number of market participants that are likely to have to register as MSPs as a result of the proposed rule, including an explanation for the basis of the estimate, and associated costs and benefits of the Proposed Rule's provisions for MSPs (including potential MSPs).

2. The Commission preliminarily believes that a requirement that Other Non-U.S. Persons include ANE transactions in their SD registration threshold calculations would not be likely to increase the scope of entities that would be covered under its swap requirements, but may result in significant burdens. Is that belief correct? If not, please provide an

estimate of the potential costs and benefits associated with including such a requirement?

3. The Commission invites information regarding whether and the extent to which specific foreign requirement(s) may affect the costs and benefits of the proposed rule, including information identifying the relevant foreign requirement(s) and any monetary or other quantitative estimates of the potential magnitude of those costs and benefits.

4. The Commission is estimating that 17 currently registered non-U.S. SDs would be classified as FCSs and that 14 unregistered non-U.S. persons may be classified as FCSs and required to register as new SDs because their swap dealing transactions are in excess of the SD de minimis threshold. The basis for these estimates is set forth below in the accompanying Appendix. The Commission seeks comments regarding its estimates of the scope and number of market participants potentially affected by the proposed rule, including its methodology for arriving at the estimates in the Appendix to Cost Benefit Considerations.

9. Appendix to Cost-Benefit Considerations

In this Appendix, the Commission explains its methodology for estimating, as a result of the proposed rule, the number of new entities that may be required to register with the Commission as SDs and the number of currently registered non-U.S. SDs that would be classified as an FCS. In arriving at this estimate, the Commission relied on SDR data and other data sources.[169] However, the Commission faced a number of challenges in conducting a quantitative analysis. In particular, the Commission does not have SDR data on trades between two non-U.S. persons, and its estimate with regard to the number of non-U.S. persons that may be required to register as SDs by virtue of being FCSs is based on certain assumptions and adjustments, as explained further below.

a. Estimates Regarding U.S. Persons and U.S. Guaranteed Entities

The Commission is estimating that overall there will not be an increase in the number of persons that will be required to register as U.S. SDs as a result of the proposed rule, as the proposed rule's approach to the swaps of U.S. persons mirrors the approach in the Guidance (*i.e.,* all swap dealing transactions must be included). Furthermore, the Commission does not expect any increase in the number of SDs resulting from changes to the U.S. person definition.[170]

The Commission is also estimating that there will be no increase in the number of new SDs that are U.S. Guaranteed Entities, as the proposed rule uses a narrower definition of a guarantee (compared to the Guidance), which the Commission believes will result in few, if any, U.S. Guaranteed Entities.[171] Therefore, for purposes of this cost-benefit analysis, the Commission estimates that currently there are no U.S. Guaranteed Entities (that are not FCSs) with over $8 billion in swaps dealing transactions.

b. Estimates Regarding Foreign Consolidated Subsidiaries

If the proposed rule is adopted, the Commission estimates that 17 currently registered non-U.S. SDs would be classified as FCSs and that 14 unregistered non-U.S. persons may be classified as FCSs and required to register as new SDs because their swap dealing transactions are in excess of the SD de minimis threshold. The basis for these estimates is set forth below.

(1) Estimate of the Number of Non-U.S. Swap Dealers That Would Be Classified as FCSs

In estimating the number of SDs that, as a result of the proposed rule, would shift from a category of non-U.S. SDs to the new category, FCS, the Commission reviewed its current list of registered SDs. As the definition of an FCS is dependent on whether the SD is a non-U.S. person that has an ultimate U.S. parent entity, the Commission was able to isolate those entities from a list of non-U.S. SDs. From this list, the Commission estimated that out of a total of 54 provisionally registered non-U.S. SDs, 17 would be classified as an FCS under the proposed rule.

(2) Estimate of Potential FCSs That May Be Required To Register as Swap Dealers

The Commission estimates that approximately 14 unregistered non-U.S. persons with a U.S. ultimate parent entity under U.S. GAAP (''potential FCSs'') may be required to register as SDs as a result of the proposed rule. The Commission does not currently collect data on trades between non-U.S. persons (including those of potential FCSs with non-U.S. persons). Therefore, in estimating the number of potential FCSs that may be required to register as SDs, the Commission relied on SDR data regarding inter-affiliate trades between potential FCSs and their affiliated U.S. SDs (''inter-affiliate trades'').

The Commission believes that SDR data on inter-affiliate trades provide a reasonable basis upon which to estimate the outward-dealing trades of potential FCSs with non-U.S. persons, provided that the estimate is scaled to the global swap market (as detailed below).[172] As described in section I.B, global financial groups commonly carry out swap dealing activities in multiple jurisdictions through branches or affiliates that effectively operate as a single business under the control of the ultimate parent entity. Under this model, where a non-U.S. branch or affiliate in the global financial group enters into a swap with a non-U.S. client in a local market, it will then offset the risk associated with the outward-facing swap via an inter-affiliate swap, which is likely to be with an affiliated dealer or market maker in the particular swap in the group.[173]

[169] Additional sources are referenced below. *See* note 174, *infra.*

[170] There may be a decrease in the number of funds or other entities that fall within the U.S. person definition as compared to the Guidance because the proposed U.S. person definition does not include the U.S. majority-owned funds provision or the catchall provision that were included in the U.S. person interpretation in the Guidance, and the Commission is clarifying that the proposed definition does not capture international financial institutions. On the other hand, because the unlimited U.S. responsibility prong does not include a majority ownership requirement (in a modification from the Guidance), this could increase the number of entities that fall within the U.S. person definition resulting in a concomitant increase in the number of SDs as compared to the Guidance. In addition, the Commission is not providing a safe harbor for funds that are only solicited to non-U.S. persons, which is a difference from the policy discussed in the Guidance. Therefore, overall the Commission does not expect any increase in the number of SDs resulting from changes to the U.S. person definition.

[171] As explained in the preamble, the Commission believes that there are few U.S. Guaranteed Entities at this time. *See* note 153, *supra.* Accordingly, the Commission does not expect an increase in the number of new SDs that would be required to register as a result of the Proposed Rule's requirement that a U.S. Guaranteed Entity include all of its swaps in its SD de minimis calculation.

[172] The Commission is unable to quantify certain swaps that may fall under the Proposed Rule. Specifically, there are dealing transactions entered into by potential FCSs with non-U.S. counterparties that would be included in the SD de minimis calculation of potential FCSs in this rulemaking that are not reported. Therefore, an estimate based solely on the SDR data for inter-affiliate trades would be under-inclusive because it only covers inter-affiliate trades between potential FCSs and their affiliated U.S. SDs. Accordingly, as detailed below, the Commission has scaled the inter-affiliate trade data to the global swaps market.

[173] The Commission understands that risk may move in either direction in an inter-affiliate trade, and therefore, the Commission's use of SDR data on inter-affiliate trades between a potential FCS and an affiliated U.S. SD may also be over-inclusive in estimating the number of SDs. However, for the reasons discussed in this section, the Commission believes that SDR data on potential FCSs' inter-

Accordingly, the Commission believes that inter-affiliate trades provide a reasonable means of estimating a substantial portion of a potential FCS's outward-facing swap dealing with non-U.S. counterparties.

However, there is an important limitation on the use of this inter-affiliate data which is likely to cause it to be under-inclusive as a proxy for the outward-facing trades of these potential FCSs with non-U.S. persons, as the Commission's SDR data only includes swaps that are between a potential FCS and an affiliated U.S. SD. Potential FCSs may also transfer the risk of some of their outward-facing dealing activities to affiliated non-U.S. SDs located in market centers outside the United States (*e.g.,* London and Tokyo) or retain the risk in their dealer portfolio (and an FCS must count all of its outward-facing dealing transactions toward its SD de minimis threshold under the proposed rule). Consequently, the Commission believes that using SDR data on inter-affiliate trades (which only includes a potential FCS's inter-affiliate swaps with an affiliated U.S. SD) as a proxy for swap dealing between a potential FCS and non-U.S. persons is likely to be under-inclusive. Therefore, the Commission has scaled the SDR data on inter-affiliate trades between a potential FCS and an affiliated U.S. SD to the global swaps market by applying a factor of 2 (which represents the approximate ratio between total U.S. swaps market and that of the global swaps market),[174] in order to estimate the number of potential FCSs that may be required to register as SDs as a result of the proposed rule.

Based on the foregoing assumptions, the Commission obtained SDR data on inter-affiliate swaps for each potential FCS with affiliated U.S. SDs during the period between March 5, 2015 and March 4, 2016 (the ''Reference Period''). Because this inter-affiliate trade data only includes open trades as of the end of the Reference Period (*i.e.,* trades that were closed out during the Reference Period are not accounted for in the data), the Commission used a $1 billion notional amount as a screening threshold to identify those potential FCSs that may be required to register as an SD under the proposed rule, rather than the current $8 billion SD de minimis threshold. Seven of the non-U.S. persons identified as potential FCSs had inter-affiliate trades with U.S. SDs that exceeded this $1 billion screening threshold. The Commission then multiplied its estimate of 7 by a scaling factor of 2 (as described above) to estimate that approximately 14 potential FCSs may be required to register as SDs as a result of the proposed rule.

c. Other Non-U.S. Persons

The Commission is unable to estimate the number of new SDs that may be required to register as a result of the proposed rule's requirement that an Other Non-U.S. Person include swaps with an FCS for SD registration threshold purposes due to the lack of SDR data regarding transactions between non-U.S. persons. The Commission also is not estimating the number of new SDs that may be required to register as a result of the proposed rule's requirement that an Other Non-U.S. Person include swaps with a U.S. Person or U.S. Guaranteed Entity in its SD de minimis registration threshold. The Commission believes that few, if any, additional Other Non-U.S. Persons would be required to register as an SD as a result of changes made by the proposed rule (as compared to the Guidance) with respect to either U.S. persons or U.S. Guaranteed Entities.[175]

As noted above, the Commission requests comment regarding its estimates of the scope and number of market participants potentially affected by the proposed rule, including its methodology for arriving at the estimates included in this Appendix.

## VIII. Preamble Summary Tables

TABLE A—CROSS-BORDER APPLICATION OF THE SWAP DEALER DE MINIMIS THRESHOLD

[Table A should be read in conjunction with the text of the proposed rule]

| Counterparty → / Potential SD ↓ | U.S. Person | Non-U.S. person | |
|---|---|---|---|
| | | U.S. Guaranteed entity [1]/FCS | Other Non-U.S. person |
| U.S. Person | Include | Include | Include. |
| Non-U.S. Person: | | | |
| U.S. Guaranteed Entity [1]/FCS | Include | Include | Include. |
| Other Non-U.S. Person | Include [2] | Include [2] | Exclude. |

[1] A non-U.S. person that is a U.S. Guaranteed Entity with respect to a swap would include the swap in its de minimis calculation if its swap counterparty has rights of recourse against a U.S. person with respect to its obligations under the swap.

[2] An Other Non-U.S. Person would include all swaps connected with its dealing activity with counterparties that are U.S. persons, U.S. Guaranteed Entities, or FCSs unless the swap is executed anonymously on a registered SEF, DCM, or FBOT and cleared.

affiliate swaps with affiliated U.S. SDs is much more likely to be under-inclusive as a means of estimating the number of potential FCSs that would be required to register as a result of the Proposed Rule.

[174] The factor of 2 that the Commission is using to scale the data upon which it is basing its estimate to the global swaps market is based on the inverse of the 57% scaling factor used in the cost-benefit analysis for the Commission's Final Margin Rule, rounded up to 2. In the Final Margin Rule, the Commission applied a 57% scale factor to the global notional amount of margin estimated in ISDA and BCBS–IOSCO surveys in order to better align its estimate of the global impact of margin requirements for uncleared swaps with the impact of the U.S. rules. The Commission utilized SDR data on uncleared interest rate swaps, which represent the majority of the notional value associated with uncleared swaps, to compute the 57% scale factor. The 57% scale factor was designed to represent the notional amount of uncleared interest rate swaps reported to the SDRs as a fraction of the global notional amount of uncleared interest rate swaps. *See* Final Margin Rule, 81 FR at 690–91 (Appendix A).

[175] The Commission believes that any increase in the number of Other Non-U.S. SDs that are required to register as an SD as a result of the proposed rule's requirement that an Other Non-U.S. Person include swaps with a U.S. Person in its SD de minimis calculation would be de minimis because the Guidance expresses a similar policy. Under the Guidance, non-U.S. persons that are not guaranteed or conduit affiliates generally include swaps with U.S. persons, excluding foreign branches of U.S. SDS, in their SD de minimis calculation. To the extent this reflects current industry practice, the Commission believes that few, if any, additional Other Non-U.S. Persons would be required to register as SDs as a result of deviation from the Guidance by the proposed rule with regard to counting swaps with U.S. persons.

In addition, as explained in the preamble, the Commission believes that there are few U.S. Guaranteed Entities at this time. *See* note 153, *supra.* Accordingly, the Commission does not expect an increase in the number of new SDs that would be required to register as a result of the proposed rule's requirement that an Other Non-U.S. Person include swaps with a U.S. Guaranteed Entity in its SD de minimis calculation.

Additionally, a potential SD, whether a U.S. or non-U.S. person, would aggregate all swaps connected with its dealing activity with those of persons controlling, controlled by, or under common control with such potential SD to the extent that these affiliated persons are themselves required to include those swaps in their own de minimis thresholds, unless the affiliated person is a registered SD.

TABLE B—CROSS-BORDER APPLICATION OF THE MAJOR SWAP PARTICIPANT REGISTRATION THRESHOLDS

[Table B should be read in conjunction with the text of the proposed rule]

| Counterparty → / Potential MSP ↓ | U.S. Person | Non-U.S. person | |
|---|---|---|---|
| | | U.S. Guaranteed entity [1]/FCS | Other Non-U.S. person |
| U.S. Person | Include | Include | Include. |
| Non-U.S. Person: | | | |
| U.S. Guaranteed Entity [a]/FCS | Include | Include | Include. |
| Other Non-U.S. Person | Include [b] | Include [b] | Exclude. |

[a] A non-U.S. person that is a U.S. Guaranteed Entity with respect to the relevant swap would include the swap in its MSP threshold calculations if its swap counterparty has rights of recourse against a U.S. person with respect to its obligations under the swap. Additionally, all swap positions that are subject to recourse should be attributed to the guarantor, whether it is a U.S. person or a non-U.S. person, unless the guarantor, the guaranteed entity, and its counterparty are Other Non-U.S. Persons.

[b] An Other Non-U.S. Person would include all of its swap positions with counterparties that are U.S. persons, U.S. Guaranteed Entities, or FCSs unless the swap is executed anonymously on a registered SEF, DCM, or FBOT and cleared.

TABLE C—CROSS-BORDER APPLICATION OF THE EXTERNAL BUSINESS CONDUCT STANDARDS

[Table C should be read in conjunction with the text of the proposed rule]

| Counterparty → / Potential SD ↓ | U.S. Person | | Non-U.S. person |
|---|---|---|---|
| | Not a foreign branch of an SD/MSP | Foreign branch of an SD/MSP | |
| U.S. Person: | | | |
| *Not* a Foreign Branch | Apply | Apply | Apply. |
| Foreign Branch | Apply | Do Not Apply * | Do Not Apply.* |
| Non-U.S. Person | Apply | Do Not Apply * | Do Not Apply.* |

* An SD that uses personnel located in the United States to arrange, negotiate, or execute a swap transaction (or a swap that is offered but not entered into) would nevertheless be subject to Commission regulations 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) and 23.433 (Fair Dealing).

**List of Subjects**

*17 CFR Part 1*

Counterparties, Cross-border, Major swap participants, Swap dealers, Swaps.

*17 CFR Part 23*

Business conduct standards, Counterparties, Cross-border, Major swap participants, Swap dealers, Swaps.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Amend § 1.3 as follows:

■ a. Add paragraphs (ggg)(7) and (nnn);

■ b. Reserve paragraphs (ooo)–(www) and (tttt)–(zzzz); and

■ c. Add paragraph (aaaaa).

The additions to read as follows:

**§ 1.3 Definitions.**

* * * * *

(ggg) * * *

(7) *Cross-border application of de minimis registration threshold calculation.*

(i) For purposes of determining whether an entity engages in more than a de minimis quantity of swap dealing activity under § 1.3(ggg)(4)(i), a person shall include the following swaps (subject to § 1.3(ggg)(6)):

(A) If such person is a U.S. person, all swaps connected with the dealing activity in which such person engages;

(B) If such person is a Foreign Consolidated Subsidiary, all swaps connected with the dealing activity in which such person engages;

(C) If such person is a non-U.S. person that is not a Foreign Consolidated Subsidiary, and its obligations under the relevant swap(s) are guaranteed by a U.S. person, all swaps connected with the dealing activity in which such person engages as to which its obligations under the relevant swap(s) are guaranteed by a U.S. person (in addition to any swaps that it is required to include pursuant to paragraph (ggg)(7)(i)(D) of this section);

(D) If such person is a non-U.S. person that is not a Foreign Consolidated Subsidiary, and its obligations under the relevant swap(s) are not guaranteed by a U.S. person, all of the following swaps connected with the dealing activity in which such person engages (in addition to any swaps that it is required to include pursuant to paragraph (ggg)(7)(i)(C) of this section) (unless the swap is entered into anonymously on a registered designated contract market, registered swap execution facility, or registered foreign board of trade and cleared through a registered or exempt derivatives clearing organization):

(*1*) Swaps with a counterparty that is a U.S. person;

(*2*) Swaps with a counterparty that is a Foreign Consolidated Subsidiary; and

(*3*) Swaps with a counterparty that is a non-U.S. person that is not a Foreign Consolidated Subsidiary and whose obligations under the relevant swap(s) are guaranteed by a U.S. person.

(ii) [Reserved]

* * * * *

(nnn) *Application of major swap participant tests in the cross-border context.*

(1) For purposes of determining a person's status as a major swap participant as defined in section 1a(33) of the Act, 7 U.S.C. 1(a)(33) and the rules and regulations thereunder, a person shall include the following swap positions:

(i) If such person is a U.S. person, all swap positions that are entered into by the person;

(ii) If such person is a Foreign Consolidated Subsidiary, all swap positions that are entered into by the person; and

(iii) If such person is a non-U.S. person that is not a Foreign Consolidated Subsidiary, and its obligations under the relevant swap(s) are guaranteed by a U.S. person, all swap positions that are entered into by the person as to which its obligations under the relevant swap(s) are guaranteed by a U.S. person (in addition to any swap positions that it is required to include pursuant to paragraph (nnn)(1)(iv) of this section);

(iv) If such person is a non-U.S. person that is not a Foreign Consolidated Subsidiary, and its obligations under the relevant swap(s) are not guaranteed by a U.S. person, all of the following swap positions that are entered into by the person (in addition to any swap positions that it is required to include pursuant to paragraph (nnn)(1)(iii) of this section) (unless the swap position is entered into anonymously on a registered designated contract market, registered swap execution facility, or registered foreign board of trade and cleared through a registered or exempt derivatives clearing organization):

(A) Swap positions with a counterparty that is a U.S. person;

(B) Swap positions with a counterparty that is a Foreign Consolidated Subsidiary; and

(C) Swap positions with a counterparty that is a non-U.S. person that is not a Foreign Consolidated Subsidiary and whose obligations under the relevant swap are guaranteed by a U.S. person.

(2) [Reserved]

(ooo)–(www) [Reserved]

* * * * *

(tttt)–(zzzz) [Reserved]

(aaaaa) *Cross-border definitions.* The following terms, as used in the rules and regulations in this chapter, with respect to the cross-border application of the swap provisions of the Act (or of the rules and regulations in this chapter prescribed or promulgated thereunder), shall have the meanings hereby assigned to them, unless the specific rule or regulation in this chapter otherwise provides or the context otherwise requires:

(1) *Foreign Consolidated Subsidiary* means a non-U.S. person in which an ultimate parent entity that is a U.S. person (''U.S. ultimate parent entity'') has a controlling financial interest, in accordance with U.S. generally accepted accounting principles, such that the U.S. ultimate parent entity includes the non-U.S. person's operating results, financial position and statement of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. generally accepted accounting principles.

(2) *Non-U.S. person* means any person that is not a U.S. person.

(3) *Ultimate parent entity* means the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. generally accepted accounting principles.

(4) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(5) *U.S. person* means:

(i) A natural person who is a resident of the United States;

(ii) An estate of a decedent who was a resident of the United States at the time of death;

(iii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity described in paragraph (aaaaa)(5)(iv) or (v) of this section) (''legal entity''), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, including any branch of the legal entity;

(iv) A pension plan for the employees, officers or principals of a legal entity described in paragraph (aaaaa)(5)(iii) of this section, unless the pension plan is primarily for foreign employees of such entity;

(v) A trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;

(vi) A legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is owned by one or more persons described in paragraphs (aaaaa)(5)(i) through (v) of this section and for which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity, including any branch of the legal entity; or

(vii) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in paragraphs (aaaaa)(5)(i) through (vi) of this section.

## PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 3. The authority citation for part 23 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Public Law 111–203, 124 Stat. 1641 (2010).

■ 4. Add § 23.452 in subpart H to read as follows:

### § 23.452 Cross-border application.

(a) Except as provided in paragraph (b) of this section, anything else to the contrary in this subpart notwithstanding, a swap dealer or major swap participant that is a non-U.S. person or a foreign branch of a U.S. person shall not be subject to the requirements of this subpart with respect to any transaction in swaps (or any swap that is offered but not entered into) where its counterparty is a foreign branch of a U.S. person that is a swap dealer or major swap participant or is a non-U.S. person.

(b) Notwithstanding paragraph (a) of this section, a swap dealer that is a non-U.S. person or a foreign branch of a U.S. person shall be subject to the requirements set forth in §§ 23.410 and 23.433 if the swap dealer uses personnel located in the United States to arrange, negotiate, or execute a transaction in swaps or a swap that is offered but not entered into.

Issued in Washington, DC, on October 11, 2016, by the Commission.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

## Appendices to Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

### Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Timothy G. Massad

I am pleased to support this proposal, which addresses several important aspects of the cross-border application of our swaps rules.

First, it seeks to enhance clarity and consistency in the application of our rules by proposing to define certain key terms, including the terms ''U.S. person'' and ''Foreign Consolidated Subsidiary'' (FCS), consistent with how they are defined in the Commission's cross-border margin rule.

Second, the proposal provides a clear standard for determining whether a swap dealing transaction should be included in an entity's calculation of whether it must register as a swap dealer. The proposal states that for U.S. persons, as well as those non-U.S. persons whose swaps are guaranteed by a U.S. person or that are a financially consolidated subsidiary of a U.S. ultimate parent (FCS), all swap dealing transactions must be included. All other persons would include swap dealing transactions with counterparties that are U.S. persons or FCSs, as well as swaps that have a U.S. guarantee, unless the swap is executed anonymously on a registered platform and cleared. The Proposed Rule provides a similar counting framework for the major swap participant registration threshold.

We are also proposing the application of external business conduct (EBC) standards for cross-border transactions, including those transactions that are arranged, negotiated, or executed by personnel in the U.S. Specifically, U.S. swap dealers would be required to comply with applicable standards, with the exception of their foreign branches. Non-U.S. swap dealers and foreign branches of U.S. swap dealers would be required to comply with applicable EBC standards for transactions with a U.S. counterparty—other than the foreign branch of a U.S. entity. For all other transactions, these dealers would not be subject to EBC standards, unless they use personnel located in the United States to arrange, negotiate, or execute such transactions. In that case, they would be required to comply with those EBC standards prohibiting fraud and other abusive conduct.

This aspect of our proposal follows up on a staff advisory and a Commission request for comment relating to non-U.S. swap dealers using personnel located in the United States to arrange, negotiate, or execute swap transactions. We will address whether other requirements should apply to such transactions at a later date.

This is just the latest in a number of steps we have taken to address cross-border issues in swaps rules. We have harmonized clearinghouse regulation through our accord with the European Commission—as well as through our work to address recovery and resolution internationally. We have given exemptions from registration to several foreign clearinghouses, and granted ''foreign board of trade'' status to several exchanges. We are actively working on harmonizing data reporting standards, and we are looking at whether we can do the same regarding trading requirements. And we harmonized requirements on margin for uncleared swaps, adopted a cross-border approach to that rule, and recently issued our first comparability determination for margin.

I wish to express my appreciation for the hard work of the CFTC staff in putting together these important rules. I thank Commissioner Bowen and Giancarlo for their support. And I encourage market participants to give us their comments on this proposed rule.

### Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

The rule proposal we have before us is significant. It addresses a number of important issues including: (i) The ''US Person'' definition; (ii) the treatment of foreign affiliates of US Persons (''Foreign Consolidated Subsidiaries'' or ''FCS''); (iii) the application of the de minimis threshold and business conduct standards to non-US registered dealers; and (iv) the treatment of swap trades that are ''arranged, negotiated, or executed'' in the US by foreign-based dealers but booked elsewhere.

I intend to vote ''yes'' for this proposed rule. Although I do not agree with every part of the proposal, I believe the proposal and questions lay out the key issues to allow for meaningful comments from the public. In that vein, I strongly urge market participants and members of the general public to comment on this rule proposal before the Commission makes a final decision. Its importance to our overall effort to regulate the swaps market requires us to take special care in considering how average investors and interested citizens feel about this proposal before we decide to finalize it.

I like many aspects of this rule. First, I am happy to see that it largely adopts the US Person and FCS definitions from the cross border margin rule. Whenever possible, we should try to make our rules consistent with each other; so this is a move in the right direction.

Second, it proposes that three important groups: US-based dealers, non-US entities guaranteed by US persons, and FCS—each count *all* of their swaps—those with US persons and non-US persons—towards the de minimis threshold. It is important that we subject non-US entities guaranteed by US persons, and FCS to this standard, because their swap risks have a material effect on the related US entity, and therefore, poses risks to our US financial system. Thus, it makes sense that we count all of their dealing activity in determining whether they engage in enough dealing to require registration.

However, I especially invite robust comment on certain aspects of the proposal:

*Conduit Affiliates:* I am concerned that the current proposal does not capture the dealing activity of ''conduit affiliates.'' A conduit affiliate is (i) a non-US affiliate that is consolidated with a US entity (or where a non-US affiliate and a US entity are consolidated) where there is no ultimate US parent and (ii) which transfers, through back to back swaps, the risk of swaps it enters into with non-US counterparties to that US person. They, in essence, serve as conduits for US entities to engage in, and ultimately assume the risk of, non-US swap activity. One would assume that these conduit affiliates would be captured by our rules and therefore would have to count this activity towards the de minimis threshold. However, this is not the case. That US entity could engage in billions of dollars of swap activity through its conduit affiliate and avoid all of our swap requirements.[1] This is a market risk concern. This issue is clearly highlighted in the questions, and I would be very interested in hearing comments about whether we should close this loophole, and require that conduit affiliates count all their trades, in which the risk is transferred to a US dealer, towards the de minimis threshold.

*Arranged, Negotiated, or Executed:* While I am believe it is good that the proposal requires that all US trading desk personnel of non-US dealers are held to conduct standards, I am not certain that we have gone far enough. Specifically, I encourage comment on whether the dealing activity that occurs in the US with US personnel from the trading desk of a non-US dealer should be counted towards that non-US dealer's threshold, even though the transactions are between two non-US counterparties and are booked outside the US. The FCS definition rightly requires non-US consolidated subsidiaries with a US parent to count all of their swap dealing activity towards the threshold, regardless of where it is booked. Does it make sense then that non-US dealers can use their US desks to engage in billions of dollars of swap dealing and never have that counted because the swaps are booked elsewhere? Are we, unnecessarily, putting US dealers at a serious competitive disadvantage to other dealers who are doing the very same thing sometimes just a few offices away?[2] Moreover, our fellow regulator, the Securities and Exchange Commission has answered ''yes'' to that question: Under their rules, non-US dealers must count security-based swap transactions that are arranged, negotiated or executed by US personnel toward their de minimis

[1] Also, if we find the jurisdiction where the transaction occurs comparable, none of these swaps would have to be margined either.

[2] ''Remarks of Chairman Gary Gensler at Swap Execution Facility Conference: Bringing Transparency and Access to Markets'' (Nov. 18, 2013), available at *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-152* (''[A] U.S. swap dealer on the 32nd floor of a New York building and a foreign-based swap dealer on the 31st floor of the same building, have to follow the same rules when arranging, negotiating or executing a swap. One elevator bank . . . one set of rules.'').

threshold.[3] Thus, if we choose not to do so, we would not be harmonized with our fellow regulator, which governs an important part of the swaps markets.

For these reasons, and others, I would strongly encourage the public and market participants, particularly our US dealers, to comment on this proposal. Thank you.

## Appendix 4—Statement of Commissioner J. Christopher Giancarlo

I support issuing today's proposed rule in order to hear commenters' considered views, especially with respect to the Commission's approach on the issue of U.S. personnel arranging, negotiating or executing transactions for two non-U.S. persons.

I have been a critic of the Commission's 2013 over-expansive cross-border interpretative guidance[4] and its avoidance of the rulemaking process to implement the sweeping policies contained therein. I consider both of these failings as having been compounded by the Division of Swap Dealer and Intermediary Oversight (DSIO) Advisory No. 13–69[5] stating that CFTC transaction-level requirements apply to swaps between a non-U.S. swap dealer and a non-U.S. person if the swap is arranged, negotiated or executed by personnel or agents of the non-U.S. swap dealer located in the U.S. (ANE Transactions). Today the Commission is proposing a rulemaking on the cross-border application of the registration thresholds and external business conduct standards to swap dealers and major swap participants and the ANE Transactions in DSIO Advisory No. 13–69. I commend the Commission for at last putting the guidance and advisory through the formal rulemaking process.

The proposed rule provides that these ANE Transactions fall within the scope of the Dodd-Frank Act and that it may be appropriate to apply specific swap requirements to such transactions to advance Dodd-Frank's regulatory objectives. Yet, it also preliminarily determines that applying registration thresholds and external business conduct standards to such ANE Transactions would not further Dodd-Frank's regulatory objectives, except for certain abusive practices and fair dealing rules with respect to external business conduct standards. While this limited application seems appropriate, I am interested to hear commenters' thoughts about the Commission's approach and rationale before reaching a decision.

Since this proposal only addresses registration thresholds and external business conduct standards, the Commission says it intends to address the application of other Dodd-Frank swap requirements to ANE Transactions in subsequent rulemakings as necessary and appropriate. Until that happens, I urge the staff to commit to extend no-action letter 16–64[6] in order to provide clarity that those swap requirements do not apply to ANE Transactions. This will provide the marketplace with certainty that all the swap requirements not addressed in today's rulemaking will not apply to ANE Transactions until the Commission takes further action.

[FR Doc. 2016–24905 Filed 10–17–16; 8:45 am]

BILLING CODE 6351–01–P

[3] 17 CFR 240.3a71–3(b)(1)(iii)(C). *See also* ''Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception; Final Rule,'' 81 FR 8598 (Feb. 19, 2016).

[4] Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (Jul. 26, 2013), *http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf.*

[5] CFTC Staff Advisory No. 13–69 (Nov. 14, 2013), *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-69.pdf.*

[6] CFTC Letter No. 16–64 (Aug. 4, 2016), *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-64.pdf.*

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