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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 37, 40, 50, 55, 74, and 75

RIN 3150–AJ60

[NRC–2015–0105]

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include updating the name and the phone number of the U.S. Government Publishing Office, updating the address for the National Technical Information Service, correcting typographical errors, correcting misspellings, and correcting references. This document is necessary to inform the public of these non-substantive changes to the NRC's regulations.

DATES: This rule is effective September 2, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0105 when contacting the NRC about the availability of information for this final rule. You may obtain publicly-available information related to this final rule by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0105. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

• *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 available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Doris Mendiola, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3464, email: *Doris.Mendiola@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 1, 37, 40, 50, 55, 74 and 75 of Title 10 of the *Code of Federal Regulations* (10 CFR) to make miscellaneous corrections. These changes include updating the name of the U.S. Government Publishing Office, updating the address for the National Technical Information Service, correcting typographical errors, correcting misspellings, and correcting and removing references. This document is necessary to inform the public of these non-substantive changes to the NRC's regulations.

II. Summary of Changes

10 CFR Part 1

Update Office Address. In § 1.3, this final rule removes the old office address for the ''National Technical Information Service'' and replaces it with the new address ''5301 Shawnee Road, Alexandria, VA 22312.''

10 CFR Part 37

Correct Reference. In § 37.23(b)(2), this final rule removes the incorrect reference ''§ 37.25(b)'' and replaces it with the correct reference ''§ 37.25(c).''

10 CFR Part 40

Correct Typographical Error. In § 40.61(a)(2), this final rule removes the first use of the word ''or'' and replaces it with the word ''of.''

10 CFR Part 50

Update Office Title and Telephone Number. In Footnote 4 of § 50.49, this final rule removes the old office title for the ''U.S. Government Printing Office'' and replaces it with the new office title ''U.S. Government Publishing Office.'' This final rule also removes the telephone number ''202–275–2060'' and replaces it with ''202–512–1800.''

Remove Reference. In § 50.54, this final rule removes the incorrect reference ''(q)'' from the introductory text.

Return Omitted Information, Update Access Information, Correct Reference. In § 50.55a, this final rule includes a document that was previously approved for incorporation by reference but inadvertently omitted from the list of incorporated documents in § 50.55a(a)(2). The document is the Institute of Electrical and Electronics Engineers (IEEE) Standard 279–1968, ''Proposed IEEE Criteria for Nuclear Power Plant Protection Systems,'' which was approved for incorporation by reference in 1972 (37 FR 17021; August 24, 1972). The documents currently listed in § 50.55a(a)(2)(i)–(iii) are moved to § 50.55a(a)(2)(ii)–(iv), and IEEE Standard 279–1968 is added back as § 50.55a(a)(2)(i), so that the documents are listed in chronological order. The access information in new § 50.55a(2)(iv) has been updated. This final rule also updates § 50.55a(h)(2) to reference the correct standards.

10 CFR Part 55

Update Office Title and Address. In Footnote 1 of § 55.40, this final rule removes the old office title ''U.S. Government Printing Office'' and replaces it with the new office title ''U.S. Government Publishing Office.'' This final rule also removes the old office address for the National Technical Information Service and replaces it with the new address ''5301 Shawnee Road, Alexandria, VA 22312.''

10 CFR Part 74

Correct Spelling. In § 74.4, this final rule corrects the definition of *Tamper-safing* by removing the misspelled word

''previouly'' and replacing it with the correct word ''previously.''

Correct Typographical Error. In § 74.55(b)(2), this final rule removes the incorrect reference ''Category BI items'' and replaces it with the correct reference ''Category IB items.''

10 CFR Part 75

Correct References. In § 75.6(d), this final rule revises the second column of the table by removing the incorrect references ''75.11(c)(1),'' ''75.11(c)(2),'' ''75.11(c)(3),'' ''75.11(c)(4),'' ''75.11(c)(5),'' ''75.11(c)(6),'' and ''75.11(c)(7)'' and replacing them with the correct references ''75.11(b)(1),'' ''75.11(b)(2),'' ''75.11(b)(3),'' ''75.11(b)(4),'' ''75.11(b)(5),'' ''75.11(b)(6),'' and ''75.11(b)(7).''

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments, because notice and opportunity for comment are unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections related only to management, organization, procedure, and practice. Specifically, the revisions correct typographical errors, misspellings, and incorrect references.

The Commission is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish these amendments as a final rule. The amendments are effective September 2, 2015. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. The revisions are non-substantive in nature, including correcting typographical errors, correcting misspellings, and correcting and removing references. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting or represent an inconsistency with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 37, 40, 50, 55, 74, and 75.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Atomic Energy Act secs. 23, 29, 161, 191 (42 U.S.C. 2033, 2039, 2201, 2241); Energy Reorganization Act secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.3, revise paragraph (c), last sentence, to read as follows:

§ 1.3 Source of additional information.

* * * * *

(c) * * * Final opinions made in the adjudication of cases are published in

''Nuclear Regulatory Commission Issuances,'' and are available on a subscription basis from the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

■ 3. The authority citation for part 37 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234 (42 U.S.C. 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201a., 2232, 2233, 2273, 2282).

■ 4. In § 37.23, revise paragraph (b)(2), last sentence, to read as follows:

§ 37.23 Access authorization program requirements.

* * * * *

(b) * * *

(2) * * * The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with § 37.25(c).

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 5. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 6. In § 40.61, revise paragraph (a)(2) to read as follows:

§ 40.61 Records.

(a) * * *

(2) The licensee who transferred the material shall retain each record of transfer of source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 7. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act secs. 11, 102, 103, 104, 105, 147, 149, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2014, 2132, 2133, 2134, 2135, 2167, 2169, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 50.10 also issued under Atomic Energy Act secs. 101, 185 (42 U.S.C. 2131, 2235); National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under Atomic Energy Act sec. 185 (42 U.S.C. 2235). Appendix Q also issued under National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415 (42 U.S.C. 2239). Section 50.78 also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

■ 8. In § 50.49, revise footnote 4 to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

[4] Specific guidance concerning the types of variables to be monitored is provided in Revision 2 of Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Copies of the Regulatory Guide may be purchased through the U.S. Government Publishing Office by calling 202–512–1800 or by writing to the U.S. Government Publishing Office, P.O. Box 37082, Washington, DC 20013–7082.

■ 9. In § 50.54, revise the last sentence of the introductory text to read as follows:

§ 50.54 Conditions of licenses.

* * * The following paragraphs with the exception of paragraph (r), (s), and (u) of this section are conditions in every combined license issued under part 52 of this chapter, provided, however, that paragraphs (i) introductory text, (i)(1), (j), (k), (l), (m), (n), (w), (x), (y), (z), and (hh) of this section are only applicable after the Commission makes the finding under § 52.103(g) of this chapter.

* * * * *

■ 10. In § 50.55a, revise paragraphs (a)(2)(i) through (iii), add paragraph (a)(2)(iv), and revise paragraph (h)(2) to read as follows:

§ 50.55a Codes and standards.

(a) * * *

(2) * * *

(i) *IEEE standard 279–1968.* (IEEE Std 279–1968), ''Proposed IEEE Criteria for Nuclear Power Plant Protection Systems'' (Approval Date: August 30, 1968), referenced in paragraph (h)(2) of this section. (Copies of this document may be purchased from IHS Global, 15 Inverness Way East, Englewood, CO 80112; *https://global.ihs.com.*)

(ii) *IEEE standard 279–1971.* (IEEE Std 279–1971), ''Criteria for Protection Systems for Nuclear Power Generating Stations'' (Approval Date: June 3, 1971), referenced in paragraph (h)(2) of this section.

(iii) *IEEE standard 603–1991.* (IEEE Std 603–1991), ''Standard Criteria for Safety Systems for Nuclear Power Generating Stations'' (Approval Date: June 27, 1991), referenced in paragraphs (h)(2) and (h)(3) of this section. All other standards that are referenced in IEEE Std 603–1991 are not approved for incorporation by reference.

(iv) *IEEE standard 603–1991, correction sheet.* (IEEE Std 603–1991 correction sheet), ''Standard Criteria for Safety Systems for Nuclear Power Generating Stations, Correction Sheet, Issued January 30, 1995,'' referenced in paragraphs (h)(2) and (h)(3) of this section. (This correction sheet is available from IEEE at *http://standards.ieee.org/findstds/errata/*).

* * * * *

(h) * * *

(2) *Protection systems.* For nuclear power plants with construction permits issued after January 1, 1971, but before May 13, 1999, protection systems must meet the requirements in IEEE Std 279–1968, ''Proposed IEEE Criteria for Nuclear Power Plant Protection Systems,'' or the requirements in IEEE Std 279–1971, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' or the requirements in IEEE Std 603–1991, ''Criteria for Safety Systems for Nuclear Power Generating Stations,'' and the correction sheet dated January 30, 1995. For nuclear power plants with construction permits issued before January 1, 1971, protection systems must be consistent with their licensing basis or may meet

the requirements of IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

* * * * *

PART 55—OPERATORS' LICENSES

■ 11. The authority citation for part 55 continues to read as follows:

Authority: Atomic Energy Act secs. 107, 161, 181, 182, 68 Stat. 939, 948, 953, 223, 234 (42 U.S.C. 2137, 2201, 2231, 2232, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226).

Section 55.61 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

■ 12. In § 55.40, revise footnote 1 to read as follows:

§ 55.40 Implementation.

* * * * *

[1]Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Publishing Office, P.O. Box 38082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312. A copy is available for inspection and/or copying in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (0–1F23), Rockville, MD.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 13. The authority citation for part 74 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

■ 14. In § 74.4, the definition of ''tamper-safing'' is revised to read as follows:

§ 74.4 Definitions.

* * * * *

Tamper-safing means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault.

* * * * *

■ 15. In § 74.55, revise paragraph (b)(2) to read as follows:

§ 74.55 Item monitoring.

* * * * *

(b) * * *

(2) Three working days for Category IA items and seven calendar days for Category IB items located elsewhere in the MAA, except for reactor components measuring at least one meter in length and weighing in excess of 30 kilograms for which the time interval shall be 30 days;

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL–IMPLEMENTATION OF US/IAEA AGREEMENT

■ 16. The authority citation for part 75 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 63, 103, 104, 122, 161, 223, 234 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 75.4 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155, 10161).

■ 17. In § 75.6, revise paragraph (d) to read as follows:

§ 75.6 Facility and location reporting.

* * * * *

(d) Locations—Specific information regarding locations is to be reported as follows:

Item	Section	Manner of delivery
Fuel cycle-related research and development information	75.11(b)(1)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Fuel cycle-related manufacturing and construction information	75.11(b)(2)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Mines and concentration plant information	75.11(b)(3)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Impure source material possession information	75.11(b)(4)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of source material for non-nuclear end uses	75.11(b)(5)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
IAEA safeguards-exempted and terminated nuclear material information.	75.11(b)(6)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of non-nuclear material and equipment	75.11(b)(7)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.

Dated at Rockville, Maryland, this 28th day of July, 2015.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2015–18863 Filed 7–31–15; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE39

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulation governing federal credit union (FCU) ownership of fixed assets. To provide regulatory relief to FCUs, the final rule eliminates a provision in the current fixed assets rule that established a five percent aggregate limit on investments in fixed assets for FCUs with $1,000,000 or more in assets. With this elimination, provisions regarding waivers from the aggregate limit are no longer relevant, so the final rule also eliminates those provisions. Instead of applying the prescriptive aggregate limit provided by regulation in the current fixed assets rule, under the final rule, NCUA will oversee FCU

ownership of fixed assets through the supervisory process and guidance.

The final rule also makes conforming amendments to the scope and definitions sections of the current fixed assets rule to reflect this modified approach, and it revises the title of § 701.36 to more accurately reflect this amended scope and applicability. In addition, the final rule simplifies the current fixed assets rule's partial occupancy requirements for FCU premises acquired for future expansion by establishing a single six-year time period for partial occupancy of all premises and by removing the 30-month requirement for partial occupancy waiver requests.

DATES: This rule is effective October 2, 2015.

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SUPPLEMENTARY INFORMATION:

I. Background

The Federal Credit Union Act (FCU Act) authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.[1] NCUA's fixed assets rule interprets and implements this provision of the FCU Act.[2] NCUA's current fixed assets rule: (1) limits FCU investments in fixed assets; (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions.[3] Under the current rule, fixed assets are defined as premises, furniture, fixtures, and equipment, including any office, branch office, suboffice, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.[4]

A. 2013 Rule

The Board has a policy of continually reviewing NCUA's regulations to update, clarify, and simplify existing regulations and eliminate redundant and unnecessary provisions. To carry out this policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA reviewed its fixed assets rule as part of this process. As a result of that review, in March 2013, the Board issued proposed amendments to the fixed assets rule to make it easier for FCUs to understand it.[5] The proposed amendments did not make any substantive changes to the regulatory requirements. Rather, they only clarified the rule and improved its overall organization, structure, and readability.

In response to the Board's request for public comment on the March 2013 proposal, several commenters offered suggestions for substantive changes to the fixed assets rule, such as increasing or eliminating the aggregate limit on fixed assets, changing the current waiver process, and extending the time frames for occupying premises acquired for future expansion. These comments, however, were beyond the scope of the March 2013 proposal, which only reorganized and clarified the rule. Accordingly, in September 2013, the Board adopted the March 2013 proposal as final without change except for one minor modification.[6] In finalizing that rule, however, the Board indicated it would take the commenters' substantive suggestions into consideration if it were to make subsequent amendments to NCUA's fixed assets rule.

B. July 2014 Proposal

In July 2014, the Board issued a proposed rule to provide regulatory relief to FCUs and to allow FCUs greater autonomy in managing their fixed assets.[7] These amendments reflected some of the public comments received on the March 2013 proposal. Specifically, in the July 2014 proposal, the Board proposed to allow an FCU to exceed the five percent aggregate limit,[8] without the need for a waiver, provided the FCU implemented a fixed assets management (FAM) program that demonstrated appropriate pre-acquisition analysis to ensure the FCU could afford any impact on earnings and net worth levels resulting from the purchase of fixed assets. Under the July 2014 proposal, an FCU's FAM program would have been subject to supervisory scrutiny and would have had to provide for close ongoing oversight of fixed assets levels and their effect on the FCU's financial performance. It also would have had to include a written policy that set an FCU board-established limit on the aggregate amount of the FCU's fixed assets. In the July 2014 proposal, the Board also proposed to simplify the partial occupancy requirement for premises acquired for future expansion by establishing a single five-year time period for partial occupancy of any premises acquired for future expansion, including improved and unimproved property, and by removing the current fixed assets rule's 30-month time limit for submitting a partial occupancy waiver request.

The public comment period for the July 2014 proposal closed on October 10, 2014, and NCUA received thirty-six comments on the proposal. While commenters generally supported the Board's efforts to provide regulatory relief from the requirements concerning FCU fixed assets, most commenters advocated for more relief or suggested alternative approaches to achieving that objective.

For example, a significant number of commenters suggested that the July 2014 proposal did not provide sufficient regulatory relief and that the five percent aggregate limit should be eliminated. These commenters noted that the aggregate limit is not statutorily mandated by the FCU Act and, thus, FCUs should be allowed to independently manage their own fixed assets without a strict regulatory limit. Several commenters argued further that FCUs should be permitted to manage their own fixed assets without the additional requirements.

In addition, a large percentage of commenters opposed the proposed FAM program requirement. Commenters argued that it would be unnecessary or overly burdensome, and it would impose additional burdens that FCUs are not already subject to under the current rule. For example, one commenter argued that the July 2014 proposal simply shuffled regulatory burden, rather than providing meaningful regulatory relief. Several other commenters proffered a similar argument that the additional requirements imposed after assets are acquired would increase FCUs' compliance responsibilities and costs, mitigating any flexibility gained under the proposal.

The July 2014 proposal also would have simplified the partial occupancy requirement for premises acquired for future expansion. Virtually all commenters that provided feedback on the proposed amendments to the partial

[1] 12 U.S.C. 1757(4).
[2] 12 CFR 701.36.
[3] *Id.*
[4] 12 CFR 701.36(c).
[5] 78 FR 17136 (Mar. 20, 2013).
[6] 78 FR 57250 (Sept. 18, 2013).
[7] 79 FR 46727 (Aug. 11, 2014).
[8] The five percent aggregate limit on fixed assets is measured in comparison to the FCU's shares and retained earnings.

occupancy requirement supported the overall concept of streamlining or improving this aspect of the fixed assets rule. However, most commenters requested additional relief beyond that proposed. For example, a number of commenters suggested that the time period for partial occupancy should be extended. Commenters also recommended that regulatory timeframes for occupancy should be eliminated entirely.

After careful consideration of the public comments, particularly those relating to the fixed assets aggregate limit, the Board determined that additional regulatory relief beyond what was provided in the July 2014 proposal was warranted. Therefore, the Board did not adopt the July 2014 proposal, including any FAM program requirements. The Board concluded upon further review that oversight of the purchase of FCU investments in fixed assets can be effectively achieved through supervisory guidance and the examination process, rather than through prescriptive regulatory limitations. Accordingly, in March 2015, the Board issued a new proposal to eliminate the five percent aggregate limit on fixed assets.

C. March 2015 Proposal

In March 2015, largely because of the public comments received in response to the July 2014 proposal, the Board issued a new proposal to address commenters' requests for additional regulatory relief from the aggregate limit on fixed assets.[9] The Board also incorporated into the March 2015 proposal partial occupancy requirements similar to those from the July 2014 proposal, but with one modification to the proposed single time period for partial occupancy, to provide even more regulatory relief to FCUs.

Specifically, in March 2015, the Board proposed to eliminate the five percent aggregate limit on FCU investments in fixed assets. It also proposed to eliminate the related provisions governing waivers of the aggregate limit because those provisions would no longer be relevant in the absence of a prescriptive aggregate limit.

In addition, in the March 2015 proposal, the Board proposed to incorporate, with one change, the proposed amendments in the July 2014 proposal relating to the partial occupancy requirements for FCU premises acquired for future expansion. Specifically, the Board proposed to require an FCU to partially occupy any premises acquired for future expansion, regardless of whether the premises are improved or unimproved property, within six years from the date of the FCU's acquisition of those premises. In the July 2014 proposal, the Board proposed to require partial occupancy within a uniform five-year time period. However, in response to public comments, the March 2015 proposal revised it to six years rather than five years for partial occupancy, which would retain the current fixed assets rule's time period for unimproved land or unimproved real property and extend the current rule's time period for improved premises by three years. The March 2015 proposal also reissued, without change, the amendment in the July 2014 proposal to eliminate the current requirement for an FCU that wishes to apply for a waiver of the partial occupancy requirement to do so within 30 months of acquisition of the property acquired for future expansion.

II. Public Comments on the March 2015 Proposal

The public comment period for the March 2015 proposal ended on April 29, 2015. NCUA received sixteen comments on the proposed rule: two from credit union trade associations, four from state credit union leagues, seven from FCUs, and three from FISCUs. Most commenters were generally supportive of the proposal and the Board's continuing efforts to provide regulatory relief in this area. Four commenters supported the proposal without stipulation, but eight commenters asked for more relief and flexibility or expressed concern about one or more aspects of the proposal. None of the commenters opposed the proposal entirely. However, one commenter indicated that it could not support the rule without first evaluating any related supervisory guidance.

The substantive comments on the key aspects of the March 2015 proposal are discussed in more detail below.

A. Removal of the 5% Aggregate Limit

Section 701.36(c) of the current fixed assets rule establishes an aggregate limit on investments in fixed assets for FCUs with $1,000,000 or more in assets. For an FCU meeting this asset threshold, the aggregate of all its investments in fixed assets is limited to five percent of its shares and retained earnings, unless NCUA grants a waiver establishing a higher limit.[10] The March 2015 proposal eliminated this provision. It also eliminated the provisions in the current fixed assets rule relating to waivers from the aggregate limit.

Eleven commenters expressed support for eliminating the five percent aggregate limit. Of those, two commenters also supported the reissuance of the proposal without the FAM program requirements that were included in the July 2014 proposal. One commenter asserted that NCUA should not impose an aggregate limit on FCU investments in fixed assets because it is not required by the FCU Act. Two commenters noted that the five percent aggregate limit is outdated and the removal of the limitation is long overdue. One commenter indicated that the current one-size-fits-all rule is very restrictive and may disadvantage credit unions in higher cost areas because credit unions located in areas with higher property costs can reach the cap much more easily and quickly. The same commenter posited that the latest proposed approach is preferable to the current rule because the individuality of each credit union can be incorporated into the supervisory evaluation process through examiner judgment.

Two commenters noted that the removal of the five percent limit will allow credit unions to make the business decisions necessary to thrive, and to accomplish their growth strategies and meet the needs of their members. Another commenter stated that the proposed amendment will allow credit unions more flexibility in finding the greatest value for their members. A different commenter said the change will increase a credit union's flexibility in the management and ownership of its fixed assets. One commenter said that the removal of the aggregate limit represents significant reform that provides FCUs with flexibility to meet their business or operational needs and the needs of members.

One commenter generally supported the concept of moving oversight of fixed assets from the regulatory process to the supervisory process, but expressed concern that the proposal simply shifts the same requirements from regulatory oversight to supervisory oversight.

In view of the generally positive comments received on this aspect of the March 2015 proposal, the Board is adopting, without change, the amendment to remove the five percent aggregate limit. As discussed in the preamble to the March 2015 proposal, the objective of the fixed assets rule is to place reasonable limits on the risk associated with excessive or speculative

[9] 80 FR 16595 (Mar. 30, 2015).

[10] 12 CFR 701.36(c).

acquisition of fixed assets.[11] The Board continues to believe this objective can be effectively achieved through the supervisory process as opposed to a regulatory limit.[12] Accordingly, the final rule eliminates the five percent aggregate limit on FCU investments in fixed assets. It also eliminates the related provisions governing waivers of the aggregate limit because those provisions are no longer necessary in the absence of a prescriptive regulatory limit.

The Board emphasizes, however, that NCUA's supervisory expectations remain high. As noted in the March 2015 proposal, the Board cautions that the elimination of the aggregate limit should not be interpreted as an invitation for FCUs to make excessive, speculative, or otherwise irresponsible investments in fixed assets. This final rule reflects the Board's recognition that relief from the prescriptive limit on fixed assets is appropriate, but FCU investments in fixed assets are, and will continue to be, subject to supervisory review. If an FCU has an elevated level of fixed assets, NCUA will maintain close oversight to ensure the FCU conducts prudent planning and analysis with respect to fixed assets acquisitions, can afford any such acquisitions, and properly manages any ongoing risk to its earnings and capital.

Supervisory Guidance and Review

Most commenters generally supported the overall concept of overseeing FCU ownership of fixed assets through the supervisory process and guidance, instead of applying a prescriptive aggregate limit provided by regulation. One commenter noted that the supervisory examination process works well in the majority of cases. Another commenter said the proposed approach is rational because investments in fixed assets present little safety and soundness risk.

A number of other commenters, however, expressed concern about the oversight of FCU fixed assets through supervisory guidance and review. One commenter argued that a credit union's purchase of a fixed asset should not be left to an individual examiner's interpretation of what should be acquired by the credit union. One commenter encouraged the agency to adopt guidance that clearly articulates the criteria that an examiner will use to determine if a credit union's investments in fixed assets are safe and sound. Another commenter suggested that when a credit union maintains a well-capitalized net worth ratio and positive earnings, and produces a sound business plan, NCUA should not intervene or second guess the credit union's decisions. Another commenter stated generally that supervisory guidance and the examination process should allow a credit union flexibility to manage its own operations and not subject it to micro-management and the rigid scrutiny of examiners. A different commenter stated that fixed assets acquisitions must be evaluated within the context of the individual strategies of each credit union and examiners should be trained accordingly.

In addition, six commenters requested that any guidance governing investments in fixed assets be issued for public comment. One commenter said the Board should re-issue for public comment a new proposal that includes proposed supervisory guidance as an appendix to the proposed rule. One commenter asked that guidance be provided before any final rule is adopted. Another commenter suggested that guidance should be issued in conjunction with the final rule. One commenter simply urged that guidance be timely issued.

While the Board appreciates the value in affording the opportunity for public comment, the Board does not believe that formal notice-and-comment procedures for the final rule's companion guidance are required or necessary in this circumstance. As noted above, the Board has already formally solicited public comment on the subject of fixed assets in 2013, 2014, and 2015, and virtually all of the amendments contained in this final rule are in response to the comments received. Further, the amendments are intended to grant significant regulatory relief to FCUs, and a fourth notice-and-comment process on this subject would only further delay their implementation.

The Board notes that supervisory guidance does not require notice and comment rulemaking under the Administrative Procedure Act (APA), and thus, it does not have the force and effect of law or regulation.[13] The purpose of supervisory guidance and other interpretive rules is generally ''to advise the public of the agency's construction of the statutes and rules that it administers.'' [14] Supervisory guidance regarding FCU ownership of fixed assets is not intended to supplant FCUs' business decisions or to impose rigid and prescriptive requirements on FCUs in the management of their investments in fixed assets. Rather, the guidance will provide examiners and credit unions with clear information about NCUA's supervisory expectations with respect to the final rule, and establish a consistent framework for the exam and supervision process for the review of credit union management of fixed assets.

The Board recognizes that clear and timely supervisory guidance is important to the effective implementation of this final rule. Thus, before this final rule takes effect, NCUA will issue updated supervisory guidance to examiners that will be shared with FCUs. The guidance will reflect current supervisory expectations [15] that require an FCU to demonstrate appropriate due diligence, ongoing board and management oversight,[16] and prudent financial analysis to ensure the FCU can afford any impact on earnings and net worth levels caused by its purchase of fixed assets. The guidance will ensure examiners effectively identify any risks to safety and soundness due to an FCU's excessive investment in fixed assets. It will focus on evaluating the quality of an FCU's fixed assets management relative to its planning for fixed assets acquisitions and controlling the related financial risks. The guidance will also focus on evaluating an FCU's quality of earnings and capital relative to its projected performance under both baseline (expected) and stressed scenarios. The Board notes that the evaluation of fixed assets is not a current baseline review requirement for

[11] *See* 43 FR 26317 (June 19, 1978) (''This regulation is intended to ensure that the officials of FCUs have considered all relevant factors prior to committing large sums of members' funds to the acquisition of fixed assets.''); 49 FR 50365, 50366 (Dec. 28, 1984) (''The intent of the regulation is to prevent, or at least curb, excessive investments in fixed assets and the related costs and expenses that may be beyond the financial capability of the credit union.''); 54 FR 18466, 18467 (May 1, 1989) (''[T]he purpose of the regulation is to provide some control on the potential risk of excess investment and/or commitment to invest substantial sums in fixed assets.'').

[12] *See* 80 FR 16595, 16601 (Mar. 30, 2015).

[13] Section 4(b)(A) of the APA provides that, unless another statute states otherwise, the notice-and-comment requirement does not apply to ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). The term ''interpretative rule,'' or ''interpretive rule,'' is not defined by the APA, but the United States Supreme Court has noted that the critical feature of interpretive rules is that they are ''issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.'' *Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1203–04, 191 L. Ed. 2d 186 (2015) (citing, *Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99, 115 S. Ct. 1232, 131 L.Ed.2d 106 (1995)).

[14] *Id.*

[15] *See* NCUA Examiner's Guide, Chapter 8.

[16] The credit union's board needs to approve plans for any investment in fixed assets that will materially affect the credit union's earnings. Credit union management should only purchase fixed assets in compliance with policy approved by the credit union's board.

any examinations, and is only expected if examiners identify a material safety and soundness concern. In general, if an FCU can demonstrate an ability to afford and manage its fixed assets, the level of fixed assets will not be a supervisory concern.

Appeals

Two commenters recommended that the final rule include a formal appeals process to allow credit unions the opportunity to defend fixed assets investment decisions that are challenged through supervision.

The Board emphasizes that it is not NCUA's goal to second guess an FCU's reasonable business decisions, and NCUA anticipates that open communications between an FCU and its examiner should resolve most kinds of fixed assets disputes about which commenters have raised concern. Nevertheless, as with any other regulation, an FCU that fails to comply with the requirements of this final rule may be subject to commensurate supervisory action. The Board notes that all rights and procedures generally available to an FCU in appealing an NCUA administrative or enforcement action are likewise available to an FCU under this final rule.

B. Partial Occupancy

Most commenters were supportive of the overall concept of streamlining or improving the fixed assets rule's partial occupancy requirement. A number of commenters, however, asked for additional relief beyond that proposed.

Uniform 6-Year Partial Occupancy Timeframe

Under the current rule, if an FCU acquires premises for future expansion and does not fully occupy them within one year, it must have an FCU board resolution in place by the end of that year with definitive plans for full occupation.[17] The current rule does not set a specific time period within which an FCU must achieve full occupation of premises acquired for future expansion. However, partial occupancy of the premises is required within a reasonable period, but no later than three years after the date of acquisition of improved property, or six years if the premises are unimproved land or unimproved real property.[18] Partial occupancy must be sufficient to show, among other things, that the FCU will fully occupy the premises within a reasonable time and consistent with its plan for the premises.[19] In the March 2015 proposal, the Board proposed to simplify the occupancy requirements in the fixed assets rule by establishing a single time period of six years from the date of acquisition for partial occupancy of any premises acquired for future expansion, regardless of whether the premises are improved or unimproved.

Three commenters agreed with the proposal to establish a single, uniform six-year time period for partial occupancy. One commenter, however, suggested that six years is too short a timeframe to achieve partial occupancy. Another commenter agreed that partial occupancy within six years may be appropriate in some instances, but disagreed that it should be mandated by regulation. Two commenters suggested that the rule should allow for up to ten years for partial occupancy. One commenter noted generally that allowing a longer timeframe for partial occupancy would reduce the need for waivers. One commenter said the proposed six-year timeframe is an improvement over the current rule, but preferred that the regulatory occupancy timeframes be removed altogether.

Six commenters suggested that the partial occupancy requirement should be eliminated entirely. Of those, four commenters observed that the FCU Act does not require a specific timeframe for occupancy or otherwise prescribe occupancy requirements for permissible real estate holdings. One commenter posited that NCUA has the statutory authority to provide greater flexibility in the partial occupancy requirements of the fixed assets rule.

As discussed in the preambles to the July 2014 and the March 2015 proposals, the FCU Act authorizes an FCU to purchase, hold, and dispose of property *necessary or incidental to its operations.*[20] NCUA has interpreted this provision to mean that an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or member services.[21] There is no authority in the FCU Act for an FCU to invest in real estate for speculative purposes or to otherwise engage in real estate activities that do not support its purpose of providing financial services to its members.

As noted above, the purpose of the fixed assets rule is to place reasonable controls on the risk associated with excess or speculative acquisition of fixed assets. The Board believes that, while partial occupancy is not expressly mandated by the FCU Act, the requirement for an FCU to partially occupy premises acquired for future expansion within a specified timeframe functions as a reasonable safeguard against speculative real estate investments or other impermissible real estate activities that are not permitted for FCUs under the FCU Act. Further, the Board maintains that a single six-year time period for partial occupancy will simplify and improve the rule, and the final rule adopts this amendment without modification. The final rule therefore retains the current time period for unimproved land or unimproved real property, and extends the current time period for improved premises by three years.

The Board emphasizes that the elimination of the 30-month requirement for partial occupancy waiver requests, which is discussed below, will allow an FCU additional leeway to apply for a waiver, as needed, if it is not able to achieve partial occupancy of premises within six years.

30-Month Waiver Deadline

Under the current rule, an FCU must submit its request for a waiver from the partial occupancy requirement within 30 months after the property is acquired. In the March 2015 proposal, the Board proposed to eliminate the 30-month requirement and allow FCUs to apply for a waiver beyond that time frame as appropriate. Four commenters provided feedback on the proposal to eliminate the 30-month timeframe for requesting a waiver of the partial occupancy requirement, and all were supportive of it. One commenter noted that the current 30-month waiver deadline does not allow FCUs the necessary flexibility to react to unanticipated business developments. The same commenter indicated that delays often occur outside the 30-month waiver timeframe and FCUs are left without options, causing greater hardship for an FCU already facing a

[17] 12 CFR 701.36(d)(1). The reasonableness of an FCU's plan for full occupation is evaluated through the examination process and based upon such factors as the defensibility of projection assumptions, the operational and financial feasibility of the plan, and the overall suitability of the plan relative to the FCU's field of membership.

[18] 12 CFR 701.36(d)(2).

[19] 12 CFR 701.36(b).

[20] 12 U.S.C. 1757(4) (emphasis added).

[21] *See* 43 FR 58176, 58178 (Dec. 13, 1978) (''Part 107(4) of the Federal Credit Union Act provides that a credit union may purchase, hold, and dispose of property necessary or incidental to its operations. Retaining a piece of property whose only purpose is to provide office space to other entities is clearly not necessary or incidental to the Federal credit union's operations. Further, investing in, or holding, property with the intent of realizing a profit from appreciation at a future sale is also outside the powers of a Federal credit union.''); 69 FR 58039, 58041 (Sept. 29, 2004) (''Federal credit unions are chartered for the purpose of providing financial services to their members and it is not permissible for them to engage in real estate activities that do not support that purpose.'')

business set-back in the development of its unimproved property.

In light of the unanimous support from commenters on this aspect of the proposal, the Board is adopting, without change, the proposal to eliminate the 30-month timeframe for requesting a waiver of the partial occupancy requirement.

C. Additional Comments

Full Occupancy

As mentioned above, the current rule does not set a specific time period within which an FCU must achieve full occupancy of premises acquired for future expansion. However, if an FCU acquires such premises and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation.[22] Further, partial occupancy of the premises is required within a set timeframe and must be sufficient to show, among other things, that the FCU will fully occupy the premises within a reasonable time and consistent with its plan for the premises.[23] The Board requested and received public comment on this topic in connection with the July 2014 proposal. The Board did not propose to amend the full occupancy requirement in the March 2015 proposal, but several commenters provided comment on this subject.

One commenter stated that the FCU Act includes no express occupancy mandate on FCU property that supports the purpose of providing financial services to credit union members. Accordingly, the commenter believed that NCUA's interpretation of Section 107(4) of the FCU Act is unnecessarily restrictive, and the Board should eliminate the occupancy requirements from the rule. In support of this contention, the same commenter suggested that removing occupancy restrictions would allow FCUs to better compete with other financial institutions.

Another commenter stated generally that NCUA should reconsider its position on full occupancy because it oftentimes makes sense for a credit union to own a building and lease out part or all of the building to help offset the cost of property ownership.

The Board appreciates the additional comments on the full occupancy requirement and is carefully considering commenters' continued requests for relief in this area. The Board may address the full occupancy requirement in a future proposed rulemaking.

Small Credit Union Exemption

One commenter suggested NCUA review the small credit union exemption in the current fixed assets rule in order to provide additional regulatory relief to FCUs. This commenter asserted that the fixed assets rule does not apply to credit unions with less than $1 million in assets, and observed that NCUA has not adjusted the exemption amount in a number of years.

The Board clarifies, however, that the current exemption for FCUs with less than $1 million in assets[24] does not exempt those FCUs from the entirety of the fixed assets rule. Rather, the exemption applies only to the five percent aggregate limit on FCU ownership of fixed assets, which is eliminated in this final rule. Thus, the small credit union exemption to that limit is rendered moot and likewise eliminated.

III. Final Rule

After careful consideration of all the public comments, the Board is generally adopting the March 2015 proposed rule as final without change.

In summary, this final rule amends the current fixed assets rule by: (1) Eliminating the five percent aggregate limit on fixed assets for FCUs with $1,000,000 or more in assets, as well as the provisions relating to waivers from that aggregate limit; (2) establishing a single time period of six years from the date of acquisition of real property for an FCU to partially occupy any premises acquired for future expansion, regardless of whether the premises are improved or unimproved property; and (3) eliminating the requirement that an FCU applying for a waiver of the partial occupancy requirement do so within 30 months of acquisition of any property acquired for future expansion.

In addition, the final rule makes conforming and technical amendments to the scope, definitions, and other sections of the fixed assets rule to reflect these changes, and it amends the title of § 701.36 to more accurately reflect its amended scope and applicability.

A. Existing Waivers or Enforcement Constraints

Because the final rule eliminates the five percent aggregate limit on fixed assets and the provisions relating to waivers from that aggregate limit, any waiver previously approved by NCUA concerning this aspect of the rule is rendered moot upon the effective date of this final rule. However, any constraints imposed on an FCU in connection with its investments in fixed assets, such as may be contained in a Letter of Understanding and Agreement, Document of Resolution, Regional Director Letter, Preliminary Warning Letter, or formal enforcement action, will remain intact. Thus, any particular enforcement measure to which an FCU is uniquely subject takes precedence over the more general application of the regulation. A constraint may take the form of a limitation or other condition that is actually imposed as part of a waiver. In such cases, the constraint will survive the adoption of this final rule.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $50 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. This rule will provide regulatory relief by allowing FCUs to manage their investments in fixed assets without having to prepare and submit a waiver request to exceed the five percent aggregate limit. Regulatory relief will also be achieved by extending the time period from three to six years for a FCU to partially occupy improved premises acquired for future expansion and by eliminating the requirement to submit a waiver request within 30 months after the property is acquired. This will reduce the number of credit unions needing to request an occupancy waiver. This rule will result in no additional costs to FCUs. NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[25] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping

[22] 12 CFR 701.36(d)(1).

[23] *Id.*

[24] 12 CFR 701.36(c).

[25] 44 U.S.C. 3507(d); 5 CFR part 1320.

requirement, both referred to as information collections. The final rule provides regulatory relief to FCUs by eliminating the requirement that, for an FCU with $1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares and retained earnings, unless it obtains a waiver from NCUA. The final rule does not impose new paperwork burdens. However, the final rule will relieve FCUs from the current requirement to obtain a waiver to exceed the five percent aggregate limit on investments in fixed assets.

According to NCUA records, as of September 30, 2014, there were 3,707 FCUs with assets over $1,000,000 and subject to the five percent aggregate limit on fixed assets. Of those, approximately 150 FCUs would prepare and file a new waiver request to exceed the five percent aggregate limit. This effort, which is estimated to create 15 hours burden per waiver, would no longer be required under the final rule. Accordingly, the reduction to existing paperwork burdens that would result from the final rule is analyzed below:

Estimate of the Reduced Burden by Eliminating the Waiver Requirement

Estimated FCUs which will no longer be required to prepare a waiver request and file a waiver request: 150.

Frequency of waiver request: Annual.

Reduced hour burden: 15.

150 FCUs × 15 hours = 2250 hours annual reduced burden.

In accordance with the requirements of the PRA, NCUA submitted a copy of the rule to the Office of Management and Budget for its review and approval.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. Because the fixed assets rule applies only to FCUs, and not to state-chartered credit unions, this final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As such, NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.[26]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA because it will provide regulatory relief to give FCUs greater autonomy in managing their investments in fixed assets. The elimination of the aggregate limit on fixed assets and the extension of the occupancy requirement will significantly reduce the number of FCUs needing to prepare a waiver request. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on July 23, 2015.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.36 as follows:
■ a. Revise the section heading and paragraph (a).
■ b. In paragraph (b) remove the following definitions: ''fixed assets'', ''furniture, fixtures, and equipment'', ''investments in fixed assets'', ''retained earnings'', and ''shares''.
■ c. Remove paragraph (c).
■ d. Redesignate paragraph (d) as (c).
■ e. Revise newly redesignated paragraph (c)(2).
■ f. Redesignate paragraph (e) as (d).
■ g. Revise newly redesignated paragraphs (d)(2) and (4).

The revisions read as follows:

§ 701.36 Federal credit union occupancy, planning, and disposal of acquired and abandoned premises.

(a) *Scope.* Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision by establishing occupancy, planning, and disposal requirements for acquired and abandoned premises, and by prohibiting certain transactions. This section applies only to federal credit unions.

* * * * *

(c) * * *

(2) If a federal credit union acquires premises for future expansion, including unimproved land or unimproved real property, it must partially occupy them within a reasonable period, but no later than six years after the date of acquisition. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

* * * * *

(d) * * *

(2) A federal credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in acquiring premises, unless the federal credit union's board of directors determines the employee's involvement is not a conflict of interest.

* * * * *

(4) To seek a waiver from any of the prohibitions in this paragraph (d), a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. Within 45 days of the receipt of the waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving its request. The Regional Director's decision will be based on safety and soundness considerations and a

[26] Public Law 105–277, 112 Stat. 2681 (1998).

determination as to whether a conflict of interest exists.

[FR Doc. 2015–18642 Filed 7–31–15; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0826; Directorate Identifier 2014–NM–221–AD; Amendment 39–18222; AD 2015–15–12]

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 certain Airbus Model A318, A319, and A320 series airplanes modified by a particular supplemental type certificate (STC). This AD was prompted by reports of cracks found during inspections of the in-flight entertainment system radome assembly. This AD requires repetitive detailed inspections for cracks in the radome assembly, and replacement of the radome if necessary. We are issuing this AD to detect and correct cracks in the radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

DATES: This AD is effective September 8, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 8, 2015.

ADDRESSES: For service information identified in this AD, contact Live TV, 7415 Emerald Dunes Drive, Orlando, FL 32822; telephone 407–812–2643; email: *CertificationEngineering@livetv.net;* Internet: *http://www.LiveTV.net.* 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–2015–0826.

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–2015–0826; 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: Barry Culler, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5546; fax: 404–474–5605; email: *william.culler@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 Airbus Model A318, A319, and A320 series airplanes modified by a particular STC. The NPRM published in the **Federal Register** on April 15, 2015 (80 FR 20175). The NPRM was prompted by reports of cracks found during inspections of the in-flight entertainment system radome assembly that had in-flight entertainment systems installed using an STC issued to Live TV (STC ST00788SE, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/$FILE/ST00788SE.pdf*). Investigation of the cause of the cracks revealed that radome manufacturing variation, due to a lack of dimensional controls on the radome manufacturing drawings, can result in the introduction of preload stress on the radome during its assembly with the skirt fairing. Preload stress combined with flight or handling stress, such as maintenance personnel stepping on the radome fairing assembly, might initiate a crack. The radome manufacturing drawings were revised on September 13, 2010, to add a control dimension, which was incorporated into production at radome serial number 498. The NPRM proposed to require detailed inspections for cracks in the radome assembly, and replacement of the radome if necessary. We are issuing this AD to detect and correct cracks in the radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 20175, April 15, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 20175, April 15, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 20175, April 15, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014. The service information describes procedures for repetitive detailed inspections for cracks in the outer ply of the radome, and replacement of the radome with a new or serviceable radome if any crack is found. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 120 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	1 work-hour × $85 per hour = $85 per inspection cycle.	N/A	$85 per inspection cycle	$10,200 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	8 work-hours × $85 per hour = $ 680	$0	$680

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

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):

2015–15–12 Airbus: Amendment 39–18222; Docket No. FAA–2015–0826; Directorate Identifier 2014–NM–221–AD.

(a) Effective Date

This AD is effective September 8, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplane models identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, with Live TV radomes having part number (P/N) 5063–100–XX (XX designates the color option) and a serial number in the range of 001 through 497 inclusive, and modified by supplemental type certificate (STC) ST00788SE, *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/6df40775b10ef09a86257ae200613cfe/$FILE/ST00788SE.pdf.*

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

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

(3) Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks found during inspections of the in-flight entertainment system radome assembly. We are issuing this AD to detect and correct cracks in the in-flight entertainment system radome assembly, which could result in the radome (or pieces) separating from the airplane and striking the tail, consequently reducing the controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Within 3,900 flight hours after the effective date of this AD: Perform a detailed inspection for cracks of the radome assembly, in accordance with the Accomplishment Instructions of Live TV Service Bulletin

A320–53–006, Rev 01, dated September 10, 2014. Repeat the inspection thereafter at intervals not to exceed 3,900 flight hours. If any crack is found during any inspection required by this paragraph, before further flight, replace the radome with a new or serviceable radome, in accordance with the Accomplishment Instructions of Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014.

(h) Reporting Requirement

If any crack is found during any inspection required by paragraph (g) of this AD, submit a report of the findings to Live TV, Attn: Oscar Hernandez, email: *CertificationEngineering@livetv.net;* at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. The report must include the information specified in the service bulletin reporting form provided in Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014.

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

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

(i) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(j) Paperwork Reduction Act Burden Statement

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.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

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

(l) Related Information

For more information about this AD, contact Barry Culler, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5546; fax: 404 474 5605; email: *william.culler@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Live TV Service Bulletin A320–53–006, Rev 01, dated September 10, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Live TV, 7415 Emerald Dunes Drive, Orlando, FL 32822; telephone 407–812–2643; email: *CertificationEngineering@livetv.net;* Internet: *http://www.LiveTV.net.*

(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 July 17, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–18535 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0348; Directorate Identifier 2014–NM–033–AD; Amendment 39–18225; AD 2015–15–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200, 777–200LR, 777–300ER, and 777F series airplanes. This AD was prompted by a report indicating that sealant might not have been applied in production to the wing skin panel gaps above certain underwing fittings. This AD would require an inspection for missing sealant, and applicable other specified, related investigative, and corrective actions. We are proposing this AD to detect and correct missing sealant from the wing skin panel gaps above the underwing fittings, which could result in corrosion and fatigue cracking in the wing skin panel, and consequent loss of limit load capability of the wing skin and potential subsequent structural failure of the wings.

DATES: This AD is effective September 8, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 8, 2015.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA 2014–0348.

Examining the AD Docket

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

0348; 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: Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–6573; phone: 425–917–6573; fax: 425–917–6590; email: *haytham.alaidy@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200, 777–200LR, 777–300ER, and 777F series airplanes. The NPRM published in the **Federal Register** on July 1, 2014 (79 FR 37243). The NPRM was prompted by a report indicating that sealant might not have been applied in production to the wing skin panel gaps above certain underwing fittings. The NPRM proposed to require an inspection for missing sealant, and applicable other specified, related investigative and corrective actions. We are issuing this AD to detect and correct missing sealant from the wing skin panel gaps above the underwing fittings, which could result in corrosion and fatigue cracking in the wing skin panel, and consequent loss of limit load capability of the wing skin and potential subsequent structural failure of the wings.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 37243, July 1, 2014) and the FAA's response to each comment. Boeing concurs with the contents of the NPRM.

Request To Accept Approved Repairs Without Need for Alternative Methods of Compliance (AMOC)

FedEx requested that any FAA-approved repair be accepted without the requirement of obtaining an AMOC.

We do not agree with the request. The FAA does not consider that any FAA-approved repair will be acceptable to repair this condition. As the sealant was missing from the airplane at the time of initial delivery, it may not have been restored in prior repairs. In addition, repairs may not have detected all corrosion because the repair might not have included the inspection information contained in Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015.

Repairs for this AD must be approved by the Manager, Seattle ACO, FAA; or by the Boeing Organization Designation Authorization (ODA) using FAA Form 8100–9 in accordance with the procedures specified in paragraph (j)(3) of this AD. We intend to delegate authority to approve AMOCs to the Boeing ODA for the repair approval process. In addition to knowledge of the unsafe condition, the Boeing ODA is knowledgeable about the original airplane design and compliance substantiation. We have not changed this AD regarding this issue.

Request To Withdraw NPRM (79 FR 37243, July 1, 2014)

American Airlines (AAL) stated that the Boeing 777 Maintenance Review Board Report (MRBR) has existing inspections intended to identify deterioration of sealant, as well as any corrosion or cracking. These inspections will detect deterioration or damage to the fillet seal that would lead to moisture ingression to the area of concern. AAL therefore considers the NPRM (79 FR 37243, July 1, 2014) to be unwarranted.

We disagree with the commenter's request to withdraw the NPRM (79 FR 37243, July 1, 2014). Evaluation of the quality escapement revealed that, under certain environmental conditions, moisture can get trapped within a cavity directly under the nacelle fittings that are normally filled with sealant. With the presence of moisture in this cavity, the existing corrosion protection would degrade within an estimated ten years of service, and corrosion pitting would form on the stringer surface. Under flight loading, cracks would initiate and propagate from the corrosion pits until the stringer would no longer be able to sustain limit load, and would eventually fail. This corrosion and cracking would not be detected by the existing maintenance program prior to stringer failure. We have not changed this AD regarding this issue.

Request for Validated Inspection Procedures

American Airlines (AAL) stated that accomplishing the actions specified in Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, could be detrimental to aircraft safety. According to AAL, any attempt at the sealant removal to do the inspection based upon the existing instructions in Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, could potentially damage or degrade the protective surface finish of the wing skin or underwing fitting and lead to future corrosion or fatigue cracking.

AAL stated that it attempted and failed to accomplish the inspection in accordance with Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, because access to some of the intended inspection areas was severely inhibited by hydraulic lines. AAL also stated that any sealant, if present, would have been applied to the entire gap, so inspection from only one side should be sufficient. In addition, AAL used the recommended tooling and alternate tooling as specified in Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, but experienced multiple problems with the use of this tooling. In addition, AAL requested that Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, be validated with workable tooling on an in-service airplane prior to any future action.

We infer that the commenter is requesting that we delay issuance of the final rule pending validation of the existing procedures. We do not agree. AAL reported ''multiple problems with the use of this tooling,'' but did not describe any specific problems. However, we understand that the tools themselves require frequent but inexpensive replacement. We have determined that use of the appropriate tools and processes to remove the sealant from underneath the fitting should not damage the skin or adjacent structures.

Boeing has performed and validated the procedures in Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, on certain airplanes that are representative of the fleet on the flight line before delivery with no damage to the skin or adjacent structures. However, Boeing has revised Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, to clarify the sealant removal process and tooling, to ensure that it will not damage the skin. We also discussed AAL's concerns with Boeing, and Boeing reported that they have provided AAL with assistance. Boeing is also willing to work with any other operator that is having difficulty implementing the SB.

Boeing considers that the revision of Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, should address AAL's concerns about

the tooling and procedures for sealant removal. We have revised paragraphs (c), (g), (h)(1), and (h)(2) of this AD to refer to Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015. We have added new paragraph (i) to this AD to give credit for actions done before the effective date of this AD using Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014. We have redesignated subsequent paragraphs accordingly. The FAA will consider approving alternative procedures if they are shown to be effective.

Request for Additional Time

AAL requested that, once Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, is validated, sufficient time should be provided to allow operators to procure such tooling.

We infer that the commenter is requesting an extension to the compliance time. We do not agree with the commenter's request to extend the compliance time. We coordinated with Boeing regarding tool availability and fabrication. The tools stated in Boeing Service Bulletin 777–57A0097, dated January 10, 2014; and Revision 1, dated May 4, 2015; are nonmetallic sealant scrapers, which are widely available, with no lead time to procure these tools. Existing tools may be modified to match the wing panel gaps by cutting them to the correct size. However, we do understand that cutting the tools to size may weaken the tools, which could cause them to fracture and result in more frequent replacement of the tools. Boeing has stated that there is no engineering or drawing work required for fabrication. Any certified aircraft mechanic can fabricate the necessary tools. Boeing stated that during validation of the Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014, the tools were fabricated in a working shift. 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 (79 FR 37243, July 1, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 37243, July 1, 2014).

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 Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015. The service information describes procedures for the inspection and repair of underwing fitting sealant at wing panel gaps. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 104 work-hours × $85 per hour = $8,840	$0	Up to $8,840	Up to $53,040.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Sealant restoration	1 work-hour × $85 per hour = $85	$0	$85.
Corrosion inspection	2 work-hours × $85 per hour = $170 per side	$0	$170 per side.

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–15–15 The Boeing Company: Amendment 39–18225; Docket No. FAA–2014–0348; Directorate Identifier 2014–NM–033–AD.

(a) Effective Date

This AD is effective September 8, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, 777–200LR, 777–300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that sealant might not have been applied in production to the wing skin panel gaps above certain underwing fittings. We are issuing this AD to detect and correct missing sealant from the wing skin panel gaps above the underwing fittings, which could result in corrosion and fatigue cracking in the wing skin panel, and consequent loss of limit load capability of the wing skin and potential subsequent structural failure of the wings.

(f) Compliance

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

(g) Inspection, Related Investigative and Corrective Actions

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015, except as required by paragraph (h)(1) of this AD: Do a detailed inspection for missing sealant in the wing skin panel gaps above the underwing fittings, and do all applicable other specified, related investigative, and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015, except as required by paragraph (h)(2) of this AD. Do all applicable other specified, related investigative, and corrective actions before further flight.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015, 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.

(2) Where Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015, specifies to contact Boeing for appropriate action: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–57A0097, dated January 10, 2014.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Some steps in the Work Instructions are labeled as Required for Compliance (RC). If this service bulletin is mandated by an AD, then the steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures. 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

(1) For more information about this AD, contact Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6573; fax: 425–917–6590; email: *haytham.alaidy@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 777–57A0097, Revision 1, dated May 4, 2015.

(ii) Reserved.

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

(4) You may view this 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 July 23, 2015.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–18694 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0652; Directorate Identifier 2014–NM–076–AD; Amendment 39–18223; AD 2015–15–13]

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 A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. This AD was prompted by reports of cracks that could be initiated at the waste water service panel area and the potable water service panel area. This AD requires modification of the potable water service panel and waste water service panel, including doing applicable related investigative and corrective actions. We are issuing this AD to prevent any cracking at the waste water service panel area and the potable water service panel area, which could affect the structural integrity of the airplane.

DATES: This AD becomes effective September 8, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0652* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact 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–2014–0652.

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 A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. The NPRM published in the **Federal Register** on October 1, 2014 (79 FR 59160).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0081, dated March 31, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. The MCAI states:

> During the full scale fatigue test on A320–200, it has been noticed that, due to fatigue, cracks could be initiated at the waste water service panel area and the potable water service panel area.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> Prompted by these findings, ALS [airworthiness limitations section] Part 2 tasks have been introduced for the affected A320 family aeroplanes. Since those actions were taken, Airbus developed production mod 160055 and mod 160056 to embody reinforcements (cold working on certain rivet rows) of the potable water and waste water service panels, and published associated Airbus Service Bulletin (SB) A320–53–1272 (retrofit mod 153074) and SB A320–53–1267 (retrofit mod 153073) for in-service embodiment.
>
> Following complementary Design Office studies, it appears that the Sharklet installations on certain aeroplanes have a significant impact on the aeroplane structure (particularly, A319 and A320 post-mod 160001, and A321 post-mod 160021), leading to different compliance times, depending on aeroplane configuration.
>
> For the reasons described above, this [EASA] AD requires reinforcement of the potable water and waste water service panels. Accomplishment of these modifications cancels the need for the related ALS Part 2 Tasks.

The modification includes doing applicable related investigative and corrective actions. Related investigative actions include measuring the diameter of a hole of a fastener and doing a rotating probe inspection. Corrective actions include repairs. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0652-0003.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 59160, October 1, 2014) and the FAA's response to each comment.

Request To Include Latest Service Information

United Airlines (UAL) and Airbus requested that we revise the NPRM (79 FR 59160, October 1, 2014) to include the latest service information. UAL explained that Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, has similar modification requirements to those specified in Airbus Service Bulletin A320–53–1267, Revision 01, dated October 2, 2013, but also has updates including two new airplane configurations, which update compliance times corresponding to the times listed in paragraph (g)(2) of the NPRM. Airbus stated that Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, updates the effectivity and compliance times in the service information.

We agree to include Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, in this AD. Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, was issued to provide updated compliance times and effectivity. Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, does not add additional requirements for AD compliance times.

Also, we have added Airbus Service Bulletin A320–53–1267, Revision 01, dated October 2, 2013, to paragraph (j)(2) of this AD to offer credit for the corresponding actions performed before the effective date of this AD.

Request To Omit Paragraph (h) of the NPRM (79 FR 59160, October 1, 2014)

UAL requested that we revise the NPRM (79 FR 59160, October 1, 2014) to omit paragraph (h) of the proposed AD. UAL explained that Task 534126–01–3, of the Airworthiness Limitation Section (ALS) Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the

Airbus A319/A320/A321 Airworthiness Limitation Items is addressed separately in other rulemaking, NPRM Docket No. FAA–2013–0692, Directorate Identifier 2012–NM–024–AD (78 FR 49213, August 13, 2013), and that NPRM contains the instructions for the corrective actions in paragraph (o)(2) of that NPRM. UAL concluded that paragraph (h) of the NPRM (79 FR 59160, October 1, 2014), which specifies corrective actions for Task 534126–01–3, might cause confusion. UAL also suggested that, as an alternative to omitting paragraph (h) of NPRM (79 FR 59160, October 1, 2014), paragraph (h) of the NPRM could be revised so that the Task 534126–01–3 requirement refers to the other rulemaking, NPRM Docket No. FAA–2013–0692, Directorate Identifier 2012–NM–024–AD (78 FR 49213, August 13, 2013), which has since been issued as AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015). (AD 2014–23–15 has since been superseded by AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015)).

We disagree to omit or revise paragraph (h) of this AD. Paragraph (h) of this AD is not a duplicated action. Paragraph (h) of this AD specifies that for Airbus A320 airplanes having pre-modification 160001, that have exceeded 46,400 flight cycles or 92,800 flight hours, whichever occurred first since the airplane's first flight, operators must repair cracks found during accomplishment of Task 534126–01–3, 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. This specific condition and corrective action is not included in paragraph (p)(2) of AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015, which corresponds to paragraph (o)(2) of NPRM Docket No. FAA–2013–0692, Directorate Identifier 2012–NM–024–AD (78 FR 49213, August 13, 2013). AD 2015–05–02, does not mandate corrective actions associated with Task 534126–01–3, of the Airworthiness Limitation Section (ALS) Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the Airbus A319/A320/A321 Airworthiness Limitation Items, but instead mandates incorporation of that task into operators' maintenance or inspection programs. We have made no changes to 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 (79 FR 59160, October 1, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 59160, October 1, 2014).

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 Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014; and Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014. The service information describes procedures for a modification, which includes measuring the diameter of a hole of a fastener and doing a rotating probe inspection, and repairs if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

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

We also estimate that it will take about 25 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $420 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,165,795, or $2,545 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0652;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–15–13 Airbus: Amendment 39–18223. Docket No. FAA–2014–0652; Directorate Identifier 2014–NM–076–AD.

(a) Effective Date

This AD becomes effective September 8, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 160055 or Airbus Modification 160056 has been embodied in production.

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

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

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

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks that could be initiated at the waste water service panel area and the potable water service panel area. We are issuing this AD to prevent any cracking at the waste water service panel area and the potable water service panel area, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Modification

(1) Within the compliance time specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this AD, as applicable, modify the potable water service panel, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014, except where Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014, specifies to contact Airbus, repair before further flight 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). Do all applicable related investigative and corrective actions within the compliance time specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this AD.

(i) For Model A319 airplanes pre-modification 160001: Within 48,500 flight cycles or 97,000 flight hours, whichever occurs first since the airplane's first flight.

(ii) For Model A319 airplanes post-modification 160001: Within 46,000 flight cycles or 92,000 flight hours, whichever occurs first since the airplane's first flight.

(iii) For Model A320 airplanes pre-modification 160001: Within 54,200 flight cycles or 108,400 flight hours, whichever occurs first since the airplane's first flight.

(iv) For Model A320 airplanes post-modification 160001: Within 36,000 flight cycles or 72,000 flight hours, whichever occurs first since the airplane's first flight.

(v) For Model A321 airplanes: Within 60,000 flight cycles or 120,000 flight hours, whichever occurs first since the airplane's first flight.

(2) Within the compliance time specified in paragraphs (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(2)(vi) of this AD, as applicable, modify the waste water service panel, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, except where Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014, specifies to contact Airbus, repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. Do all applicable related investigative and corrective actions within the compliance time specified in paragraphs (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v) of this AD.

(i) For Airbus A319 airplanes pre-modification 160001: Within 44,400 flight cycles or 88,800 flight hours, whichever occurs first since the airplane's first flight.

(ii) For Airbus A319 airplanes post-modification 160001: Within 43,600 flight cycles or 87,200 flight hours, whichever occurs first since the airplane's first flight.

(iii) For Airbus A320 airplanes pre-modification 160001, within the compliance times specified in paragraph (g)(2)(iii)(A) or (g)(2)(iii)(B) of this AD, whichever occurs later:

(A) Within 46,400 flight cycles or 92,800 flight hours, whichever occurs first since the airplane's first flight.

(B) Within 2,300 flight cycles or 4,600 flight hours, whichever occurs first since last accomplishment of Task No. 534126–01–3, of the Airworthiness Limitation Section (ALS) Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the Airbus A319/A320/A321 Airworthiness Limitation Items, without exceeding 48,000 flight cycles or 96,000 flight hours, whichever occurs first since the airplane's first flight.

(iv) For Airbus A320 airplanes post-modification 160001: Within 39,200 flight cycles or 78,400 flight hours, whichever occurs first since the airplane's first flight.

(v) For Airbus A321 airplanes pre-modification 160021: Within 51,600 flight cycles or 103,200 flight hours, whichever occurs first since the airplane's first flight.

(vi) For Airbus A321 airplanes post-modification 160021: Within 51,200 flight cycles or 102,400 flight hours, whichever occurs first since the airplane's first flight.

(h) Corrective Action

For Airbus A320 airplanes having pre-modification 160001, that have exceeded 46,400 flight cycles or 92,800 flight hours, whichever occurred first since the airplane's first flight: If any crack is found during accomplishment of Task No. 534126–01–3, of the ALS Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the Airbus A319/A320/A321 Airworthiness Limitation Items, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(i) Terminating Action for ALS Task

(1) Modification of an airplane as required by paragraph (g)(1) of this AD, terminates the requirement for the task in the ALS Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the Airbus A318/A319/A320/A321 Airworthiness Limitation Items for that airplane, as identified in paragraphs (i)(1)(i), (i)(1)(ii), (i)(1)(iii), (i)(1)(iv), (i)(1)(v), and (i)(1)(vi) of this AD, as applicable.

(i) For Airbus A319 airplanes pre-modification 160001: Task No. 534125–01–2.

(ii) For Airbus A319 airplanes post-modification 160001: Task No. 534125–01–5.

(iii) For Airbus A320 airplanes pre-modification 160001: Task No. 534125–01–3.

(iv) For Airbus A320 airplanes post-modification 160001: Task No. 534125–01–6.

(v) For Airbus A321 airplanes pre-modification 160021: Task No. 534125–01–4.

(vi) For Airbus A321 airplanes post-modification 160021: Task No. 534125–01–7.

(2) Modification of an airplane as required by paragraphs (g)(2) and (g)(3) of this AD, terminates the requirement for the task in the ALS Part 2, ''Damage-Tolerant Airworthiness Limitation Items'' of the Airbus A318/A319/A320/A321 Airworthiness Limitation Items for that airplane, as identified in paragraphs (i)(2)(i), (i)(2)(ii), (i)(2)(iii), (i)(2)(iv), (i)(2)(v), and (i)(2)(vi) of this AD, as applicable.

(i) For Airbus A319 airplanes pre-modification 160001: Task No. 534126–01–2.

(ii) For Airbus A319 airplanes post-modification 160001: Task No. 534126–01–5.

(iii) For Airbus A320 airplanes pre-modification 160001: Task No. 534126–01–3.

(iv) For Airbus A320 airplanes post-modification 160001: Task No. 534126–01–6.

(v) For Airbus A321 airplanes pre-modification 160021: Task No. 534126–01–4.

(vi) For Airbus A321 airplanes post-modification 160021: Task No. 534126–01–7.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1272, dated January 10, 2013; or Airbus Service Bulletin A320–53–1272, Revision 01, dated August 6, 2013; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1267, dated June 24, 2013; or Airbus Service Bulletin A320–53–1267, Revision 01, dated October 2, 2013; which are not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0081, dated March 31, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0652-0003.*

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

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–53–1267, Revision 02, dated May 19, 2014.

(ii) Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014.

(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 July 22, 2015.

Victor Wicklund,

Acting Manager,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–18564 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31028; Amdt. No. 3653]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 3, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This

amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97:

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

Issued in Washington, DC, on July 17, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 20 August 2015

Russian Mission, AK, Russian Mission, RNAV (GPS) RWY 35, Orig–B
Tuscaloosa, AL, Tuscaloosa Rgnl, RNAV (GPS) RWY 12, Orig–A
Tuscaloosa, AL, Tuscaloosa Rgnl, RNAV (GPS) RWY 30, Orig–B
San Diego, CA, San Diego Intl, ILS or LOC RWY 9, Amdt 2
San Diego, CA, San Diego Intl, LOC RWY 27, Amdt 5C
San Diego, CA, San Diego Intl, RNAV (GPS) RWY 9, Amdt 1
San Diego, CA, San Diego Intl, RNAV (GPS) RWY 27, Amdt 3C
San Diego, CA, San Diego Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Washington, DC, Ronald Reagan Washington National, RNAV (GPS) RWY 15, Orig
Washington, DC, Ronald Reagan Washington National, RNAV (GPS) RWY 33, Amdt 1
Washington, DC, Ronald Reagan Washington National, VOR RWY 15, Amdt 2
Washington, DC, Ronald Reagan Washington National, VOR RWY 19, Amdt 10
Atlanta, GA, Newnan Coweta County, ILS OR LOC/NDB RWY 32, Orig
Atlanta, GA, Newnan Coweta County, LOC RWY 32, Amdt 2, CANCELED
Millen, GA, Millen, RNAV (GPS) RWY 17, Amdt 2A
Millen, GA, Millen, RNAV (GPS) RWY 35, Amdt 1A
Millen, GA, Millen, Takeoff Minimums and Obstacle DP, Amdt 1
Vidalia, GA, Vidalia Rgnl, ILS OR LOC RWY 25, Amdt 2
Vidalia, GA, Vidalia Rgnl, RNAV (GPS) RWY 7, Orig
Vidalia, GA, Vidalia Rgnl, RNAV (GPS) RWY 25, Amdt 2
Vidalia, GA, Vidalia Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Gary, IN, Gary/Chicago Intl, COPTER ILS OR LOC RWY 30, Amdt 1
Gary, IN, Gary/Chicago Intl, ILS OR LOC RWY 30, Amdt 6
Gary, IN, Gary/Chicago Intl, NDB RWY 30, Amdt 7D, CANCELED
Gary, IN, Gary/Chicago Intl, RNAV (GPS) Y RWY 30, Amdt 1
Gary, IN, Gary/Chicago Intl, RNAV (RNP) Z RWY 30, Amdt 1
Concordia, KS, Blosser Muni, NDB–A, Orig–A, CANCELED
Tribune, KS, Tribune Muni, RNAV (GPS) RWY 17, Orig
Tribune, KS, Tribune Muni, RNAV (GPS) RWY 35, Orig
Tribune, KS, Tribune Muni, Takeoff Minimums and Obstacle DP, Orig
Louisville, KY, Louisville Intl-Standiford Field, LOC RWY 29, Orig
Louisville, KY, Louisville Intl-Standiford Field, LOC RWY 29, Orig–B, CANCELED
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 13, Amdt 28
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC/DME RWY 22R, ILS RWY 22R (SA CAT I), ILS RWY 22R (SA CAT II), Amdt 12
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB RWY 31, Amdt 3
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RADAR–1, Amdt 11
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 4L, Amdt 3
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 13, Amdt 2
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 22R, Amdt 3
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 31, Amdt 2
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR RWY 4L, Amdt 18
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 9
Majuro Atoll, MH, Marshall Islands Intl, NDB RWY 7, Amdt 1
Majuro Atoll, MH, Marshall Islands Intl, NDB RWY 25, Amdt 1
Lakeview, MI, Lakeview-Griffith Field, GPS RWY 9, Orig–A, CANCELED
Lakeview, MI, Lakeview-Griffith Field, GPS RWY 27, Orig–A, CANCELED
Lakeview, MI, Lakeview-Griffith Field, RNAV (GPS) RWY 10, Orig
Lakeview, MI, Lakeview-Griffith Field, RNAV (GPS) RWY 28, Orig
Mahnomen, MN, Mahnomen County, RNAV (GPS) RWY 17, Amdt 1
Mahnomen, MN, Mahnomen County, RNAV (GPS) RWY 35, Amdt 1
Walker, MN, Walker Muni, RNAV (GPS) RWY 15, Amdt 1

Walker, MN, Walker Muni, RNAV (GPS) RWY 33, Amdt 1
Excelsior Springs, MO, Excelsior Springs Memorial, Takeoff Minimums and Obstacle DP, Amdt 2
Excelsior Springs, MO, Excelsior Springs Memorial, VOR–A, Orig
Excelsior Springs, MO, Excelsior Springs Memorial, VOR OR GPS RWY 19, Amdt 1, CANCELED
Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 17, Amdt 1B
Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 35, Orig–B
Edgeley, ND, Edgeley Muni, RNAV (GPS) RWY 14, Orig
Edgeley, ND, Edgeley Muni, RNAV (GPS) RWY 32, Orig
Edgeley, ND, Edgeley Muni, Takeoff Minimums and Obstacle DP, Orig
Alma, NE., Alma Muni, RNAV (GPS) RWY 17, Orig
Alma, NE., Alma Muni, RNAV (GPS) RWY 35, Orig
Alma, NE., Alma Muni, Takeoff Minimums and Obstacle DP, Orig
Valentine, NE., Miller Field, RNAV (GPS) RWY 3, Orig–A
Newark, NJ, Newark Liberty Intl, RNAV (GPS) X RWY 29, Orig
West Creek, NJ, Eagles Nest, RNAV (GPS)–A, Orig
West Creek, NJ, Eagles Nest, RNAV (GPS)–B, Orig
West Creek, NJ, Eagles Nest, Takeoff Minimums and Obstacle DP, Orig
New York, NY, John F Kennedy Intl, ILS OR LOC RWY 13L, ILS RWY 13L (CAT II), Amdt 17
Oxford, OH, Miami University, NDB RWY 5, Amdt 11A, CANCELED
Millersburg, OH, Holmes County, GPS RWY 27, Orig, CANCELED
Millersburg, OH, Holmes County, RNAV (GPS) RWY 9, Orig
Millersburg, OH, Holmes County, RNAV (GPS) RWY 27, Orig
Millersburg, OH, Holmes County, Takeoff Minimums and Obstacle DP, Amdt 2
Millersburg, OH, Holmes County, VOR–A, Amdt 7
Redmond, OR, Roberts Field, RNAV (GPS) Y RWY 29, Amdt 2
Redmond, OR, Roberts Field, RNAV (GPS) Z RWY 29, Amdt 1
Brookings, SD, Brookings Rgnl, RNAV (GPS) RWY 12, Amdt 1A
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 17L, Amdt 1B
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 17R, Amdt 1B
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 35L, Amdt 1B
Austin, TX, Austin-Bergstrom Intl, RNAV (RNP) Z RWY 17L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (RNP) Z RWY 17R, Orig
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Orig
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Orig–A, CANCELED
El Paso, TX, El Paso Intl, Takeoff Minimums and Obstacle DP, Amdt 8
Greenville, TX, Majors, ILS Y OR LOC/DME Y RWY 17, Amdt 1
Greenville, TX, Majors, ILS Z OR LOC/DME Z RWY 17, Amdt 8
Greenville, TX, Majors, RNAV (GPS) RWY 17, Amdt 2
San Angelo, TX, San Angelo Rgnl/Mathis Field, LOC BC RWY 21, Amdt 14A, CANCELED
Richfield, UT, Richfield Muni, RNAV (GPS) RWY 19, Amdt 1
Roanoke, VA, Roanoke Rgnl/Woodrum Field, RNAV (GPS) RWY 24, Amdt 1A
Hayward, WI, Sawyer County, ILS OR LOC/DME RWY 20, Orig
Hayward, WI, Sawyer County, LOC/DME RWY 20, Amdt 1C, CANCELED
Hayward, WI, Sawyer County, RNAV (GPS) RWY 20, Amdt 1
Hayward, WI, Sawyer County, Takeoff Minimums and Obstacle DP, Amdt 5
Rice Lake, WI, Rice Lake Regional—Carl's Field, VOR RWY 1, Amdt 1, CANCELED
Rice Lake, WI, Rice Lake Regional—Carl's Field, VOR/DME RWY 19, Amdt 1, CANCELED
Shell Lake, WI, Shell Lake Muni, VOR/DME RWY 32, Orig–A, CANCELED

Effective 17 September 2015

Hornell, NY, Hornell Muni, VOR/DME–A, Amdt 4A, CANCELED

[FR Doc. 2015–18731 Filed 7–31–15; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31029; Amdt. No. 3654]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 3, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 3, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on July 17, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
20–Aug–15	CA	Livermore	Livermore Muni	5/7014	06/11/15	This NOTAM, published in TL 15–17, is hereby rescinded in its entirety.
20–Aug–15	OK	Clinton	Clinton-Sherman	5/0435	07/06/15	ILS OR LOC RWY 17R, Amdt 7A.
20–Aug–15	MO	Jefferson City	Jefferson City Memorial	5/0449	07/06/15	ILS OR LOC RWY 30, Amdt 5B.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0564	07/06/15	VOR RWY 24, Amdt 8.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0571	07/06/15	RNAV (GPS) RWY 15, Orig.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0572	07/06/15	RNAV (GPS) RWY 6, Orig.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0573	07/06/15	RNAV (GPS) RWY 24, Orig.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0574	07/06/15	RNAV (GPS) RWY 33, Orig.
20–Aug–15	NY	Dunkirk	Chautauqua County/ Dunkirk.	5/0575	07/06/15	VOR RWY 6, Amdt 3.
20–Aug–15	MA	Beverly	Beverly Muni	5/0582	07/06/15	RNAV (GPS) RWY 16, Amdt 1A.
20–Aug–15	MA	Beverly	Beverly Muni	5/0583	07/06/15	RNAV (GPS) RWY 34, Orig.
20–Aug–15	MA	Beverly	Beverly Muni	5/0584	07/06/15	LOC RWY 16, Amdt 7.
20–Aug–15	MA	Beverly	Beverly Muni	5/0585	07/06/15	RNAV (GPS) RWY 27, Orig-A.
20–Aug–15	MA	Beverly	Beverly Muni	5/0586	07/06/15	VOR RWY 16, Amdt 5.
20–Aug–15	TN	amden	Benton County	5/1575	06/24/15	RNAV (GPS) RWY 22, Orig-A.
20–Aug–15	NM	Carlsbad	Cavern City Air Trml	5/1690	07/09/15	ILS RWY 3, Amdt 4C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
20–Aug–15	MI	Iron Mountain Kingsford	Ford	5/3036	07/06/15	NDB RWY 1, Orig.
20–Aug–15	IN	Gary	Gary/Chicago Intl	5/4354	07/06/15	RNAV (GPS) Y RWY 12, Amdt 1.
20–Aug–15	OH	Port Clinton	Erie-Ottawa Intl	5/4483	07/06/15	RNAV (GPS) RWY 27, Amdt 1.
20–Aug–15	OH	Port Clinton	Erie-Ottawa Intl	5/4484	07/06/15	NDB RWY 27, Amdt 14.
20–Aug–15	TX	Houston	West Houston	5/4496	07/06/15	RNAV (GPS) RWY 15, Amdt 1A.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5829	07/07/15	RNAV (GPS) RWY 1, Orig-B.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5830	07/07/15	NDB RWY 1, Amdt 22B.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5831	07/07/15	ILS Y OR LOC Y RWY 1, Orig.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5834	07/07/15	ILS Z OR LOC Z RWY 1, Amdt 30.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5839	07/07/15	RNAV (GPS) RWY 19, Amdt 1.
20–Aug–15	SC	Greenville	Greenville Downtown	5/5862	07/07/15	RNAV (GPS) RWY 10, Amdt 1.
20–Aug–15	ID	Salmon	Lemhi County	5/7282	06/11/15	RNAV (GPS)–D, Orig-A.
20–Aug–15	MN	South St Paul	South St Paul Muni-Richard E Fleming Fld.	5/8151	07/06/15	NDB–B, Amdt 4.
20–Aug–15	MN	South St Paul	South St Paul Muni-Richard E Fleming Fld.	5/8159	07/06/15	RNAV (GPS) RWY 34, Amdt 1.
20–Aug–15	MN	South St Paul	South St Paul Muni-Richard E Fleming Fld.	5/8164	07/06/15	LOC RWY 34, Amdt 1A.
20–Aug–15	AL	Dothan	Dothan Rgnl	5/9070	07/06/15	RNAV (GPS) RWY 36, Amdt 1A.
20–Aug–15	AL	Dothan	Dothan Rgnl	5/9072	07/06/15	VOR RWY 14, Amdt 4A.

[FR Doc. 2015–18739 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1217

[Docket No. NASA–2015–0006]

RIN 2700–AD99

Duty Free Entry of Space Articles

AGENCY: National Aeronautics and Space Administration

ACTION: Direct final rule.

SUMMARY: This direct final rule makes non-substantive changes to correct citations and office titles. The revisions to this rule are part of NASA's retrospective plan completed in August 2011 under Executive Order (EO) 13563.

DATES: This direct final rule is effective on October 2, 2015. Comments due on or before September 2, 2015. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RIN 2700–AD99 and may be sent to NASA via the *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Craig Salvas, 202–358–2330.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes to correct citations and office titles in 14 CFR part 1217. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Background

Part 1217 was last amended February 12, 1997, [62 FR 6467] to extend and expand NASA's authority with respect to duty-free imports of articles for use by NASA and for the implementation of its international programs, as prescribed by Presidential Proclamation 6780 issued March 23, 1995 [60 FR 15845]. The Part is being amended to correct citations and office titles. The revisions to this rule are part of NASA's retrospective plan completed in August 2011 under Executive Order (EO) 13563. NASA's full plan can be accessed on the Agency's open Government Web site at *http://www.nasa.gov/feature/compliance-and-other-documents.*

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113(a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review

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

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603).

This rule revises subpart 1 to correct citations and office titles.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under EO 13132

EO 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the EO. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Part 1217:

Custom duties and inspection, space transportation and exploration.

Accordingly, under the authority of the National Aeronautics and Space Act, as amended, NASA amends 14 CFR part 1217 as follows:

PART 1217—DUTY-FREE ENTRY OF SPACE ARTICLES

■ 1. The authority citation for part 1217 is revised as follows:

Authority: 51 U.S.C. 20113; Proclamation No. 6780 of March 23, 1995, 60 FR 15845.

■ 2. In 1217.103, revise paragraphs (a)(1) through (a)(3) to read as follows:

§ 1217.103 Authority to certify.

(a)* * *

(1) The NASA Assistant Administrator for Procurement is authorized to issue the certification for articles imported into the United States which are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government pursuant to the terms of the contract or subcontract. Requests for certification should be sent to: Office of Procurement, Attn: Director, Contract and Grant Policy Division, National Aeronautics and Space Administration, Washington, DC 20546.

(2) The NASA Associate Administrator for International and Interagency Relations is authorized to issue the certification for articles imported into the United States pursuant to international agreements. Requests for certification should be sent to: Office of International and Interagency Relations, Attn: Director, Export Control and Interagency Liaison Division, National Aeronautics and Space Administration, Washington, DC 20546.

(3) The NASA Associate Administrator for Human Exploration and Operations is authorized to issue the certification for articles imported into the United States by persons or entities under agreements other than those identified in paragraphs (a)(1) and (a)(2) of this section, including launch services agreements. Requests for certification should be sent to: Human Exploration and Operations Mission Directorate, Attn: Director, International Space Station Office, National Aeronautics and Space Administration, Washington, DC 20546.

* * * * *

Cheryl E. Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2015–17213 Filed 7–31–15; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9728]

RIN 1545–BD71

Determination of Distributive Share When Partner's Interest Changes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the determination of a partner's distributive share of partnership items of income, gain, loss, deduction, and credit when a partner's interest varies during a partnership taxable year. The final regulations also modify the existing regulations regarding the required taxable year of a partnership. These final regulations affect partnerships and their partners.

DATES: *Effective date:* These regulations are effective on August 3, 2015.

Applicability date: For dates of applicability, see §§ 1.706–1(b)(6)(v), 1.706–1(d), 1.706–4(g), and 1.706–5(b).

FOR FURTHER INFORMATION CONTACT: Benjamin H. Weaver of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–6850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this Treasury decision has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 2, 2015. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in the final regulations are in § 1.706–4(f), which requires partnerships adopting the proration method, adopting the semi-monthly or monthly convention, choosing to perform semi-monthly or monthly interim closings, or selecting an additional class of extraordinary items, to maintain a statement with their books and records. This information will be available to the IRS upon examination to document the partnership's selection of the method, convention, optional interim closings, or additional class of extraordinary items. The collections of information are required to obtain a benefit. The likely respondents are partnerships. The collections will be reported and collected through the OMB approval number for Form 1065, U.S. Return of Partnership Income, under control number 1545–0123; please see the instructions for Form 1065 for estimates of the burden associated with the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by section 6103.

Background

These final regulations contain amendments to the Income Tax Regulations (26 CFR part 1) under section 706 of the Internal Revenue Code (Code). On April 14, 2009, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–144689–04) (the 2009 proposed regulations) in the **Federal Register** to provide guidance under section 706(d)(1) and to conform the Income Tax Regulations for certain provisions of section 1246 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)), and section 72 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494 (1984)). The Treasury Department and the IRS did not hold a public hearing because there were no requests to speak at a hearing. However, the Treasury Department and the IRS received comments in response to the 2009 proposed regulations. The comments are discussed in this preamble.

The 2009 proposed regulations provided methods for determining partners' distributive shares of partnership items in any year in which there is a change in a partner's interest in the partnership, whether by reason of a disposition of the partner's entire interest or less than the partner's entire interest, or by reason of a reduction of a partner's interest due to the entry of a new partner or partners. The 2009 proposed regulations also added proposed § 1.706–1(c)(2)(iii) to provide that a deemed disposition of a partner's interest pursuant to §§ 1.1502–76(b)(2)(vi) (relating to corporate partners that become or cease to be members of a consolidated group within the meaning of § 1.1502–1(h)), 1.1362–3(c)(1) (relating to the termination of the subchapter S election of an S corporation partner), or 1.1377–1(b)(3)(iv) (regarding an election to terminate the taxable year of an S corporation partner) shall be treated as a disposition of the partner's entire interest in the partnership. Finally, the 2009 proposed regulations amended the rules applicable to the determination of the taxable year of a partnership when a partnership interest is held by a ''disregarded foreign partner'' (as defined in § 1.706–1(b)(6)(i)).

After consideration of the comments, the 2009 proposed regulations are adopted as modified by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Varying Interests Rule

The 2009 proposed regulations under § 1.706–4 provided guidance under section 706(d)(1), which provides that, except as required by section 706(d)(2) and (d)(3), if there is a change in a partner's interest in the partnership during the partnership's taxable year, each partner's distributive share of any partnership item of income, gain, loss, deduction, or credit for such taxable year is determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year. The 2009 proposed regulations incorporated several of the existing varying interest rules in the regulations under section 706. These final regulations finalize the varying interest rules contained in the 2009 proposed regulations with the modifications described in this Part 1 of the preamble. The Treasury Department and the IRS have decided that these modifications necessitate reorganizing § 1.706–4 for clarity. As finalized by these regulations, § 1.706–4(a)(3) now contains a step-by-step process for making allocations under § 1.706–4. In addition, the remainder of § 1.706–4 has been reorganized into discrete sections addressing the scope of § 1.706–4, exceptions to § 1.706–4, partnership conventions, extraordinary items, and procedures for partnership decisions relating to § 1.706–4. Where possible, this preamble tracks the organization of § 1.706–4 as finalized by these regulations.

A. Scope of § 1.706–4

Section 1.706–4 of the final regulations provides rules for determining the partners' distributive shares of partnership items when a partner's interest in a partnership varies during the taxable year as a result of the disposition of a partial or entire interest in a partnership as described in § 1.706–1(c)(2) and (c)(3), or with respect to a partner whose interest in a partnership is reduced as described in § 1.706–1(c)(3), including by the entry of a new partner (collectively, a ''variation''). The final regulations further provide that, in all cases, all partnership items for each taxable year must be allocated among the partners, and no items may be duplicated, regardless of the particular provision of section 706 which applies, and regardless of the method or convention adopted by the partnership.

The 2009 proposed regulations contained two exceptions for allocations that would otherwise be subject to the rules of § 1.706–4: one exception applies to certain partnerships with contemporaneous partners, and the other exception applies to certain service partnerships. As described below, the final regulations adopt these exceptions with certain modifications.

The 2009 proposed regulations did not address the interaction of the allocable cash basis item rules of section 706(d)(2) and the tiered partnership rules of section 706(d)(3) with the rules in § 1.706–4 for determining a partner's distributive share when a partner's interest varies. However, the 2009 proposed regulations did request comments on issues that arise with regard to allocable cash basis items and tiered partnerships. In response to comments received, §§ 1.706–2 and 1.706–3 are proposed to be amended as described in a notice of proposed rulemaking issued contemporaneously with these final regulations to address the treatment of allocable cash basis items and tiered partnerships, respectively. The final regulations clarify that § 1.706–4 does not apply to items subject to allocation under other rules, including section 706(d)(2) and section 706(d)(3).

i. Permissible Changes Among Contemporaneous Partners

The 2009 proposed regulations contained a ''contemporaneous partner exception'' based on the Tax Court's opinion in *Lipke* v. *Commissioner,* 81 T.C. 689 (1983), and the legislative history of section 706. Section 761(c) provides that a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions). In *Lipke,* the Tax Court held that section 706(c)(2)(B) (as in effect prior to 1984) prohibited retroactive allocations of partnership losses when the allocations resulted from additional capital contributions made by both new and existing partners. However, the Tax Court held that the prohibition on retroactive allocations under section 706(c)(2)(B) did not apply to changes in the allocations among partners that were members of the partnership for the entire year (contemporaneous partners) if the changes in the allocations did not result from capital contributions. Congress amended section 706 in 1984, in part to clarify that the varying interests rule applies to any change in a partner's interest, whether in connection with a complete disposition of the partner's interest or otherwise. To that end, Congress replaced the varying

interests rule in section 706(c)(2)(B) with the rule that now appears in section 706(d)(1). The legislative history pertaining to this amendment reflects Congress's intention that the new rule of section 706(d)(1) be comparable to the pre-1984 law without overruling the longstanding rule of section 761(c):

> The committee wishes to make clear that the varying interests rule is not intended to override the longstanding rule of section 761(c) with respect to interest shifts among partners who are members of the partnership for the entire taxable year, provided such shifts are not, in substance, attributable to the influx of new capital from such partners. *See Lipke* v. *Commissioner,* 81 T.C. 689 (1983).

S. Prt. 98–169, Vol. I, 98th Cong., 2d Sess. 218–19 (1984); see also H. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess. 1212–13 (1984) (containing similar language).

Consistent with this authority, proposed § 1.706–4(b)(1) provided an exception to the rule in proposed § 1.706–4(a)(1) for dispositions of less than a partner's entire interest in the partnership described in § 1.706–1(c)(3), provided that the variation in the partner's interest is not attributable to a capital contribution or a partnership distribution to a partner that is a return of capital, and the allocations resulting from the modification otherwise comply with section 704(b) and the regulations promulgated thereunder.

Commenters requested guidance on determining when changes in the allocations among partners are attributable to capital contributions to, and distributions from, the partnership, and which requirements of section 704(b) must be met. The final regulations do not address the determination of whether an amended allocation is attributable to a contribution or a distribution to a partner or whether such allocations otherwise satisfy section 704(b) because these comments raise issues beyond the scope of this project and require further consideration. However, the Treasury Department and the IRS may address these issues in future guidance.

Commenters also requested that the final regulations expand the scope of the contemporaneous partner exception to include allocations of items attributable solely to a particular segment of a partnership's year (see § 1.706–4(a)) among partners who are partners of the partnership for that entire segment. The final regulations adopt this recommendation and finalize the contemporaneous partner exception.

ii. Safe Harbor for Partnerships for Which Capital Is Not a Material Income-Producing Factor

Proposed § 1.706–4(b)(2) provided that a service partnership (a partnership in which substantially all the activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting) may choose to determine the partners' distributive shares of partnership income, gain, loss, deduction, and credit using any reasonable method, provided that the allocations were valid under section 704(b). Commenters recommended the final regulations extend the safe harbor to non-service partnerships that satisfy specific revenue and allocation thresholds (for example, gross receipts of $100 million or less and no partner receives an allocation of an item listed under section 702(a) in excess of $10 million). Another commenter requested that the final regulations provide that the list of service partnerships could be expanded by other published guidance.

The Treasury Department and the IRS intend the safe harbor for service partnerships to be limited to partnerships that derive their income from the provision of services and not from capital because, in general, allocations among individual partners in partnerships for which capital is not a material income-producing factor do not raise concerns that may be present in allocations among partners in capital-intensive partnerships. Therefore the final regulations do not provide an exception based upon revenue and allocation thresholds. However, the Treasury Department and the IRS agree that the definition of a service partnership in the proposed regulations was overly narrow. Accordingly, the final regulations apply the service partnership safe harbor to any partnership for which capital is not a material income-producing factor.

B. Varying Interest Rule Methods: Interim Closing and Proration

The 2009 proposed regulations generally provided that a partnership shall take into account any variation in the partners' interests in the partnership during the taxable year in determining the distributive share of partnership items under section 702(a) by using either the interim closing method or the proration method. Unless the partners agree to use the proration method, the partnership was required to use the interim closing method and allocate its items among the partners in accordance with their respective partnership interests during each segment of the taxable year. Under the 2009 proposed regulations, if the partners agreed to use the proration method, the partnership was required to allocate the distributive share of partnership items among the partners in accordance with their pro rata shares of the items for the entire taxable year. The 2009 proposed regulations did not, however, allow certain ''extraordinary items'' to be prorated, and instead required that those items be allocated according to special rules. These regulations finalize the method rules of the 2009 proposed regulations with certain modifications.

i . Use of More Than One Method and Convention During the Same Taxable Year

Proposed § 1.706–4(a)(1) required the partnership and all of its partners to use the same method for all variations in the partners' interests occurring within the partnership's taxable year, whether resulting from a complete or partial termination of a partner's interest or the entry of a new partner. Commenters recommended that the final regulations allow a partnership to use different methods for separate variations during the partnership's taxable year, provided that the overall combination of methods is reasonable based on the overall facts and circumstances. Commenters stated that it would be reasonable for a partnership to be allowed to apply the interim closing method to a transfer of a large interest in the partnership, where the partnership or transferee or transferor partner is willing to pay for the additional accounting costs associated with the interim closing method, and in the same year apply the proration method for transfers of small interests (or other large transfers of interests if, for example, the parties are unwilling to bear the costs of closing the books), in order to minimize the costs and administrative burden of accounting for such transfers. The Treasury Department and the IRS agree that partnerships may be more willing to use the interim closing method, which is generally more accurate but more costly, for significant variations if doing so would not require the partnership to use the interim closing method for all variations, regardless of size, that occur throughout the year. Therefore, in response to comments, the final regulations allow a partnership to use different methods for different variations within the partnership's taxable year, as explained in Part 1.B.iii of this Preamble. Accordingly, a partnership may use the interim closing method with respect to one variation and may choose to use the proration method for another variation in the

same year. However, the final regulations provide that the Commissioner may place restrictions on the ability of a partnership to use different methods during the same taxable year in guidance published in the Internal Revenue Bulletin.

ii. Optional Regular Monthly or Semi-Monthly Interim Closings

The 2009 proposed regulations require partnerships applying the interim closing method to perform the interim closing at the time the variation is deemed to occur, and do not require or permit a partnership to perform an interim closings of its books except at the time of any variation for which the partnership uses the interim closing method. One commenter stated that of the partnerships that close their books at times other than year end, most do so at month end, and some close their books semi-monthly. The commenter stated that most partnerships that currently are subject to the interim closing method do not actually close their books other than at month end as they do not have the resources and systems organized in order to do that. The commenter requested that partnerships using the interim closing method and the calendar day convention be allowed under the final regulations to determine income on a calendar day basis by closing their books at month's end, and then prorating the last month's income to the periods of the month before and after the calendar day on which the variation occurred.

The Treasury Department and the IRS agree that partnerships should be permitted to perform regular monthly or semi-monthly interim closings, and to prorate items within each month or semi-month, as applicable. Therefore, the final regulations provide that a partnership may, by agreement of the partners, perform regular interim closings of its books on a monthly or semi-monthly basis, regardless of whether any variation occurs. The Treasury Department and the IRS believe that this combination of the use of regular interim closings and the proration method with respect to variations should generally achieve the results sought by the commenter. The final regulations continue to require a partnership using the interim closing method with respect to a variation to perform the interim closing at the time the variation is deemed to occur, and do not require a partnership to perform an interim closings of its books except at the time of any variation for which the partnership uses the interim closing method.

The final regulations provide guidance on the meaning of the term ''agreement of the partners,'' including for purposes of the decision to perform regular monthly or semi-monthly interim closings. Because that term applies to several different decisions in § 1.706–4, the discussion of ''agreement of the partners'' is consolidated into Part 1.E of this preamble.

iii. Segments and Proration Periods

For purposes of accounting for the partners' varying interests in the partnership, the 2009 proposed regulations required the partnership to maintain, for each partner whose interest changes in the taxable year, segments to account for such changes. Under the 2009 proposed regulations, a segment was a specific portion of a partnership's taxable year created by a variation, regardless of whether the partnership used the interim closing method or the proration method for that variation. The final regulations continue to rely on the concept of segments; however, because the final regulations now permit partnerships to use both the interim closing method and the proration method in the same taxable year, the final regulations also contain a new concept of proration periods. Under the final regulations, segments are specific periods of the partnership's taxable year created by interim closings of the partnership's books, and proration periods are specific portions of a segment created by a variation for which the partnership chooses to apply the proration method. The partnership must divide its year into segments and proration periods, and spread its income among the segments and proration periods according to the rules for the interim closing method and proration method, respectively.

Under the final regulations, the first segment commences with the beginning of the taxable year of the partnership and ends at the time of the first interim closing of the partnership's books. Any additional segment shall commence immediately after the closing of the prior segment and ends at the time of the next interim closing. However, the last segment of the partnership's taxable year ends no later than the close of the last day of the partnership's taxable year. If there are no interim closings, the partnership has one segment, which corresponds to its entire taxable year.

Under the final regulations, the first proration period in each segment begins at the beginning of the segment, and ends at the time of a variation for which the partnership uses the proration method. The next proration period begins immediately after the close of the prior proration period and ends at the time of the next variation for which the partnerships uses the proration method. However, each proration period ends no later than the close of the segment. Thus, segments close proration periods. Therefore, the only items subject to proration are the partnership's items attributable to the segment containing the proration period.

a. Rules for Determining the Items in Each Segment

Proposed § 1.706–4(a)(2)(i) required that a partnership using the interim closing method treat each segment as though the segment was a separate distributive share period and that therefore a partnership using the interim closing method may compute a capital loss for a segment of a taxable year even though the partnership has a net capital gain for the entire taxable year. Similarly, proposed § 1.706–4(a)(2)(ii) provided that any limitation applicable to the partnership year as a whole (for example, the limitation under section 179 relating to elections to expense certain depreciable business assets) must be apportioned among the segments using any reasonable method, provided that the total amount of the items apportioned among the segments does not exceed the limitation applicable to the partnership year as a whole.

Commenters expressed concern that the examples do not clarify how a partnership accounts for items that are not determined until the end of the taxable year, such as waterfall allocations, minimum gain chargebacks, and certain reserves. Commenters specifically inquired whether these determinations are made at the interim closing dates or at the end of the partnership's taxable year. Other commenters questioned whether the distributive share periods are treated as separate taxable years for purposes of sections 461(h) (relating to economic performance) and 404(a)(5) (relating to deductions for contributions to employee plans). Finally, other commenters requested guidance on the interaction of sections 168 (relating to the modified accelerated cost recovery system) and 471 (relating to accounting for inventories) with the 2009 proposed regulations.

Proposed § 1.706–4(a)(2)(i) and (ii) were intended to demonstrate that year-end determinations and annual limitations are evaluated only at the end of the partnership's taxable year. The final regulations continue to provide that each segment is generally treated as a separate distributive share period. Additionally, the final regulations

provide that for purposes of determining allocations to segments, any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year will be applied based on the partnership's satisfaction of the limitation or requirements as of the end of the partnership's taxable year. For example, the expenses related to the election to expense a section 179 asset must first be calculated (and limited if applicable) based on the partnership's full taxable year, and then the effect of any limitation must be apportioned among the segments in accordance with the interim closing method or the proration method using any reasonable method. Thus, the segments are not treated as separate taxable years for purposes of sections 461(h) and 404(a)(5). The final regulations do not address inventory accounting under section 471 because those issues are beyond the scope of this project.

Moreover, other provisions of the Code providing a convention for making a particular determination still apply. For example, section 168 provides conventions for determining when property is placed in service and when property is disposed of. The convention in section 168 would apply first to determine when the property is placed in service or when the property is disposed of, and section 706 would apply second to determine who was a partner during that segment. The Treasury Department and the IRS are studying issues relating to the interaction of section 706 and the partnership minimum gain provisions in § 1.704–2 and therefore the final regulations do not address these issues. As discussed in Part 1.F of this preamble, the interaction of sections 704 and 706 is generally beyond the scope of these final regulations; accordingly, these final regulations do not address the treatment of waterfall allocations.

b. Determining the Items in Each Proration Period

Under the 2009 proposed regulations, if the partners agreed to use the proration method, the partnership was required to allocate the distributive share of partnership items among the partners in accordance with their pro rata shares of the items for the entire taxable year. The Treasury Department and the IRS received several comments suggesting various modifications to the proration method. Commenters stated that the 2009 proposed regulations provided less flexibility in accounting for partners' varying interests under the proration method than the current regulations under section 706. Commenters recommended that the final regulations retain the flexibility of the current regulations by allowing partnerships to use any reasonable proration method to determine partners' distributive shares of partnership items and that the final regulations provide examples of reasonable proration methods. The Treasury Department and the IRS believe that, because the final regulations provide partnerships with flexibility to use either the interim closing method or the proration method for each variation, and because the proration method can be less accurate than the interim closing method, it is appropriate to generally retain the rules applicable to the proration method from the 2009 proposed regulations. Accordingly, the final regulations do not adopt this suggestion. However, because the final regulations permit partnerships to use both the proration method and the interim closing method in the same taxable year, the rules for the proration method are now based upon the items in each segment, rather than the items for the partnership's entire taxable year. Section 1.706–4(a)(4) of the final regulations contains a detailed example illustrating the interaction of segments and proration periods.

Proposed § 1.706–4(d)(1) provided that, for purposes of the proration method, specific items aggregated by the partnership at the end of the year (other than extraordinary items) shall be disregarded, and the aggregate of the items shall be considered to be the partnership item for the year. Commenters questioned whether proposed § 1.706–4(a)(2)(i) and (ii) and (d)(1) were intended to provide the same rules for both the interim closing method and the proration method. These sections address different issues. Proposed § 1.706–4(d)(1) was intended to allow partnerships that have multiple items that are aggregated by the partnership at the end of the year to also treat those items as a single item for purposes of the proration method (for example, capital gains and capital losses). By contrast, proposed § 1.706–4(a)(2)(i) and (ii) were intended to demonstrate that for purposes of determining allocations to segments, any annual limitation will be disregarded as long as the limitation is satisfied by the end of the partnership's taxable year.

One commenter requested that the final regulations allow publicly traded partnerships (as defined in section 7704(b)) that are treated as partnerships (''PTPs'') using the proration method and calendar day convention to prorate their annual aggregate tax items by the number of months instead of the number of days. Because the use of the proration method can be less accurate than the interim closing method in certain circumstances, the Treasury Department and the IRS believe that partnerships using the proration method should prorate by the number of days. Therefore, the final regulations do not adopt this recommendation.

iv. Agreement of the Partners To Use the Proration Method

Consistent with the 2009 proposed regulations, under the final regulations the proration method may be used only by ''agreement of the partners.'' Commenters requested guidance on the meaning of this term, and the final regulations provide guidance as described in Part 1.E of this preamble.

C. Varying Interest Rule Conventions: Calendar Day, Semi-Monthly, and Monthly

The 2009 proposed regulations acknowledged that for certain partnerships using the interim closing method, such as partnerships in which interests are frequently transferred, determining the partnership items for each segment could create a significant administrative burden. Accordingly, the 2009 proposed regulations allowed the use of simplifying conventions. Conventions are rules of administrative convenience that determine when each variation is deemed to occur for purposes of § 1.706–4. Because the timing of each variation determines the partnership's segments and proration periods, which in turn are used to determine the partners' distributive shares, the convention used by the partnership with respect to a variation will generally affect the allocation of partnership items. However, as discussed in Part 1.D.ii of this preamble, extraordinary items generally must be allocated without regard to the partnership's convention.

The 2009 proposed regulations provided that a partnership using the interim closing method could use either the calendar day convention or the semi-monthly convention to determine the segments of the partnership's taxable year, and provided that a partnership using the proration method shall use the calendar day convention. The 2009 proposed regulations required the partnership to use the same convention for all variations during a taxable year. The 2009 proposed regulations requested comments with regard to the possible expansion of these rules to include other conventions or other methods. The final regulations generally finalize the rules for

conventions from the 2009 proposed regulations with the modifications described in this Part 1.C of the preamble.

i. Allowance of Monthly Conventions

Commenters noted that the legislative history of section 706(d) contemplated that regulations under section 706 would provide a monthly convention for all partnerships. These commenters also argued that the administrative burden and accounting complexity inherent in the interim closing method would be alleviated by a monthly convention. Accordingly, the commenters recommended that the monthly convention be available to all partnerships, regardless of method, provided that the overall allocation of partnership items is reasonable.

The legislative history indicates that Congress did consider providing for a statutory election to use a monthly convention:

> [T]o prevent undue complexity, the bill provides, that in any case where there is a disposition of less than an entire interest in the partnership by a partner (including the entry of a new partner), the partnership may elect (on an annual basis) to determine the varying interests of the partners by using a monthly convention that treats any changes in any partner's interest in the partnership during the taxable year as occurring on the first day of the month.

S. Rep. No. 98–169, at 221 (1984). However, this statutory provision was not enacted and the House-Senate Conference Committee report explains that it was omitted because Congress expected the Secretary to provide for a monthly convention by regulation. H.R. Rep. No. 98–861, at 858 (1984). In accordance with this Congressional intent, the final regulations provide that any partnership using the interim closing method (but not partnerships using the proration method) may use a monthly convention to account for partners' varying interests. Under the monthly convention, in the case of a variation occurring on the first through the 15th day of a calendar month, the variation is deemed to occur for purposes of § 1.706–4 at the end of the last day of the immediately preceding calendar month. And in the case of a variation occurring on the 16th through the last day of a calendar month, the variation is deemed to occur for purposes of § 1.706–4 at the end of the last day of that calendar month.

Consistent with the rules for the selection of the proration method, the final regulations provide that the selection of the convention must be made by agreement of the partners by satisfying the provisions of § 1.706–4(f) of these final regulations as explained in Part 1.E of this preamble. In the absence of an agreement to use a convention, the partnership will be deemed to have chosen the calendar day convention.

ii. Convention for Partnerships Using the Proration Method

Commenters also requested that the final regulations allow partnerships using the proration method to allocate extraordinary items under either the calendar day convention or the semi-monthly convention to mirror the rules under the interim closing method. As explained in Part 1.D.i of this preamble, the final regulations provide that extraordinary items must generally be allocated based on the date and time on which the extraordinary items arise, without regard to the partnership's convention or use of the proration method or interim closing method. Thus, under the final regulations the allocation of extraordinary items will generally be the same regardless of the partnership's selected method or convention.

The partnership's method and convention are generally relevant in determining allocations of non-extraordinary items. The final regulations retain the requirement that partnerships using the proration method must use a calendar day convention. Partnerships using the interim closing method have the option of using a semi-monthly or monthly convention in addition to the calendar day convention because of the additional administrative burdens inherent in using the more accurate interim closing method. Although the proration method may impose less administrative burdens on a partnership, it is less accurate than the interim closing method. Thus, the Treasury Department and the IRS believe it is necessary to retain the requirement of a calendar day convention for the proration method.

iii. Conventions for PTPs

Proposed § 1.706–4(b)(3) provided a safe harbor for PTPs that permitted a PTP using either the interim closing method or the proration method to treat all transfers of its publicly traded units (as described in § 1.7704–1(b)(1)) except for certain block transfers during the calendar month as occurring, for purposes of determining partner status, on the first day of the following month under a consistent method adopted by the partnership. Proposed § 1.706–4(b)(3) also provided that, alternatively, PTPs could use the semi-monthly convention described in proposed § 1.706–4(e)(2). The proposed PTP safe harbor referenced both rules for determining partner status and conventions in the same sentence, which could cause confusion. To eliminate this confusion, the Treasury Department and the IRS have decided to incorporate the rules of the PTP safe harbor from the 2009 proposed regulations, modified in response to comments as described in this section of the preamble, into the portions of the regulations providing rules for partnership conventions and methods. Therefore, the PTP safe harbor from the 2009 proposed regulations is no longer necessary and has been removed from the final regulations. However, as described below, the substantive rules from the PTP safe harbor remain largely unchanged in these final regulations.

Commenters on the PTP safe harbor recommended that PTPs should be able to apply their conventions to all transfers of units, not just publicly traded units, including block transfers. The IRS and the Treasury Department agree that the rules from the proposed regulations should be extended to block transfers, but believe that transfers of non-publicly traded units should be accounted for similar to transfers of interests in non-publicly traded partnerships. Accordingly, the final regulations provide that a PTP may, by agreement of the partners, use any of the calendar day, the semi-monthly, or the monthly convention with respect to all variations during the taxable year relating to its publicly-traded units, regardless of whether the PTP uses the proration method with respect to those variations. A PTP must use the same convention for all variations during the taxable year relating to its publicly traded units. The final regulations provide that a PTP must use the calendar day convention with respect to all variations relating to its non-publicly traded units for which the PTP uses the proration method. In addition, consistent with the rules from the PTP safe harbor in the 2009 proposed regulations, the final regulations provide that a PTP using a monthly convention generally may consistently treat all variations occurring during each month as occurring at the end of the last day of that calendar month, if the PTP uses the monthly convention for those variations.

The preamble to the 2009 proposed regulations acknowledged that some PTPs use conventions not described in the 2009 proposed regulations and requested comments concerning the use of additional conventions. In response to this request for comments, one commenter on the PTP safe harbor also recommended that the final regulations allow PTPs to use a quarterly

convention. This commenter stated that PTPs generally declare cash distributions quarterly to their unit holders of record on the last day of the quarter to align the distributions with the PTPs' quarterly financial reporting. The Treasury Department and the IRS believe that a quarterly convention could significantly reduce the accuracy of the allocations of a partnership's tax items to a particular partner. Accordingly, the final regulations do not permit PTPs to use a quarterly convention. As discussed in Part 1.D.iii.a of this preamble, however, proposed regulations under section 706 (REG–109370–10) are being published concurrently with these final regulations, and, subject to certain exceptions, provide that PTPs may, by agreement of their partners, treat all items of income that are amounts subject to withholding as defined in § 1.1441–2(a) (excluding income effectively connected with the conduct of a trade or business within the United States) or withholdable payments under § 1.1473–1(a) as extraordinary items. If the partners so agree, then for purposes of section 706 such items are treated as occurring at the next time as of which the recipients of a distribution by the PTP are determined, or, to the extent such income items arise between the final time during the taxable year as of which the recipients of a distribution are determined and the end of the taxable year, such items shall be treated as occurring at the final time during the taxable year that the recipients of a distribution by the PTP are determined. This proposed rule does not apply unless the PTP has a regular practice of making at least four distributions (other than de minimis distributions) to its partners during each taxable year. The Treasury Department and the IRS believe that this proposed rule is desirable to link each partner's distributive share to the related cash distributions, thereby enabling PTPs and their transfer agents to satisfy their withholding obligations under chapter 4 of the Code and under sections 1441 through 1443 from distributions.

The convention rules in proposed § 1.706–4(c)(2) and (d)(2) did not apply to existing PTPs (existing PTP exception). Solely for purposes of the 2009 proposed regulations, an existing PTP was a partnership described in section 7704(b) that was formed on a date before the 2009 proposed regulations were published. Commenters noted that an existing PTP that terminates under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits (a ''technical termination'') on or after the publication of the 2009 proposed regulations would not receive the benefit of the existing PTP exception. These commenters noted that a technical termination is a tax concept and does not result in any changes to the partnership agreement, including any provisions relating to section 706(d). Commenters also noted that disregarding technical terminations of PTPs would be consistent with other regulation provisions (such as § 1.731–2(g)(2), which provides that a successor partnership formed as a result of technical termination is disregarded for purposes of applying section 731(c)). The final regulations adopt this recommendation and provide that, for purposes of the effective date provision, the termination of a PTP under section 708(b)(1)(B) is disregarded in determining whether the PTP is an existing PTP.

iv. Use of More Than One Convention During a Taxable Year

The 2009 proposed regulations required the partnership to use the same convention for all variations during a taxable year. Because the final regulations permit partnerships to use both the proration and interim closing methods during a taxable year, the final regulations provide that the partnership and all of its partners must use the same convention for all variations for which the partnership chooses to use the interim closing method. Furthermore, because PTPs are also permitted to use the semi-monthly and monthly conventions with respect to variations for which the PTP uses the proration method, the final regulations provide that PTPs must use the same convention for all variations during the taxable year.

v. Deemed Timing of Variations

Under the semi-monthly convention in the 2009 proposed regulations, the first segment of the partnership's taxable year commenced with the beginning of the partnership's taxable year, and with respect to a variation in interest occurring on the first through the 15th day of the month, was deemed to close at the end of the last day of the immediately preceding calendar month. Thus, although the 2009 proposed regulations provided that the first segment commences with the beginning of the partnership's taxable year, they also provided that a variation occurring on the first through the 15th day of the first calendar month of the partnership's taxable year was deemed to close at the end of the last day of the immediately preceding calendar month, which would be the last day of the prior taxable year. The final regulations provide that all variations within a taxable year are deemed to occur no earlier than the first day of the partnership's taxable year, and no later than the close of the final day of the partnership's taxable year. Thus, under the semi-monthly or monthly convention, a variation occurring on January 1st through January 15th for a calendar year partnership will be deemed to occur for purposes of § 1.706–4 at the beginning of the day on January 1. The conventions are not applicable to a sale or exchange of an interest in the partnership that causes a termination of the partnership under section 708(b)(1)(B); instead, such a sale or exchange will be considered to occur when it actually occurred.

vi. Exception for Admission to and Exit From the Partnership Within a Convention Period

The Treasury Department and the IRS recognize that, while the conventions are rules of administrative convenience that simplify the partnership's determination of the partners' distributive shares, the application of the conventions could result in some partners not being allocated any share of partnership items at all. For example, under the monthly convention, if a new partner buys a partnership interest on or after the 16th day of a month, and sells the entire partnership interest on or before the 15th day of the following month, that partner would not be treated as having been a partner at all for purposes of § 1.706–4, even if that partner otherwise is treated as a partner for purposes of other Code and regulations provisions, including section 6031(b) (relating to the partnership's obligation to furnish each partner a Schedule K–1, ''Partner's Share of Income, Deductions, Credits, etc.'') and §§ 1.6012–1(b) and 1.6012–2(g) (relating to the obligation of certain foreign persons engaged in a U.S. trade or business to file a return). However, the Treasury Department and the IRS believe that the application of the conventions should not cause persons who are admitted to and exit from a partnership during a single convention period to avoid all allocations under § 1.706–4. Accordingly, the final regulations provide that in the case of a partner who becomes a partner during the partnership's taxable year as a result of a variation, and ceases to be a partner as a result of another variation, and under the application of the partnership's conventions both such variations would be deemed to occur at the same time, the variations with

respect to that partner's interest will instead be treated as occurring when they actually occurred. Thus, in such a case, the partnership must treat the partner as a partner for the entire portion of its taxable year during which the partner actually owned an interest. However, in recognition of the increased administrative difficultly this exception would have for PTPs, this exception does not apply to PTPs with respect to holders of publicly traded units (as described in § 1.7704–1(b) or (c)(1)).

D. Extraordinary Items

Section 1.706–4(d)(3) of the 2009 proposed regulations required a partnership using the proration method to allocate extraordinary items among the partners in proportion to their interests at the beginning of the day on which they are taken into account. Section 1.706–4(d)(3) of the 2009 proposed regulations contained a list of nine enumerated extraordinary items. These final regulations continue to provide special rules for the allocation of extraordinary items; in addition, as discussed in this Part 1.D of the preamble, the final regulations expand the application of the extraordinary item rules to cover partnerships using the interim closing method, modify the list of extraordinary items and the timing of extraordinary item inclusions, and add a small item exception.

i. Extraordinary Items and the Interim Closing Method

The 2009 proposed regulations did not require partnerships using the interim closing method to separately account for extraordinary items. However, the Treasury Department and the IRS are aware (and commenters pointed out) that partnerships using the interim closing method and either the semi-monthly convention or the monthly convention to account for extraordinary items may achieve inappropriate tax consequences by shifting the tax consequences of extraordinary items to partners that were not partners in the partnership when the partnership incurred the extraordinary item. The Treasury Department and the IRS believe that extraordinary items should generally be taken into account by the partners that were partners at the time the partnership incurred the extraordinary item. Therefore, the final regulations provide that the extraordinary item rules also apply to partnerships using the interim closing method. Thus, the final regulations require the allocation of extraordinary items as an exception to (1) the proration method, which would otherwise ratably allocate the extraordinary items across the segment, and (2) the conventions, which might otherwise inappropriately shift extraordinary items between a transferor and transferee. The final regulations also provide that extraordinary items continue to be subject to any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year (for example, the limitation for section 179 expenses).

ii. Timing of Extraordinary Items

Proposed § 1.706–4(d)(3) provided that a partnership must allocate extraordinary items among the partners in proportion to their interests at the beginning of the calendar day on which they are taken into account (beginning of the day rule). One commenter noted that under this rule, if a partnership interest is transferred on a given date and an extraordinary item is recognized by the partnership after the transfer, but still on the transfer date, the 2009 proposed regulations required the item to be allocated to the transferor. This commenter noted that other regulation sections use a ''next day rule'' (for example, §§ 1.1502–76(b)(1)(ii)(B) and 1.338–1(d)). According to the commenter, under the next day rule, an item would be treated as occurring at the beginning of the day following the day on which the extraordinary item is taken into account by the partnership. Another commenter expressed concern that the beginning of the day rule was incompatible with partnership agreements that provide that partners' distributive shares are determined on the basis of hurdles, waterfalls, or other income/loss thresholds.

The Treasury Department and the IRS agree that extraordinary items should generally be allocated according to the partners' interests in the item at the time the extraordinary item arose. However, the Treasury Department and the IRS believe that a ''next day'' rule could result in inappropriate shifts of extraordinary items between a transferor and a transferee in situations in which the extraordinary items arise before, but on the same day as, the transfer of a partnership interest. In addition, the Treasury Department and the IRS believe that allowing allocation of extraordinary items based upon end of year threshold determinations such as hurdles or waterfalls would be inconsistent with the purpose of the varying interest rule and could result in inappropriate shifts in extraordinary items. Therefore, to avoid inappropriate shifts in extraordinary items, the final regulations provide that extraordinary items must be allocated in accordance with the partners' interests in the partnership item at the time of day that the extraordinary item occurs, regardless of the method and convention otherwise used by the partnership. Thus, if a partner disposes of its entire interest in a partnership before an extraordinary item occurs (but on the same day), the partnership and all of its partners must allocate the extraordinary item in accordance with the partners' interests in the partnership item at the time of day on which the extraordinary item occurred; in such a case, the transferor will not be allocated a portion of the extraordinary item, regardless of when the transfer is deemed to occur under the partnership's convention. However, the final regulations provide that PTPs (as defined in section 7704(b)) may, but are not required to, respect the applicable conventions in determining who held their publicly traded units (as described in § 1.7704–1(b) or 1.7704–1(c)(1)) at the time of the occurrence of an extraordinary item. The Treasury Department and the IRS believe that this exception is necessary for administrative convenience given the frequency of variations experienced by PTPs. *Examples 1* through *4* of § 1.706–4(e)(4) illustrate these timing rules.

As discussed in Part 1.B.i of this preamble, proposed § 1.706–4(a)(1) required the partnership and all of its partners to use the same method for all variations in the partners' interests occurring within the partnership's taxable year, whether in complete or partial termination of the partners' interests. Proposed § 1.706–4(d)(3) provided that partnerships using the proration method must allocate extraordinary items among the partners in proportion to their interests at the beginning of the calendar day of the day on which they are taken into account, thus prohibiting the partnership from allocating extraordinary items using the proration method. Commenters stated that proposed § 1.706–4(a)(1) and (d)(3), when read together, could be interpreted to prohibit partnerships with extraordinary items from the using the proration method. These commenters also stated that these provisions could be interpreted to prohibit the use of the so-called ''hybrid method.'' One commenter explained that under a hybrid method, a partnership separates certain extraordinary items and allocates them to partners based on their interests in the partnership on particular days or periods (for example, the date of sale), effectively using the interim closing

method and a calendar day convention with respect to these extraordinary items. According to this commenter, the partnership then allocates the remaining partnership items in accordance with the proration method. A commenter also requested that the final regulations permit partnerships using the proration method to use the interim closing method and a semi-monthly convention to account for extraordinary items. Under the final regulations, a partnership with extraordinary items may use the proration method. As a result, the final regulations effectively permit the hybrid method described by the commenter. However, the final regulations provide that partnerships must allocate extraordinary items according to the partners' interests in the partnership item at the time of day that the extraordinary item arose, generally without regard to the method and convention otherwise used by the partnership.

iii. List of Extraordinary Items

The 2009 proposed regulations defined an extraordinary item as (i) any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 (determined without the application of any other rules of law); (ii) any item from the disposition or abandonment of property used in a trade or business (other than in the ordinary course of business) as defined in section 1231(b) (determined without the application of any holding period requirement); (iii) any item from the disposition or abandonment of an asset described in section 1221(a)(1), (3), (4), or (5), if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions); (iv) any item from assets disposed of in an applicable asset acquisition under section 1060(c); (v) any section 481(a) adjustment; (vi) any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge); (vii) any item from the settlement of a tort or similar third-party liability; (viii) any credit, to the extent it arises from activities or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service); and (ix) any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any consolidated return or separate return in which the item is included.

The 2009 proposed regulations requested comments on whether any items should be added to or removed from the definition of extraordinary items. After consideration of the comments received, the Treasury Department and the IRS have decided to generally retain the list of enumerated extraordinary items, subject to changes that are discussed in this Part 1.D.iii of the preamble.

a. Two Additional Extraordinary Items and Two Additional Proposed Extraordinary Items

In response to comments, the final regulations add two items to the extraordinary item list. First, commenters requested that the final regulations provide partnerships with more flexibility in determining what items are extraordinary items. One commenter argued that the definition of extraordinary item should be tied to the uniqueness of the partnership and materiality of the item. Another commenter recommended the final regulations remove the mandatory treatment of the specifically enumerated items as extraordinary items and instead highlight these specific items as items the partnership may agree to treat as extraordinary. In addition, commenters recommended that the final regulations allow the partners to agree to treat other nonenumerated items as extraordinary items. The commenters noted that this could prevent distortion of the economic deal of the partners in certain circumstances. The final regulations adopt the recommendation to allow a partnership to treat additional nonenumerated items as extraordinary items for a taxable year if, for that taxable year, there is an agreement of the partners (as described in Part 1.E of this preamble) to treat consistently such items as extraordinary items. However, this rule does not apply if treating that additional item as an extraordinary item would result in a substantial distortion of income in any partner's return. Any additional extraordinary items continue to be subject to any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year (for example, the limitation for section 179 expenses).

Second, the final regulations provide that an extraordinary item includes any item identified as an additional class of extraordinary item in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS believe that this addition is necessary to provide flexibility and guidance in the event that additional classes of items should be treated as extraordinary items.

In addition, proposed regulations under section 706 (REG–109370–10) being published concurrently with these final regulations propose to add two additional extraordinary items. The first proposed additional extraordinary item responds to comments regarding the administrative difficulty PTPs face in satisfying certain withholding obligations if the PTPs are not permitted to use a quarterly convention. As discussed in Part 1.C.iii of this preamble, the final regulations do not permit PTPs to use a quarterly convention. However, the proposed regulations being published concurrently with these final regulations would add an optional extraordinary item for PTPs, which the Treasury Department and the IRS believe is desirable to link each partner's distributive share to the related cash distributions, thereby enabling PTPs and their transfer agents to satisfy their withholding obligations under Chapter 4 of the Code and sections 1441 through 1443 from distributions. Specifically, the proposed regulations provide that, for PTPs, all items of income that are amounts subject to withholding as defined in § 1.1441–2(a) (excluding income effectively connected with the conduct of a trade or business within the United States) or withholdable payments under § 1.1473–1(a) occurring during a taxable year may be treated as extraordinary items if, for that taxable year, the partners agree to consistently treat all such items as extraordinary items for that taxable year. If the partners so agree, then for purposes of section 706 such items shall be treated as occurring at the next time as of which the recipients of a distribution by the PTP are determined, or, to the extent such income items arise between the final time during the taxable year as of which the recipients of a distribution are determined and the end of the taxable year, such items shall be treated as occurring at the final time during the taxable as of which the recipients of a distribution are determined. This proposed rule does not apply unless the PTP has a regular practice of making at least four distributions (other than de minimis distributions) to its partners during each taxable year. The proposed regulations provide that taxpayers may

rely on this proposed additional extraordinary item for PTPs until final regulations are issued.

The second proposed additional extraordinary item addresses partnership deductions attributable to the transfer of partnership equity in connection with the performance of services. Specifically, the proposed regulations being published concurrently with these final regulations would add as an additional extraordinary item any deduction for the transfer of an interest in the partnership in connection with the performance of services and would provide that such deduction is treated as occurring immediately before the transfer or vesting of the partnership interest that results in compensation income for the person who performs the services. Moreover, for such deductions the proposed regulations would ''turn off'' the exceptions to the extraordinary item rules which would otherwise apply to certain small items and for partnerships for which capital is not a material income-producing factor. The Treasury Department and the IRS believe that this rule is necessary to ensure that, in the case of a transfer of partnership equity in connection with the performance of services, no portion of the deduction for the transfer of a partnership interest in connection with the performance of services will be allocated to the person who performs the services.

b. Clarification of Certain Enumerated Items

This Part 1.D.iii.b provides additional clarification on five of the extraordinary items from the 2009 proposed regulations.

First, the 2009 proposed regulations provided that an extraordinary item includes any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 (determined without the application of any other rules of law). One commenter requested that the final regulations clarify that gains or losses from the actual or deemed sale of securities by securities partnerships (as defined in § 1.704–3(e)(3)(iii)) are items resulting from the disposition or abandonment of a capital asset (as defined in section 1221) in the ordinary course of business. Without such a rule, the commenter noted that a securities partnership would incur significant administrative and accounting costs to account for each security bought and sold. The Treasury Department and the IRS believe that it is unnecessary to provide a special rule for securities partnerships; if a securities partnership is engaged in the trade or business of trading securities then it will generally be true that any gains or losses from the actual or deemed sale of securities are items from the disposition of a capital asset in the ordinary course of the partnership's business. Accordingly, the final regulations do not modify this extraordinary item.

Second, commenters inquired as to whether revaluations of partnership property under § 1.704–1(b)(2)(iv)(*e*) or (*f*) are extraordinary items. Section 1.704–1(b)(2)(iv)(*e*) generally requires that a partner's capital account be decreased by the fair market value of property distributed by the partnership to such partner. To do so, the partners' capital accounts are adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in the property would be allocated among the partners if there were a taxable disposition of the property for fair market value on the date of distribution. Section 1.704–1(b)(2)(iv)(*f*) provides that a partnership may increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books upon the occurrence of certain events. The adjustments to the partners' capital accounts must reflect the manner in which the unrealized income, gain, loss, or deduction inherent in the property would be allocated among the partners if there were a taxable disposition of the property for fair market value on that date. Under § 1.704–3(a)(6)(i), section 704(c) principles apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) (reverse section 704(c) allocations). However, partnerships are not generally required to revalue their property on the occurrence of these events. The Treasury Department and the IRS believe that the treatment of an item as an extraordinary item should not depend upon whether the partnership chooses to revalue its assets. Additionally, as discussed in Part 1.F of this preamble, the final regulations generally do not address the interaction of sections 704(b), 704(c), and 706. Accordingly, the final regulations do not include book items from partnership revaluations as extraordinary items.

Third, the 2009 proposed regulations provided that an extraordinary item included any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any consolidated return or separate return in which the item is included. One commenter recommended that the final regulations provide that the Commissioner may only treat a nonenumerated item as an extraordinary item where the Commissioner has provided advance notice by notice or regulation of the types of income subject to scrutiny, or where there is evidence that the proration method was chosen with the intent to substantially distort income. However, the Treasury Department and the IRS believe that such a rule would unduly impede the ability of the IRS to correct substantial distortions of income, and accordingly the final regulations do not adopt this suggestion.

Fourth, the 2009 proposed regulations provided that an extraordinary item included any section 481(a) adjustment. The Treasury Department and the IRS have determined that the inclusion of section 481(a) adjustments within the meaning of ''extraordinary items'' for purposes of section 706 may be overbroad. The purpose of the extraordinary items rule is to avoid substantial distortions of income among partners by requiring a partnership to allocate certain significant, nonrecurring items incurred other than in the ordinary course of business among its partners in proportion to their ownership interests in the partnership on the date the extraordinary item was incurred. Section 481 requires a taxpayer that has changed its method of accounting to compute its income by taking into account adjustments necessary to prevent any duplication or omission that would otherwise result from the change. Under certain circumstances, these adjustments may be spread over a period of years, and in all circumstances, the adjustments relate to a change of accounting method by the taxpayer rather than a particular item incurred by the taxpayer. Because the new accounting method that triggers the section 481 adjustment applies to the entire taxable year of the change, the adjustment similarly relates to that entire taxable year rather than any specific date within that taxable year. Therefore, the Treasury Department and the IRS believe that not all section 481 adjustments should be treated as extraordinary items. However, in situations in which the change in accounting method is initiated after the occurrence of a variation, the Treasury Department and the IRS believe it is appropriate to allocate any resulting item attributable to the change among the partners in accordance with their percentage interests at and after the time the method change is initiated. Therefore, the final regulations have

changed this extraordinary item to include only the effects of any change in accounting method initiated by the filing of the appropriate form after a variation occurs.

Fifth, the 2009 proposed regulations provided that an extraordinary item included:

> Any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge).

Section 108(e)(8) and (i) generally require that a partnership allocate discharge of indebtedness income (COD income) to the partners that were partners immediately prior to the transaction giving rise to the COD income. Thus, the rules under section 108(e)(8) and (i) and section 706 could provide conflicting results if items of a partnership subject to section 108(e)(1) or 108(i) were treated as an extraordinary item. This could occur where section 108(e)(8) or 108(i) provides a rule regarding the timing of COD income that is different from the extraordinary item timing rules under section 706. Thus, because section 108(e)(8) and (i) already provide special timing rules, the Treasury Department and the IRS believe it is unnecessary to treat these items as extraordinary items. Accordingly, the final regulations provide a limited exception in the definition of extraordinary items in § 1.706–4(e)(1)(v) for amounts subject to section 108(e)(8) or 108(i).

iv. Small Item Exception for Extraordinary Items

In addition to receiving comments on the items on the extraordinary item list, the Treasury Department and the IRS received many comments requesting that the final regulations provide a de minimis rule for extraordinary items. One commenter suggested that an extraordinary item would be considered de minimis if, for the partnership's taxable year: (i) The total of the particular class of extraordinary items is less than five percent of the partnership's (a) gross income in the case of income or gain items, or (b) gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expenses; and (ii) all extraordinary items in total do not exceed $10 million. Another commenter recommended using a dollar amount threshold per item, a cumulative amount (for example, $100,000), or an amount that varies depending on the size of the partnership or whether the partnership is a PTP.

The Treasury Department and the IRS recognize that accounting for extraordinary items can be burdensome to partnerships. Accordingly, the final regulations adopt the recommendation to include a small item exception. Specifically, the final regulations allow a partnership to treat an otherwise extraordinary item as not extraordinary if, for the partnership's taxable year: (1) The total of all items in the particular class of extraordinary items (for example, all tort or similar liabilities) is less than five percent of the partnership's (a) gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or (b) gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and (2) the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's (a) gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or (b) gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such extraordinary items as positive amounts. *Examples 5* and *6* of § 1.706–4(e)(4) illustrate the small item exception.

E. Agreement of the Partners

As discussed in this preamble, the final regulations provide that partnerships may make certain decisions under § 1.706–4 by agreement of the partners. See Part 1.B.ii (agreement to perform regular monthly or semi-monthly interim closings), Part 1.B.iv (selection to use the proration method), Part 1.C.i (choice of convention), and Part 1.D.iii.a (adding extraordinary items).

Proposed § 1.706–4(a)(1) provided that a partnership may only use the proration method by agreement of the partners. Proposed § 1.706–4(c)(3) and –(d)(4) provided examples that indicated that the agreement of the partners to use the proration method must be part of the partnership agreement. Commenters requested clarification on the meaning of ''by agreement of the partners'' and on whether a partnership may delegate the authority to select the proration method. Another commenter suggested that the final regulations adopt different rules for a variation caused by a transaction between the partnership and one or more partners, and for a variation caused by a transaction between partners. One commenter noted that existing partnerships may not be able to amend the partnership agreement within the timeframe prescribed by section 761(c). Section 1.706–4(f) of the final regulations provides guidance on the meaning of ''agreement of the partners.''

The Treasury Department and the IRS believe that the final regulations should provide the partners with a voice in the choice of methods, conventions, and additional extraordinary items, and should allow the IRS to easily ascertain what the partnership selected, without unduly burdening the partnership. In response to comments, the Treasury Department and the IRS have determined that each of these objectives can be achieved by allowing partnerships to select their method, convention, or additional extraordinary items through a dated, written statement maintained with the partnership's books and records by the due date, including extensions, of the partnership's tax return. The final regulations provide that such a statement would include, for example, a selection included in the partnership agreement. The final regulations also permit the selection of the method, convention, or additional extraordinary item to be made by a person authorized to make that selection (including under a grant of general authority provided for by either state law or in the partnership agreement), if that person's selection is in a dated, written statement maintained with the partnership's books and records by the due date, including extensions, of the partnership's tax return. That person's selection will be binding on the partnership and the partners.

F. Interaction of Sections 706(d) and 704

The 2009 proposed regulations did not address the interaction of section 706(d) with the rules under section 704. Section 1.704–1(b)(1) generally provides that, under section 704(b), if a partnership agreement does not provide for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner, or if the partnership agreement provides for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner but such allocation does not have substantial economic effect, then the partner's distributive share of such income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with such partner's interest in the partnership (taking into account all facts and circumstances). However, § 1.704–1(b)(1)(iii) provides that the

determination of a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) under section 704(b) and the regulations thereunder is not conclusive as to the tax treatment of a partner with respect to such distributive share. Section 1.704–1(b)(1)(iii) further provides that an allocation that is respected under section 704(b) and the regulations nevertheless may be reallocated under other provisions, such as section 706(d) (and related assignment of income principles).

The Treasury Department and the IRS received several comments requesting guidance on the interaction of sections 706(d) and 704. One commenter requested clarification on the effect of a reallocation under section 706(d) on the application of provisions of section 704(b), particularly regarding the capital account maintenance provisions in § 1.704–1(b)(2)(iv). Another commenter indicated that partnership agreements are drafted to apply section 706 to section 704(b) items and allocate tax items in the same manner as the corresponding book items, subject to the application of section 704(c). This commenter asked that the final regulations address whether section 706(d) applies to the allocation of book items rather than tax items.

The Treasury Department and the IRS have carefully considered the comments relating to the interaction of sections 706(d) and 704 and believe that the issues require further consideration and are generally outside the scope of these final regulations. However, the Treasury Department and the IRS may consider addressing these issues in future guidance.

2. Deemed Dispositions

Proposed § 1.706–1(c)(2)(iii) provided that a deemed disposition of a partner's interest pursuant to § 1.1502–76(b)(2)(vi) (relating to corporate partners that become or cease to be members of a consolidated group within the meaning of § 1.1502–1(h)), § 1.1362–3(c)(1) (relating to the termination of the subchapter S election of an S corporation partner), or § 1.1377–1(b)(3)(iv) (regarding an election to terminate the taxable year of an S corporation partner) shall be treated as a disposition of the partner's entire interest in the partnership. The preamble to the 2009 proposed regulations indicated that this treatment is solely for purposes of section 706. One commenter explained that unless the regulatory language specifically limits the disposition treatment to section 706, taxpayers could deem these transactions to be dispositions for other purposes of the Code, thereby achieving unintended results. For example, the commenter stated that, unless clarified, the 2009 proposed regulations could cause unintended consequences under sections 708, 743(b), or 1001 when a member of a consolidated group sells an interest in a partnership that exits the consolidated group after the sale. Consistent with the preamble to the 2009 proposed regulations, the final regulations clarify that deemed dispositions under §§ 1.1502–76(b)(2)(vi), 1.1362–3(c)(1), or 1.1377–1(b)(3)(iv) are treated as a disposition of the partner's entire interest in the partnership solely for purposes of section 706.

Effective/Applicability Dates

With respect to amendments to §§ 1.706–1 (with the exception of two special rules applicable to § 1.706–1(b)(6)(iii)), 1.706–4 (with the exception of a special rule applicable to § 1.704–4(c)(3)), and 1.706–5, these final regulations are applicable to partnership taxable years that begin on or after August 3, 2015.

With respect to the final regulations contained in § 1.706–1(b)(6)(iii), the regulations apply to the partnership taxable years that begin on or after August 3, 2015, subject to two special rules. First, under the current regulations, partnerships formed prior to September 23, 2002 (existing partnerships) generally are exempt from the rules of § 1.706–1(b)(6) unless they have voluntarily chosen to apply them or unless they have undergone a technical termination under section 708(b)(1)(B). The final regulations retain this special rule, such that an existing partnership will not be subject to the modified minority interest rule in § 1.706–1(b)(6)(iii) unless there has been such an election or technical termination of the partnership. Second, because the final regulations modify § 1.706–1(b)(6)(iii) but otherwise leave the rules of § 1.706–1(b)(6) unchanged, it is appropriate to exempt other partnerships from the modified minority interest rule if they are already subject to § 1.706–1(b)(6) and the minority interest rule of the current regulations (interim period partnerships). Thus, interim period partnerships will be exempt from the modified minority interest rule of § 1.706–1(b)(6)(iii) unless they voluntarily elect to be subject to this rule or undergo a technical termination.

The final regulations under § 1.706–4 generally apply for partnership taxable years that begin on or after August 3, 2015; however, the rules of § 1.706–4(c)(3) do not apply to existing PTPs. For purposes of this effective date provision, an existing PTP is a partnership described in section 7704(b) that was formed prior to April 19, 2009. For purposes of this effective date provision, the termination of a PTP under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether the PTP is an existing PTP.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations. It is hereby certified that the collection of information in this Treasury decision will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Treasury Department and the IRS believe that the economic impact on small entities as a result of the collection of information in this Treasury decision will not be significant. The small entities subject to the collection are business entities formed as partnerships that choose to adopt the proration method, the semi-monthly or monthly convention, perform semi-monthly or monthly interim closings, or to add an additional class of extraordinary item, in which case the partnership must keep a written statement with its books and records evidencing the decision or delegation. Thus, the collection only applies if the partnership does not wish to accept the default method, convention, and list of extraordinary items provided in these regulations. Furthermore, the information required to be maintained with the partnership's books and records is simply a short statement evidencing the agreement of the partners. For these reasons, the Treasury Department and the IRS do not believe that the collection of information in this Treasury decision has a significant economic impact.

Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these final regulations is Benjamin H. Weaver, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 2

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding a new entry in numerical order to read as follows:

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

Section 1.706–4 also issued under 26 U.S.C. 706(d). * * *

■ **Par. 2.** Section 1.706–0 is added to read as follows:

§ 1.706–0 Table of contents.

This section lists the captions contained in the regulations under section 706.

§ 1.706–1 Taxable years of partner and partnership.
(a) Year in which partnership income is includible.
(b) Taxable year.
(1) Partnership treated as taxpayer.
(2) Partnership's taxable year.
(i) Required taxable year.
(ii) Exceptions.
(3) Least aggregate deferral.
(i) Taxable year that results in the least aggregate deferral of income.
(ii) Determination of the taxable year of a partner or partnership that uses a 52–53 week taxable year.
(iii) Special small item exception.
(iv) Examples.
(4) Measurement of partner's profits and capital interest.
(i) In general.
(ii) Profits interest.
(A) In general.
(B) Percentage share of partnership net income.
(C) Distributive share.
(iii) Capital interest.
(5) Taxable year of a partnership with tax-exempt partners.
(i) Certain tax-exempt partners disregarded.
(ii) Example.
(iii) Effective date.
(6) Certain foreign partners disregarded.
(i) Interests of disregarded foreign partners not taken into account.
(ii) Definition of foreign partner.
(iii) Minority interest rule.
(iv) Example.
(v) Effective date.
(A) Generally.
(B) Voluntary change in taxable year.
(C) Subsequent sale or exchange of interests.
(D) Transition rule.
(7) Adoption of taxable year.
(8) Change in taxable year.
(i) Partnerships.
(A) Approval required.
(B) Short period tax return.
(C) Change in required taxable year.
(ii) Partners.
(9) Retention of taxable year.
(10) Procedures for obtaining approval or making a section 444 election.
(11) Effect on partner elections under section 444.
(i) Election taken into account.
(ii) Effective date.
(c) Closing of partnership year.
(1) General rule.
(2) Disposition of entire interest.
(i) In general.
(ii) Example.
(iii) Deemed dispositions.
(3) Disposition of less than entire interest.
(4) Determination of distributive shares.
(5) Transfer of interest by gift.
(d) Effective/applicability date.

§ 1.706–2 Certain cash basis items prorated over period to which attributable. [Reserved]

§ 1.706–2T Temporary regulations; question and answer under the Tax Reform Act of 1984 (temporary).

§ 1.706–3 Items attributable to interest in lower tier partnership prorated over entire taxable year. [Reserved]

§ 1.706–4 Determination of distributive share when a partner's interest varies.
(a) General rule.
(1) Variations subject to this section.
(2) Coordination with section 706(d)(2) and (3).
(3) Allocation of items subject to this section.
(4) Example.
(b) Exceptions.
(1) Permissible changes among contemporaneous partners.
(2) Safe harbor for partnerships for which capital is not a material income-producing factor.
(3) Special rules for publicly traded partnerships.
(c) Conventions.
(1) In general.
(i) Calendar day convention.
(ii) Semi-monthly convention.
(iii) Monthly convention.
(2) Exceptions.
(3) Permissible conventions for each variation.
(4) Examples.
(d)(1) Optional monthly or semi-monthly closings.
(2) Example.
(e) Extraordinary items.
(1) General principles.
(2) Definition.
(3) Small item exception.
(4) Examples.
(f) Agreement of the partners.
(g) Effective/applicability date.

§ 1.706–5 Taxable year determination.
(a) In general.
(b) Effective/applicability date.

■ **Par. 3.** Section 1.706–1 is amended as follows:
■ a. The language ''this paragraph (a)(1)'' in the first sentence of paragraph (a)(2) is removed and the language ''paragraph (a)(1) of this section'' is added in its place.
■ b. The language ''capital or profits'' in the first sentence in paragraph (b)(6)(iii) is removed and the language ''capital and profits'' is added in its place.
■ c. Paragraph (b)(6)(v)(A) is revised.
■ d. The last sentence of paragraph (b)(6)(v)(B) is removed and four new sentences are added in its place.
■ e. Paragraph (b)(6)(v)(C) is revised.
■ f. Add a sentence at the end of paragraph (b)(6)(v)(D).
■ g. Paragraph (c)(2) is revised.
■ h. Paragraph (c)(3) is removed.
■ i. Paragraph (c)(4) is redesignated as paragraph (c)(3) and the last sentence of newly designated paragraph (c)(3) is removed.
■ k. New paragraph (c)(4) is added.
■ l. Paragraph (d) is revised.

The revisions and additions read as follows:

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) * * *
(6) * * *
(v) * * *

(A) *Generally.* The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section) apply to partnership taxable years, other than those of an existing partnership, that begin on or after July 23, 2002. The provisions of paragraph (b)(6)(iii) of this section apply to partnership taxable years, other than those of an existing partnership or an interim period partnership, that begin on or after August 3, 2015. For partnership taxable years beginning on or after July 23,

2002, and before August 3, 2015, see the provisions of § 1.706–1(b)(6)(iii) as contained in the 26 CFR part 1 on July 31, 2015. For purposes of paragraph (b)(6) of this section, an existing partnership is a partnership that was formed prior to September 23, 2002, and an interim period partnership is a partnership that was formed on or after September 23, 2002, and prior to August 3, 2015.

(B) * * * An existing partnership that makes such a change prior to August 3, 2015 will generally cease to be exempted from the requirements of this paragraph (b)(6) of this section, and thus will be subject to the requirements of paragraph (b)(6) of this section, except for paragraph (b)(6)(iii) of this section—instead, such partnership will be subject to the provisions of § 1.706–1(b)(6)(iii) as contained in the 26 CFR part 1 on July 31, 2015. An existing partnership that makes such a change on or after August 3, 2015 will cease to be exempted from the requirements of this paragraph (b)(6). An interim period partnership may change its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section. An interim period partnership that makes such a change will cease to be exempted from the requirements of paragraph (b)(6)(iii) of this section.

(C) *Subsequent sale or exchange of interests.* If an existing partnership or an interim period partnership terminates under section 708(b)(1)(B), the resulting partnership is not an existing partnership or an interim period partnership for purposes of paragraph (b)(6)(v) of this section.

(D) * * * If, in a partnership taxable year beginning on or after August 3, 2015, an interim period partnership voluntarily changes its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section, then the partners of that partnership may apply the provisions of § 1.702–3T to take into account all items of income, gain, loss, deduction, and credit attributable to the partnership year of change ratably over a four-year period.

* * * * *

(c) * * *

(2) *Disposition of entire interest*—(i) *In general.* A partnership taxable year shall close with respect to a partner who sells or exchanges his entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated, and with respect to a partner who dies. In the case of a death, liquidation, or sale or exchange of a partner's entire interest in the partnership, the partner shall include in his taxable income for his taxable year within or with which the partner's interest in the partnership ends the partner's distributive share of items described in section 702(a) and any guaranteed payments under section 707(c) for the partnership taxable year ending with the date of such termination. If the decedent partner's estate or other successor sells or exchanges its entire interest in the partnership, or if its entire interest is liquidated, the partnership taxable year with respect to the estate or other successor in interest shall close on the date of such sale or exchange, or the date of the completion of the liquidation. The sale or exchange of a partnership interest does not, for the purpose of this rule, include any transfer of a partnership interest which occurs at death as a result of inheritance or any testamentary disposition.

(ii) Example. H is a partner of a partnership having a taxable year ending December 31. Both H and his wife W are on a calendar year and file joint returns. H dies on March 31, 2015. Administration of the estate is completed and the estate, including the partnership interest, is distributed to W as legatee on November 30, 2015. Such distribution by the estate is not a sale or exchange of H's partnership interest. The taxable year of the partnership will close with respect to H on March 31, 2015, and H will include in his final return for his final taxable year (January 1, 2015, through March 31, 2015) his distributive share of partnership items for that period under the rules of sections 706(d)(2), 706(d)(3), and § 1.706–4.

(iii) *Deemed dispositions.* A deemed disposition of the partner's interest pursuant to § 1.1502–76(b)(2)(vi) (relating to corporate partners that become or cease to be members of a consolidated group within the meaning of §§ 1.1502–1(h)), 1.1362–3(c)(1) (relating to the termination of the subchapter S election of an S corporation partner), or 1.1377–1(b)(3)(iv) (regarding an election to terminate the taxable year of an S corporation partner), shall be treated as a disposition of the partner's entire interest in the partnership solely for purposes of section 706.

* * * * *

(4) *Determination of distributive shares.* See section 706(d)(2), 706(d)(3), and § 1.706–4 for rules regarding the methods to be used in determining the distributive shares of items described in section 702(a) for partners whose interests in the partnership vary during the partnership's taxable year as a result of a disposition of a partner's entire interest in a partnership as described in paragraph (c)(2) of this section or as a result of a disposition of less than a partner's entire interest as described in paragraph (c)(3) of this section.

* * * * *

(d) *Effective/applicability date.* (1) The rules for paragraphs (a) and (b) of this section apply for partnership taxable years ending on or after May 17, 2002, except for paragraphs (b)(5) and (6) of this section, which generally apply to partnership taxable years beginning on or after July 23, 2002 (however, see paragraphs (b)(5)(iii) and (b)(6)(v) of this section for certain exceptions to and transition relief from the applicability dates of paragraphs (b)(5) and (6) of this section).

(2) The rules for paragraph (c)(1) of this section apply for partnership taxable years beginning after December 31, 1953. All other paragraphs under paragraph (c) of this section apply for partnership taxable years that begin on or after August 3, 2015.

■ **Par. 4.** Add reserved § 1.706–2 with the following heading:

§ 1.706–2 Certain cash basis items allocable. [Reserved]

■ **Par. 5.** Add reserved § 1.706–3 with the following heading:

§ 1.706–3 Items attributable to interest in lower tier partnership prorated over entire taxable year. [Reserved]

■ **Par. 6.** Section 1.706–4 is added to read as follows:

§ 1.706–4 Determination of distributive share when a partner's interest varies.

(a) *General rule*—(1) *Variations subject to this section.* Except as provided in paragraph (a)(2) of this section, this section provides rules for determining the partners' distributive shares of partnership items when a partner's interest in a partnership varies during the taxable year as a result of the disposition of a partial or entire interest in a partnership as described in § 1.706–1(c)(2) and (3), or with respect to a partner whose interest in a partnership is reduced as described in § 1.706–1(c)(3), including by the entry of a new partner (collectively, a ''variation'').

(2) *Coordination with sections 706(d)(2) and 706(d)(3) and other Code sections.* Items subject to allocation under other rules, including sections 108(e)(8) and 108(i) (which provide special allocation rules for certain items from the discharge or retirement of indebtedness), section 706(d)(2) (relating to the determination of partners' distributive shares of allocable cash basis items) and section 706(d)(3) (relating to the determination of partners' distributive share of any item of an upper tier partnership attributable to a lower tier partnership), are not

subject to the rules of this section. In all cases, all partnership items for each taxable year must be allocated among the partners, and no partnership items may be duplicated, regardless of the particular provision of section 706 (or other Code section) which applies, and regardless of the method or convention adopted by the partnership.

(3) *Allocation of items subject to this section.* In determining the distributive share under section 702(a) of partnership items subject to this section, the partnership shall follow the steps described in this paragraph (a)(3)(i) through (x).

(i) First, determine whether either of the exceptions in paragraph (b) of this section (regarding certain changes among contemporaneous partners and partnerships for which capital is not a material income-producing factor) applies.

(ii) Second, determine which of its items are subject to allocation under the special rules for extraordinary items in paragraph (e) of this section, and allocate those items accordingly.

(iii) Third, determine with respect to each variation whether it will apply the interim closing method or the proration method. Absent an agreement of the partners (within the meaning of paragraph (f) of this section) to use the proration method, the partnership shall use the interim closing method. The partnership may use different methods (interim closing or proration) for different variations within each partnership taxable year; however, the Commissioner may place restrictions on the ability of partnerships to use different methods during the same taxable year in guidance published in the Internal Revenue Bulletin.

(iv) Fourth, determine when each variation is deemed to have occurred under the partnership's selected convention (as described in paragraph (c) of this section).

(v) Fifth, determine whether there is an agreement of the partners (within the meaning of paragraph (f) of this section) to perform regular monthly or semi-monthly interim closings (as described in paragraph (d) of this section). If so, then the partnership will perform an interim closing of its books at the end of each month (in the case of an agreement to perform monthly closings) or at the end and middle of each month (in the case of an agreement to perform semi-monthly closings), regardless of whether any variation occurs. Absent an agreement of the partners to perform regular monthly or semi-monthly interim closings, the only interim closings during the partnership's taxable year will be at the deemed time of the occurrence of variations for which the partnership uses the interim closing method.

(vi) Sixth, determine the partnership's segments, which are specific periods of the partnership's taxable year created by interim closings of the partnership's books. The first segment shall commence with the beginning of the taxable year of the partnership and shall end at the time of the first interim closing. Any additional segment shall commence immediately after the closing of the prior segment and shall end at the time of the next interim closing. However, the last segment of the partnership's taxable year shall end no later than the close of the last day of the partnership's taxable year. If there are no interim closings, the partnership has one segment, which corresponds to its entire taxable year.

(vii) Seventh, apportion the partnership's items for the year among its segments. The partnership shall determine the items of income, gain, loss, deduction, and credit of the partnership for each segment. In general, a partnership shall treat each segment as though the segment were a separate distributive share period. For example, a partnership may compute a capital loss for a segment of a taxable year even though the partnership has a net capital gain for the entire taxable year. For purposes of determining allocations to segments, any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year will be applied based upon the partnership's satisfaction of the limitation or requirement as of the end of the partnership's taxable year. For example, the expenses related to the election to expense a section 179 asset must first be calculated (and limited if applicable) based on the partnership's full taxable year, and then the effect of any limitation must be apportioned among the segments in accordance with the interim closing method or the proration method using any reasonable method.

(viii) Eighth, determine the partnership's proration periods, which are specific portions of a segment created by a variation for which the partnership chooses to apply the proration method. The first proration period in each segment begins at the beginning of the segment, and ends at the time of the first variation within the segment for which the partnership selects the proration method. The next proration period begins immediately after the close of the prior proration period and ends at the time of the next variation for which the partnerships selects the proration method. However, each proration period shall end no later than the close of the segment.

(ix) Ninth, prorate the items of income, gain, loss, deduction, and credit in each segment among the proration periods within the segment.

(x) Tenth, determine the partners' distributive shares of partnership items under section 702(a) by taking into account the partners' interests in such items during each segment and proration period.

(4) Example. (i) At the beginning of 2015, PRS, a calendar year partnership, has three equal partners, A, B, and C. On April 16, 2015, A sells 50% of its interest in PRS to new partner D. On August 6, 2015, B sells 50% of its interest in PRS to new partner E. During 2015, PRS earned $75,000 of ordinary income, incurred $33,000 of ordinary deductions, earned $12,000 of capital gain in the ordinary course of its business, and sustained $9,000 of capital loss in the ordinary course of its business. Within that year, PRS earned $60,000 of ordinary income, incurred $24,000 of ordinary deductions, earned $12,000 of capital gain, and sustained $6,000 of capital loss between January 1, 2015, and July 31, 2015, and PRS earned $15,000 of gross ordinary income, incurred $9,000 of gross ordinary deductions, and sustained $3,000 of capital loss between August 1, 2015, and December 31, 2015. None of PRS's items are extraordinary items within the meaning of paragraph (e)(2) of this section. Capital is a material income-producing factor for PRS. For 2015, PRS determines the distributive shares of A, B, C, D, and E as follows.

(i) First, PRS determines that none of the exceptions in paragraph (b) of this section apply because capital is a material-income producing factor and no variation is the result of a change in allocations among contemporaneous partners.

(ii) Second, PRS determines that none of its items are extraordinary items subject to allocation under paragraph (e) of this section.

(iii) Third, the partners of PRS agree (within the meaning of paragraph (f) of this section) to apply the proration method to the April 16, 2015, variation, and PRS accepts the default application of the interim closing method to the August 6, 2015, variation.

(iv) Fourth, PRS determines the deemed date of the variations for purposes of this section based upon PRS's selected convention. Because PRS applied the proration method to the April 16, 2015, variation, PRS must use the calendar day convention with respect to the April 16, 2015, variation pursuant to paragraph (c) of this section. Therefore, the variation that resulted from A's sale to D on April 16, 2015, is deemed to occur for purposes of this section at the end of the day on April 16, 2015. Further, the partners of PRS agree (within the meaning of paragraph (f) of this section) to apply the semi-monthly convention to the August 6, 2015, variation. Therefore, the August 6, 2015, variation is deemed to occur at the end of the day on July 31, 2015.

(v) Fifth, the partners of PRS do not agree to perform regular semi-monthly or monthly closings as described in paragraph (d) of this section. Therefore, PRS will have only one interim closing for 2015, occurring at the end of the day on July 31.

(vi) Sixth, PRS determines that it has two segments for 2015. The first segment commences January 1, 2015, and ends at the close of the day on July 31, 2015. The second segment commences at the beginning of the day on August 1, 2015, and ends at the close of the day on December 31, 2015.

(vii) Seventh, PRS determines that during the first segment of its taxable year (beginning January 1, 2015, and ending July 31, 2015), it had $60,000 of ordinary income, $24,000 of ordinary deductions, $12,000 of capital gain, and $6,000 of capital loss. PRS determines that during the second segment of its taxable year (beginning August 1, 2015, and ending December 31, 2015), it had $15,000 of gross ordinary income, $9,000 of gross ordinary deductions, and $3,000 of capital loss.

(viii) Eighth, PRS determines that it has two proration periods. The first proration period begins January 1, 2015, and ends at the close of the day on April 16, 2015; the second proration period begins April 17, 2015, and ends at the close of the day on July 31, 2015.

(ix) Ninth, PRS prorates its income from the first segment of its taxable year among the two proration periods. Because each proration period has 106 days, PRS allocates 50% of its items from the first segment to each proration period. Thus, each proration period contains $30,000 gross ordinary income, $12,000 gross ordinary deductions, $6,000 capital gain, and $3,000 capital loss.

(x) Tenth, PRS calculates each partner's distributive share. Because A, B, and C were equal partners during the first proration period, each is allocated one-third of the partnership's items attributable to that proration period. Thus, A, B, and C are each allocated $10,000 gross ordinary income, $4,000 gross ordinary deductions, $2,000 capital gain, and $1,000 capital loss for the first proration period. For the second proration period, A and D each had a one-sixth interest in PRS and B and C each had a one-third interest in PRS. Thus, A and D are each allocated $5,000 gross ordinary income, $2,000 gross ordinary deductions, $1,000 capital gain, and $500 capital loss, and B and C are each allocated $10,000 gross ordinary income, $4,000 gross ordinary deductions, $2,000 capital gain, and $1,000 capital loss for the second proration period. For the second segment of PRS's taxable year, A, B, D, and E each had a one-sixth interest in PRS and C had a one-third interest in PRS. Thus, A, B, D, and E are each allocated $2,500 gross ordinary income, $1,500 gross ordinary deductions, and $500 capital loss, and C is allocated $5,000 gross ordinary income, $3,000 gross ordinary deductions, and $1,000 capital loss for the second segment.

(b) *Exceptions*—(1) *Permissible changes among contemporaneous partners.* The general rule of paragraph (a)(3) of this section, with respect to the varying interests of a partner described in § 1.706–1(c)(3), will not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners for the entire partnership taxable year (or among contemporaneous partners for a segment if the item is entirely attributable to a segment), provided that—

(i) Any variation in a partner's interest is not attributable to a contribution of money or property by a partner to the partnership or a distribution of money or property by the partnership to a partner; and

(ii) The allocations resulting from the modification satisfy the provisions of section 704(b) and the regulations promulgated thereunder.

(2) *Safe harbor for partnerships for which capital is not a material income-producing factor.* Notwithstanding paragraph (a)(3) of this section, with respect to any taxable year in which there is a change in any partner's interest in a partnership for which capital is not a material income-producing factor, the partnership and such partner may choose to determine the partner's distributive share of partnership income, gain, loss, deduction, and credit using any reasonable method to account for the varying interests of the partners in the partnership during the taxable year provided that the allocations satisfy the provisions of section 704(b).

(c) *Conventions*—(1) *In general.* Conventions are rules of administrative convenience that determine when each variation is deemed to occur for purposes of this section. Because the timing of each variation is necessary to determine the partnership's segments and proration periods, which are used to determine the partners' distributive shares, the convention used by the partnership with respect to a variation will generally affect the allocation of partnership items. However, see paragraph (e) of this section for special rules regarding extraordinary items, which generally must be allocated without regard to the partnership's convention. Subject to the limitations set forth in paragraphs (c)(2) and (3) of this section, partnerships may generally choose from the following three conventions:

(i) *Calendar day convention.* Under the calendar day convention, each variation is deemed to occur for purposes of this section at the end of the day on which the variation occurs.

(ii) *Semi-monthly convention.* Under the semi-monthly convention, each variation is deemed to occur for purposes of this section either:

(A) In the case of a variation occurring on the 1st through the 15th day of a calendar month, at the end of the last day of the immediately preceding calendar month; or

(B) In the case of a variation occurring on the 16th through the last day of a calendar month, at the end of the 15th calendar day of that month.

(iii) *Monthly convention.* Under the monthly convention, each variation is deemed to occur for purposes of this section either:

(A) In the case of a variation occurring on the 1st through the 15th day of a calendar month, at the end of the last day of the immediately preceding calendar month; or

(B) In the case of a variation occurring on the 16th through the last day of a calendar month, at the end of the last day of that calendar month.

(2) *Exceptions.* (i) Notwithstanding paragraph (c)(1) of this section, all variations within a taxable year shall be deemed to occur no earlier than the first day of the partnership's taxable year, and no later than the close of the final day of the partnership's taxable year. Thus, in the case of a calendar year partnership applying either the semi-monthly or monthly convention to a variation occurring on January 1st through January 15th, the variation will be deemed to occur for purposes of this section at the beginning of the day on January 1st.

(ii) In the case of a partner who becomes a partner during the partnership's taxable year as a result of a variation, and ceases to be a partner as a result of another variation, if both such variations would be deemed to occur at the same time under the rules of paragraph (c)(1) of this section, then the variations with respect to that partner's interest will instead be treated as occurring on the dates each variation actually occurred. Thus, the partnership must treat such a partner as a partner for the entire portion of its taxable year during which the partner actually owned an interest. See *Example 2* of paragraph (c)(4) of this section. However, this paragraph (c)(2)(ii) does not apply to publicly traded partnerships (as defined in section 7704(b)) that are treated as partnerships with respect to holders of publicly traded units (as described in § 1.7704–1(b) or 1.7704–1(c)(1)).

(iii) Notwithstanding paragraph (c)(1)(iii) of this section, a publicly traded partnership (as defined in section 7704(b)) that is treated as a partnership may consistently treat all variations occurring during each month as occurring at the end of the last day of that calendar month if the publicly

traded partnership uses the monthly convention for those variations.

(3) *Permissible conventions for each variation*—(i) *Rules applicable to all partnerships.* A partnership generally shall use the calendar day convention for each variation; however, for all variations during a taxable year for which the partnership uses the interim closing method, the partnership may instead use the semi-monthly or monthly convention by agreement of the partners (within the meaning of paragraph (f) of this section). The partnership must use the same convention for all variations for which the partnership uses the interim closing method.

(ii) *Publicly traded partnerships.* A publicly traded partnership (as defined in section 7704(b)) that is treated as a partnership may, by agreement of the partners (within the meaning of paragraph (f) of this section) use any of the calendar day, the semi-monthly, or the monthly conventions with respect to all variations during the taxable year relating to its publicly-traded units (as described in § 1.7704–1(b) or (c)(1)), regardless of whether the publicly traded partnership uses the proration method with respect to those variations. A publicly traded partnership must use the same convention for all variations during the taxable year relating to its publicly traded units. A publicly traded partnership must use the calendar day convention with respect to all variations relating to its non-publicly traded units for which the publicly traded partnership uses the proration method.

(4) *Examples.* The following examples illustrate the principles in this paragraph (c).

Example 1. PRS is a calendar year partnership with four equal partners A, B, C, and D. PRS is not a publicly traded partnership. PRS has the following three variations that occur during its 2015 taxable year: on March 11, A sells its entire interest in PRS to new partner E; on June 12, PRS partially redeems B's interest in PRS with a distribution comprising a partial return of B's capital; on October 21, C sells part of C's interest in PRS to new partner E. These transfers do not result in a termination of PRS under section 708. Pursuant to paragraph (a)(3)(iii) of this section, the partners of PRS agree (within the meaning of paragraph (f) of this section) to use the interim closing method with respect to the variations occurring on March 11 and October 21 and agree to use the proration method with respect to the variation occurring on June 12. Pursuant to paragraph (c)(3) of this section, the partners of PRS may agree (within the meaning of paragraph (f) of this section) to use any of the calendar day, semi-monthly, or monthly conventions with respect to the March 11 and October 21 variations, but must use the same convention for both variations. If the partners of PRS agree to use the calendar day convention, the March 11 and October 21 variations will be deemed to occur for purposes of this section at the end of the day on March 11, 2015, and October 21, 2015, respectively. If the partners of PRS agree to use the semi-monthly convention, the March 11 and October 21 variations will be deemed to occur for purposes of this section at the end of the day on February 28, 2015, and October 15, 2015, respectively. If the partners of PRS agree to use the monthly convention, the March 11 and October 21 variations will be deemed to occur for purposes of this section at the end of the day on February 28, 2015, and October 31, 2015, respectively. Pursuant to paragraph (c)(3) of this section PRS must use the calendar day convention with respect to the June 12 variation; thus, the June 12 variation is deemed to occur for purposes of this section at the end of the day on June 12, 2015.

Example 2. PRS is a calendar year partnership that uses the interim closing method and monthly convention to account for variations during its taxable year. PRS is not a publicly traded partnership. On January 20, 2015, new partner A purchases an interest in PRS from one of PRS's existing partners. On February 14, 2015, A sells its entire interest in PRS. These transfers do not result in a termination of PRS under section 708. Under the rules of paragraph (c)(1)(iii) of this section, the January 20, 2015, variation and the February 14, 2015, variation would both be deemed to occur at the same time: the end of the day on January 31, 2015. Therefore, under the exception in paragraph (c)(2)(ii) of this section, the rules of paragraph (c)(1) of this section do not apply, and instead the January 20, 2015, variation and the February 14 variation are considered to occur on January 20, 2015, and February 14, 2015, respectively. PRS must perform a closing of the books on both January 20, 2015, and February 14, 2015, and allocate A a share of PRS's items attributable to that segment.

(d)(1) *Optional regular monthly or semi-monthly interim closings.* Under the rules of this section, a partnership is not required to perform an interim closing of its books except at the time of any variation for which the partnership uses the interim closing method (taking into account the applicable convention). However, a partnership may, by agreement of the partners (within the meaning of paragraph (f) of this section) perform regular monthly or semi-monthly interim closings of its books, regardless of whether any variation occurs. Regardless of whether the partners agree to perform these regular interim closings, the partnership must continue to apply the interim closing or proration method to its variations according to the rules of this section.

(2) *Example.* The following example illustrates the principles in this paragraph (d).

Example. (i) PRS is a calendar year partnership with five equal partners A, B, C, D, and E. PRS has the following two variations that occur during its 2015 taxable year: on August 29, A sells its entire interest in PRS to new partner F; on December 27, PRS completely liquidates B's interest in PRS with a distribution. These variations do not result in a termination of PRS under section 708.

(ii) The partners of PRS agree (within the meaning of paragraph (f) of this section) to use the interim closing method and the semi-monthly convention with respect to the variation occurring on August 29. Thus, the August variation is deemed to occur for purposes of this section at the end of the day on August 15, 2015. The partners of PRS agree (within the meaning of paragraph (f) of this section) to use the proration method with respect to the December 27 variation. Therefore, PRS must use the calendar day convention with respect to the December variation pursuant to paragraph (c) of this section. Thus, the December variation is deemed to occur for purposes of this section at the end of the day on December 27, 2015.

(iii) Pursuant to paragraph (d)(1) of this section, the partners of PRS agree (within the meaning of paragraph (f) of this section) to perform regular monthly interim closings. Therefore, PRS will have twelve interim closings for its 2015 taxable year, one at the end of every month and one at the end of the day on August 15. Therefore, PRS will have thirteen segments for 2015, one corresponding to each month from January through July, one segment from August 1 through August 15, one segment from August 16 through August 31, and one corresponding to each month from September through December. PRS must apportion its items among these segments under the rules of paragraph (a)(3) of this section.

(iv) PRS will have two proration periods for 2015, one from December 1 through December 27, and one from December 28 through December 31. Pursuant to the rules of paragraph (a)(3) of this section, PRS will prorate the items in its December segment among these two proration periods. Therefore, PRS will apportion 27/31 of all items in its December segment to the proration period from December 1 through December 27, and 4/31 of all items in its December segment to the proration period from December 28 through December 31.

(v) Pursuant to the rules of paragraph (a)(3)(x) of this section, PRS determines the partners' distributive shares of partnership items under section 702(a) by taking into account the partners' interests in such items during each of the thirteen segments and two proration periods. Thus, A, B, C, D, and E will each be allocated one-fifth of all items in the following segments: January, February, March, April, May, June, July, and August 1 through August 15. B, C, D, E, and F will each be allocated one-fifth of all items in the following segments: August 16 through August 31, September, October, and November. B, C, D, E, and F will each be allocated one-fifth of all items in the proration period from December 1 through December 27. C, D, E, and F will each be

allocated one-quarter of all items in the proration period from December 28 through December 31.

(e) *Extraordinary items*—(1) *General principles.* Extraordinary items may not be prorated. The partnership must allocate extraordinary items among the partners in proportion to their interests in the partnership item at the time of day on which the extraordinary item occurred, regardless of the method (interim closing or proration method) and convention (daily, semi-monthly, or monthly) otherwise used by the partnership. These rules require the allocation of extraordinary items as an exception to the proration method, which would otherwise ratably allocate the extraordinary items across the segment, and the conventions, which could otherwise inappropriately shift extraordinary items between a transferor and transferee. However, publicly traded partnerships (as defined in section 7704(b)) that are treated as partnerships may, but are not required to, apply their selected convention in determining who held publicly traded units (as described in § 1.7704–1(b) or (c)(1)) at the time of the occurrence of an extraordinary item. Extraordinary items continue to be subject to any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year (for example, the limitation for section 179 expenses).

(2) *Definition.* Except as provided in paragraph (e)(3) of this section, an extraordinary item is:

(i) Any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 (determined without the application of any other rules of law);

(ii) Any item from the disposition or abandonment (other than in the ordinary course of business) of property used in a trade or business as defined in section 1231(b) (determined without the application of any holding period requirement);

(iii) Any item from the disposition or abandonment of an asset described in section 1221(a)(1), (a)(3), (a)(4), or (a)(5) if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions);

(iv) Any item from assets disposed of in an applicable asset acquisition under section 1060(c);

(v) Any item resulting from any change in accounting method initiated by the filing of the appropriate form after a variation occurs;

(vi) Any item from the discharge or retirement of indebtedness (except items subject to section 108(e)(8) or 108(i), which are subject to special allocation rules provided in section 108(e)(8) and 108(i));

(vii) Any item from the settlement of a tort or similar third-party liability or payment of a judgment;

(viii) Any credit, to the extent it arises from activities or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service);

(ix) For all partnerships, any additional item if, the partners agree (within the meaning of paragraph (f) of this section) to consistently treat such item as an extraordinary item for that taxable year; however, this rule does not apply if treating that additional item as an extraordinary item would result in a substantial distortion of income in any partner's return; any additional extraordinary items continue to be subject to any special limitation or requirement relating to the timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year (for example, the limitation for section 179 expenses);

(x) Any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any return in which the item is included;

(xi) Any item identified as an additional class of extraordinary item in guidance published in the Internal Revenue Bulletin.

(3) *Small item exception.* A partnership may treat an item described in paragraph (e)(2) of this section as other than an extraordinary item for purposes of this paragraph (e) if, for the partnership's taxable year the total of all items in the particular class of extraordinary items (as enumerated in paragraphs (e)(2)(i) through (xi) of this section, for example, all tort or similar liabilities, but in no event counting an extraordinary item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such extraordinary items as positive amounts.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (e).

Example 1. PRS, a calendar year partnership, uses the proration method and calendar day convention to account for varying interests of the partners. At 3:15 p.m. on December 7, 2015, PRS recognizes an extraordinary item within the meaning of paragraph (e)(2) of this section. On December 12, 2015, A, a partner in PRS, disposes of its entire interest in PRS. PRS does not experience a termination under section 708 during 2015. PRS has no other extraordinary items for the taxable year, the small item exception of paragraph (e)(3) of this section does not apply, the exceptions in paragraph (b) of this section do not apply, and PRS is not a publicly traded partnership. Pursuant to paragraph (e)(1) of this section, the item of income, gain, loss, deduction, or credit attributable to the extraordinary item will be allocated in accordance with the partners' interests in the extraordinary item at 3:15 p.m. on December 7, 2015. The remaining partnership items of PRS that are subject to this section must be prorated across the partnership's taxable year in accordance with paragraph (a)(3) of this section.

Example 2. Assume the same facts as in Example 1, except that PRS uses the interim closing method and monthly convention to account for varying interests of the partners. Pursuant to paragraph (c)(1)(iii) of this section, the December 12 variation is deemed to have occurred for purposes of this section at the end of the day on November 30, 2015. Thus, A will not generally be allocated any items of PRS attributable to the segment between December 1, 2015, and December 31, 2015; however, pursuant to paragraph (e)(1) of this section, PRS must allocate the item of income, gain, loss, deduction, or credit attributable to the extraordinary item in accordance with the partners' interests in the extraordinary item at the time of day on which the extraordinary item occurred, regardless of the convention used by PRS. Thus, because A was a partner in PRS at 3:15 p.m. on December 7, 2015 (ignoring application of PRS's convention), A must be allocated a share of the extraordinary item.

Example 3. Assume the same facts as in *Example 2,* except that PRS is a publicly traded partnership (within the meaning of section 7704(b)) and A held a publicly traded unit (as described in § 1.7704–1(b) or 1.7704–1(c)(1)) in PRS. Under PRS's monthly convention, the December 12 variation is deemed to have occurred for purposes of this section at the end of the day on November 30, 2015. Pursuant to paragraph (e)(1) of this section, a publicly traded partnership (as defined in section 7704(b)) may choose to respect its conventions in determining who held its publicly traded units (as described in § 1.7704–1(b) or § 1.7704–1(c)(1)) at the time of the occurrence of an extraordinary item. Therefore, PRS may choose to treat A as not having been a partner in PRS for purposes of this paragraph (e) at the time the

extraordinary item arose, and thus PRS may choose not to allocate A any share of the extraordinary item.

Example 4. A and B each own a 15 percent interest in PRS, a partnership that is not a publicly traded partnership and for which capital is a material income-producing factor. At 9:00 a.m. on April 25, 2015, A sells its entire interest in PRS to new partner D. At 3:00 p.m. on April 25, 2015, PRS incurs an extraordinary item (within the meaning of paragraph (e)(2) of this section). At 5:00 p.m. on April 25, 2015, B sells its entire interest in PRS to new partner E. Under paragraph (e)(1) of this section, PRS must allocate the extraordinary item in accordance with the partners' interests at 3:00 p.m. on April 25, 2015. Accordingly, a portion of the extraordinary item will be allocated to each of B and D, but no portion will be allocated to A or E.

Example 5. PRS, a calendar year partnership that is not a publicly traded partnership, has a variation in a partner's interest during 2015 and the exceptions in paragraph (b) of this section do not apply. During 2015 PRS has two extraordinary items: PRS recognizes $8 million of gross income on the sale outside the ordinary course of business of an asset described in paragraph (e)(2)(ii) of this section, and PRS also recognizes $12 million of gross income from a tort settlement as described in paragraph (e)(2)(vii) of this section. PRS's gross income (including the gross income from the extraordinary items) for the taxable year is $200 million. The gain from all items described in paragraph (e)(2)(ii) of this section is less than five percent of PRS's gross income ($8 million gross income from the asset sale divided by $200 million total gross income, or four percent) and all of the extraordinary items of PRS from classes that are less than five percent of PRS's gross income ($8 million), in the aggregate, do not exceed $10 million for the taxable year. Thus, the $8 million gain recognized on the asset sale is considered a small item under paragraph (e)(3) of this section and is therefore excepted from the rules of paragraph (e)(1) of this section. Because the gross income attributable to the tort settlement exceeds five percent of PRS's gross income (six percent), the tort settlement gross income is not considered a small item under paragraph (e)(3) of this section. Therefore, the $12 million gross income attributable to the tort settlement must be allocated according to the rules of paragraph (e)(1) of this section in accordance with PRS's partners' interests in the item at the time of the day that the tort settlement income arose.

Example 6. Assume the same facts as Example 5, except that during the year, PRS also recognizes two additional extraordinary items: $2 million of gross income from the sale of a capital asset described in paragraph (e)(2)(i) of this section, and $1 million of gross income from discharge of indebtedness described in paragraph (e)(2)(vi) of this section. Although the gain from items described in each of paragraphs (e)(2)(i), (e)(2)(ii), and (e)(2)(vi) of this section is each less than five percent of PRS's gross income, the extraordinary items of PRS from classes that are less than five percent of PRS's gross income ($11 million), in the aggregate, exceeds $10 million for the taxable year. Thus, none of the items are considered a small item under paragraph (e)(3) of this section. Therefore, the items attributable to the sale of the capital asset, the sale of the trade or business asset, the discharge of indebtedness income, and the tort settlement must each be allocated according to the rules of paragraph (e)(1) of this section in accordance with PRS's partners' interests in the item at the time of the day that the items arose.

(f) *Agreement of the partners.* For purposes of paragraphs (a)(3)(iii) (relating to selection of the proration method), (c)(3) (relating to selection of the semi-monthly or monthly convention), (d) (relating to performance of regular monthly or semi-monthly interim closings), and (e)(2)(ix) (relating to selection of additional extraordinary items) of this section, the term agreement of the partners means either an agreement of all the partners to select the method, convention, or extraordinary item in a dated, written statement maintained with the partnership's books and records, including, for example, a selection that is included in the partnership agreement, or a selection of the method, convention, or extraordinary item made by a person authorized to make that selection, including under a grant of general authority provided for by either state law or in the partnership agreement, if that person's selection is in a dated, written statement maintained with the partnership's books and records. In either case, the dated written agreement must be maintained with the partnership's books and records by the due date, including extension, of the partnership's tax return.

(g) *Effective/applicability date.* Except with respect to paragraph (c)(3) of this section, this section applies for partnership taxable years that begin on or after August 3, 2015. The rules of paragraph (c)(3) of this section apply for taxable years of partnerships other than existing publicly traded partnerships that begin on or after August 3, 2015. For purposes of the immediately preceding sentence, an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 19, 2009. For purposes of this effective date provision, the termination of a publicly traded partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether the publicly traded partnership is an existing publicly traded partnership.

■ **Par. 7.** Section 1.706–5 is added to read as follows:

§ 1.706–5 Taxable year determination.

(a) *In general.* For purposes of § 1.706–4, the taxable year of a partnership shall be determined without regard to section 706(c)(2)(A) and its regulations.

(b) *Effective/applicability date.* This section applies for partnership taxable years that begin on or after August 3, 2015.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR Part or section where identified and described	Current OMB control no.
* * * * *	
1.706–4(f)	1545–0123
* * * * *	

Karen L. Schiller,

Acting Deputy Commissioner for Services and Enforcement.

Approved: June 3, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–18816 Filed 7–31–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 553

[Docket No. BOP–1163]

RIN 1120–AB63

Contraband and Inmate Personal Property: Technical Amendment

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons makes a minor technical amendment to its regulations on contraband and inmate personal

property to maintain consistency in language which describes the purpose of the regulations as ensuring the safety, security, or good order of the facility or protection of the public.

DATES: This interim rule is effective September 2, 2015. Written comments must be postmarked and electronic comments must be submitted on or before October 2, 2015. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Written comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534. You may view an electronic version of this regulation at *www.regulations.gov.* You may also comment by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202)307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains confidential business information that cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Interim Regulations

In this document, the Bureau of Prisons (Bureau) makes a minor technical change to its regulations on contraband and inmate personal property to maintain consistency in language which describes the purpose of the regulations as ensuring the ''safety, security, or good order of the facility or protection of the public.''

Variations on this phrase appear throughout the Bureau's regulations in 28 CFR Chapter V. *See* 28 CFR 500.1(h), 501.2(b), 501.3(b), 511.10(a), 511.11(a), 511.12(a), 511.15(b), 511.17(b), 540.12(a), 540.14(c) and (d), 540.15(d), 540.40, 540.44(c), 540.51(h), 540.70, 540.71(b) and (d), 540.100(a), 540.101(a), 541.12, 541.43(b), 541.63(c), 543.11(f), 543.14(a) and (c), 543.15(c), 543.16(b), 544.20, 544.21(b), 548.10, 548.16–.18, 549.13(b), 549.50, 549.51(b), 551.1, 551.10, 551.12(d), 551.16(a), 551.31(b), 551.34(b), 551.35, 551.71(d), 551.110(a), 551.112(b), 551.113(a), 551.115(a), 552.13(b), 552.20, 552.21(a) and (d), 553.11(h), 553.12(b).

The Bureau has conformed the phrase in all revised regulations since approximately 2005. We now propose to similarly alter our regulations on contraband, an important threat to the safety, security, or good order of the facility or protection of the public.

Currently, the definition of contraband in § 500.1(h) reads as follows: ''Contraband is material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution.'' We now propose to conform the ''security, safety, or good order'' phrase to the language we have used in recent years, to read as follows: ''Contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security, or good order of the facility or protection of the public.''

Likewise, in order to conform the phrase and underscore the importance of prohibiting contraband, we propose to add the phrase to the end of the first sentence of § 553.10, regarding inmate personal property, to read as follows: ''It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, *that does not threaten the safety, security, or good order of the facility or protection of the public.''* [Emphasis added.] Further, § 543.12(b) contains another description/definition of contraband, categorizing it as either ''hard contraband'' or ''nuisance contraband.'' We add the ''safety, security'' phrase to this regulation as well.

It is important to note that this interim rule changes none of the substantive requirements or obligations relating to petitions for commutation of sentence, nor does it alter the Bureau's responsibilities in this regard.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for ''(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor technical change. Because this change is a minor clarification of current agency procedure and practice by conforming language, we find that normal notice-and-comment rulemaking is unnecessary. The alternation of the language in this regulation is a minor clarification of current agency procedure, and is therefore exempt from normal notice-and-comment procedures under 5 U.S.C. 553(b)(A). Adding a rote phrase indicating that the purpose of the regulation is to insure the safety, security, and good order of the facility and the protection of the public does not impose any new rights or obligations, nor does it leave the Bureau free to exercise further discretion. *See National Ass'n of Broadcasters* v. *F.C.C.,* 569 F.3d 416, 426 (D.C. Cir. 2009). Despite the technical nature of the change, however, we are still allowing the public to comment on this rule

change by publishing it as an interim final rule.

Executive Order 12866

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Parts 500 and 553

Prisoners.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR parts 500 and 553 as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

■ 1. The authority citation for 28 CFR part 500 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

■ 2. In § 500.1, paragraph (h) is revised to read as follows:

§ 500.1 Definitions.

* * * * *

(h) Contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security, or good order of the facility or protection of the public.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 553—INMATE PROPERTY

■ 3. The authority citation for 28 CFR part 553 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

■ 4. In § 553.10, revise the first sentence to read as follows:

§ 553.10 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, that does not threaten the safety, security, or good order of the facility or protection of the public. * * *

■ 5. In § 553.12, revise paragraph (b) to read as follows:

§ 553.12 Contraband.

* * * * *

(b) For the purposes of this subpart, there are two types of contraband.

(1) Staff shall consider as hard contraband any item which threatens the safety, security, or good order of the facility or protection of the public and which ordinarily is not approved for possession by an inmate or for admission into the institution. Examples of hard contraband include weapons, intoxicants, and currency (where prohibited).

(2) Staff shall consider as nuisance contraband any item other than hard contraband, which has never been authorized, or which may be, or which previously has been authorized for possession by an inmate, but whose possession is prohibited when it presents a threat to safety, security, or good order of the facility or protection of the public, or its condition or excessive quantities of it present a health, fire, or housekeeping hazard. Examples of nuisance contraband include: personal property no longer permitted for admission to the institution or permitted for sale in the commissary; altered personal property; excessive accumulation of commissary, newspapers, letters, or magazines which cannot be stored neatly and safely in the designated area; food items which are spoiled or retained beyond the point of safe consumption; government-issued items which have been altered, or other items made from government property without staff authorization.

[FR Doc. 2015–18982 Filed 7–31–15; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0594]

Safety Zones; Swim Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with swim events. During the

enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Douglas Neumann, Coast Guard; telephone 718–354–4154, email *douglas.w.neumann@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69617).

TABLE 1

1.	Hudson Valley Triathlon Swim Event 33 CFR 165.160(1.1)	• Location: All waters of the Hudson River in the vicinity of Ulster Landing, bound by the following points: 42°00′03.7″ N., 073°56′43.1″ W.; thence to 41°59′52.5″ N., 073°56′34.2″ W. thence to 42°00′15.1″ N., 073°56′25.2″ W. thence to 42°00′05.4″ N., 073°56′41.9″ W. thence along the shoreline to the point of beginning. This Safety Zone includes all waters within a 100-yard radius of each participating swimmer. • Date: July 12, 2015. • Time: 7:30 a.m.–8:30 a.m.
2.	Newburgh to Beacon Swim Event 33 CFR 165.160(1.2) Date: July 18, 2015	• Location: Participants will cross the Hudson River between Newburgh and Beacon, New York approximately 1300 yards south of the Newburgh-Beacon Bridges. This Safety Zone includes all waters within a 100-yard radius of each participating swimmer. • Date: July 18, 2015. • Reserve Date: July 19, 2015. • Time 10:15 a.m.–01:15 p.m.
3.	Rose Pitnof Swim Swim Event 33 CFR 165.160(4.2)	• Location: Participants will swim between Manhattan, New York and the shore of Coney Island, New York transiting through the Upper New York Bay, under the Verrazano-Narrows Bridge and south in the Lower New York Bay. The route direction is determined by the predicted tide state and direction of current on the scheduled day of the event. This Safety Zone includes all waters within a 100-yard radius of each participating swimmer. • Date: August 15, 2015. • Time: 10:00 a.m.–05:00 p.m.

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts.

If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: June 23, 2015.

G. Loebl,

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

[FR Doc. 2015–18995 Filed 7–31–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1036]

Safety Zones; Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce 3 safety zones for fireworks displays in the Sector Long Island Sound area of responsibility on the dates and times listed in the table below. This action is necessary to provide for the safety of life on navigable waterways during the events. During the enforcement periods, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 165.151 will be enforced during the dates and times as listed in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Ian Fallon, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4565, email *Ian.M.Fallon@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.151 on the specified dates and times as indicated in the following Table.

TABLE 1 TO § 165.151

6.2 Town of Branford Fireworks	• Date: July 25, 2015. • Rain Date: July 26, 2015. • Time: 9:00 p.m. to 10:30 p.m. • Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′37″ N., 072°49′15″ W. (NAD 83).
8.4 Town of Babylon Fireworks	• Date: August 22, 2015. • Rain Date: August 23, 2015. • Time: 8:30 p.m. to 10:00 p.m.

TABLE 1 TO § 165.151—Continued

9.1 East Hampton Fire Department Fireworks	• Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N., 073°20′12″ W. (NAD 83). • Date: August 29, 2015. • Rain Date: August 30, 2015. • Time: 8:45 p.m. to 10:15 p.m. • Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′40.28″ N., 072°11′21.26″ W. (NAD 83).

Under the provisions of 33 CFR 165.151, the fireworks displays listed above are established as safety zones. During the enforcement periods, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that the safety zones need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: July 24, 2015.

E.J. Cubanski, III,

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

[FR Doc. 2015–18998 Filed 7–31–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0498, FRL–9927–49–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Approval of NO_X Emission Offset Credits as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. The revision approves amendments to two existing Trading and Agreement Orders for new source review nitrogen oxides (NO_X) emission offsets at PSEG Power Connecticut's facility in Bridgeport, Connecticut. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective October 2, 2015, unless EPA receives adverse comments by September 2, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2014–0498 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: dahl.donald@epa.gov.*
3. *Fax:* (617) 918–0657.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2014–0498'', Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th floor, (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2014–0498. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section

of this **Federal Register,** copies of the state submittals are also available for public inspection during normal business hours, by appointment at the State Air Agency. The Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What did Connecticut submit as a SIP revision?

On October 31, 2012, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of two modifications to existing Trading and Agreement Orders (TAO) issued to PSEG Power Connecticut, LLC. The modified TAOs are No. 8187 Modification 1 issued to PSEG Power Connecticut, LLC (formerly Wisvest Connecticut LLC.) and No. 8242 Modification 1 issued to PSEG Power Connecticut, LLC. The modified TAOs remove an outdated restriction in the original TAOs No. 8187 and No. 8242 that limited the use of the NO_X offsets to sources that were also subject to a NO_X emission trading program in Section 22a–174–22a or 22a–174–22b of Connecticut's regulations, or another NO_X budget trading program established by another state in accordance with the Ozone Transport Commission Memorandum of Understanding dated September 27, 1994 or 40 CFR part 96. Connecticut held a public hearing on the proposed SIP revision on October 19, 2012.

II. What is the background for EPA's action in this notice?

EPA approved the original TAO No. 8187 on March 23, 2001 (see 66 FR 16135). This TAO recognized that Wisvest, the owner of Bridgeport Harbor Electric Generating Station at the time, voluntarily reduced actual NO_X emissions from Unit No. 2. The TAO made the voluntary reductions mandatory, thus creating a permanent, enforceable reduction of 816 tons of NO_X emissions at Unit No. 2. Subsequently, these NO_X emission reductions could be used for offsetting NO_X emissions for sources subject to the nonattainment new source review permitting program under Connecticut's Regulation Section 22a–174–3a. As discussed above, TAO No. 8187 also limited the use of the NO_X offsets to sources that were also subject to a NO_X emission trading program in Section 22a–174–22a or 22a–174–22b of Connecticut's regulations, or another NO_X budget trading program established by another state in accordance with the Ozone Transport Commission Memorandum of Understanding dated September 27, 1994 or 40 CFR part 96.

In late 2001, 424 tons of NO_X offset credits from the original 816 tons were transferred to sources subject to nonattainment new source review in New York and are no longer available for use in Connecticut. Moreover, in late 2001, 192 tons of NO_X offset credits were transferred to a private entity and held for future use.

On December 6, 2002, PSEG purchased Bridgeport Harbor Electric Generating Station from Wisvest along with the remaining 200 tons of the 816 tons NO_X offsets created by TAO No. 8187. To recognize this transaction, Connecticut issued a new TAO (No. 8242) on February 13, 2003 that acknowledged the change in ownership of the facility and the 200 tons of NO_X offsets from Wisvest to PSEG. EPA approved TAO No. 8242 on September 9, 2013 (78 FR 54962). As with the original TAO that created the NO_X offsets (*i.e.,* TAO No. 8187), TAO No. 8242 also limited the use of NO_X offsets for nonattainment new source review to sources that were also subject to a NO_X emission trading program in Section 22a–174–22a or 22a–174–22b of Connecticut's regulations, or another NO_X budget trading program established by another state in accordance with the Ozone Transport Commission Memorandum of Understanding dated September 27, 1994 or 40 CFR part 96.

Under Connecticut's Regulations for the Abatement of Air Pollution, Section 22a–174–22a was repealed effective September 4, 2007, and Section 22a–174–22b was repealed May 1, 2010. Moreover, with the transition from the Clean Air Interstate Rule (CAIR) to the Cross-State Air Pollution Rule (CSAPR), the State of Connecticut is no longer part of any trading program under 40 CFR part 96. As such, the original restrictions in TAOs No. 8187 and 8242 are now outdated and would no longer serve the purpose for which they were created.

III. How does Connecticut account for bank emission reduction credits (ERC) in its Ozone SIP?

On February 1, 2008, Connecticut submitted its 2002 to 2008 reasonable further progress (RFP) plans and 2002 base year inventory to EPA as part of its attainment demonstration SIP submittal for the 1997 8-hr ozone standard. On October 14, 2009, Connecticut submitted a revision to the RFP plans which it had originally submitted to EPA on February 1, 2008. The revision consisted of the incorporation of a small number of banked NO_X ERCs into the state's RFP analysis. Those banked NO_X ERCs were incorporated into Connecticut's 2002 and 2008 emission inventories, and included all of the remaining unused portion of the 816 tons of NO_X offsets created under TAO No. 8187 (*i.e.,* the 200 tons of NO_X owned by PSEG under TAO No. 8242, and the 192 tons of NO_X transferred to a private entity in late 2001). The inclusion of the banked ERCs into the RFP analysis did not alter Connecticut's conclusion that it easily meets RFP requirements, and EPA approved Connecticut's RFP plans on August 22, 2012 (77 FR 50595). Since ERCs represent emissions that may occur at some point in the future, banked emissions need to be accounted for in a state's RFP analysis, and Connecticut has properly done that.

IV. What is EPA's analysis of Connecticut's SIP revision?

Today, EPA is approving two modifications to existing TAOs that will allow the NO_X offset credits, originally created in TAO No. 8187, to be used for nonattainment new source review without the additional outdated restrictions contained in the original TAOs No. 8187 and 8242. As described above, Connecticut has properly accounted for the unused portion of the NO_X offset credits (*i.e.,* 392 tons) from the original TAO No. 8187 in the state's RFP analysis, and thus these credit remain available for future use.

This action does not alter any existing requirements in Connecticut's approved SIP that a facility must meet when using

NO_X emission reductions to offset any new permitted emissions. This is important to note since subsection 22a–174–3a(*l*)(4)(B)(ii) of Connecticut's regulations states that:

''(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits pursuant to subparagraph (A) of this subdivision:

(i) . . .

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,''

Pursuant to this provision in Section 22a–174–3a, the unused portion of the NO_X emission reduction credits originally created under TAO No. 8187 will need to be adjusted pursuant to subsection 22a–174–22(e)(3) of Connecticut's regulations. This provision in Section 22a–174–22 was adopted by Connecticut after the original issuance of TAO No. 8187 and requires sources such as Unit No. 2 at Bridgeport Harbor Electric Generating Station to meet a NO_X emission limit of 0.15 lbs/MMBtu during the nonozone season. Because the NO_X emission limit for Unit No. 2 became more stringent after the time when the NO_X offset credits were first created, the original number of tons of NO_X offset credits must be adjusted downward to reflect the new, more stringent NO_X emission limit, before a source subject to NNSR may use the credits.

V. Final Action

Pursuant to section 110 of the CAA, EPA is approving Trading and Agreement Orders No. 8187 Modification 1 issued to PSEG Power Connecticut, LLC (formerly Wisvest Connecticut LLC) and 8242 Modification 1 issued to PSEG Power Connecticut, LLC. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 2, 2015 without further notice unless the Agency receives relevant adverse comments by September 2, 2015.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 2, 2015 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the [State Agency Regulations] described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, 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).

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 29, 2015.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(109) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(109) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 31, 2012.

(i) Incorporation by reference.

(A) Connecticut Trading Agreement and Order No. 8187, Modification 1 issued to PSEG Power Connecticut LLC on July 16, 2012.

(B) Connecticut Trading Agreement and Order No. 8242, Modification 1 issued to PSEG Power Connecticut LLC on July 16, 2012.

■ 3. In § 52.385, Table 52.385 is amended by adding new entries to an existing state citation for 22a–174–22 to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/Subject	Dates		**Federal Register** citation	Section 52.370	Comments/Description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–22	Control of Nitrogen Oxides emissions.	7/16/12	8/3/15	[Insert **Federal Register** page number where the document begins].	(c)(109) ..	Connecticut Trading Agreement and Order No. 8187, Modification 1.
22a–174–22	Control of Nitrogen Oxides emissions.	7/16/12	8/3/15	[Insert **Federal Register** page number where the document begins].	(c)(109) ..	Connecticut Trading Agreement and Order No. 8242, Modification 1.
*	*	*	*	*	*	*

[FR Doc. 2015–18872 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0854; FRL–9931–54–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Gasoline and Volatile Organic Compound Storage and Handling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision pertains to amendments to Code of Maryland Regulation (COMAR) 26.11.13, Control of Gasoline and Volatile Organic Compound Storage and Handling. The amendments consist of establishing an alternative and equivalent method of transfer of high pressure materials as well as changing incorrect references in regulations .04 and .05. EPA is

approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 2, 2015 without further notice, unless EPA receives adverse written comment by September 2, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0854 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0854, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0854. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 8, 2014, Maryland submitted a formal revision (#14–05) to its State Implementation Plan (SIP). The SIP revision consists of amendments to COMAR 26.11.13, Control of Gasoline and Volatile Organic Compound Storage and Handling. The amendments consist of establishing an alternative and equivalent method of transfer of high pressure materials as well as changing incorrect references in regulations .04 and .05.

II. Summary of SIP Revision

COMAR 26.11.13, Control of Gasoline and Volatile Organic Compound Storage and Handling, provides regulations that control the emissions of volatile organic compounds (VOCs) from the storage and handling of substances containing VOCs. The October 8, 2014 SIP submittal includes corrections to references found within sections .04 and .05 of COMAR 26.11.13. The corrected references add an update regarding the technical memorandum referenced in the sections. Maryland updated its citation to Test Methods and Equipment Specifications for Stationary Sources for both Sections .04 and .05 by adding a reference to an update to the memorandum. The reference now reads as Test Methods and Equipment Specifications for Stationary Sources [(]January 1991[)], as amended through Supplement 3 (October 1, 1997). Section .04 was amended to establish an alternative and equivalent method of transfer of high pressure materials.

Section .04 sets requirements for loading/transfer operations of high pressure materials (defined as having a pressure which exceeds 1.5 pound per square inch absolute (psia)). Currently in the State of Maryland an industry standard is used for the transfer of gasoline and fuel grade ethanol products. The industry standard is referred to as a dry disconnect. Dry disconnects transfer high pressure materials and upon disconnection, they immediately close to prevent the release of VOCs or high pressure material. Currently, there is no industry standard for the loading/transfer of other high pressure materials outside of gasoline and fuel grade ethanol. Because there is a lack of industry standard for the transfer of other high pressure materials, this SIP revision provides amendments to establish alternative and equivalent compliance procedures for the transfer of other high pressure materials.

The alternative compliance procedures include the use of an overhead loading rack that would transfer the high pressure materials from a railroad tank car to a tank truck or vice versa. This would also require the utilization of spill control equipment, such as spill pans, that would prevent the leak of high pressure material during post loading disconnection. In addition to this system one of the following measures must also be used: Walking the hose clear of material, using a pump to clean the line of material, or using an inert gas to clean the material from the hose.

III. Final Action

EPA is approving amendments to COMAR 26.11.13, Control of Gasoline and Volatile Organic Compound Storage and Handling, which include establishing an alternative and equivalent method of transfer of high pressure materials as well as changing incorrect references in regulations .04 and .05. EPA is publishing this rule prior to proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *October 2, 2015* without further notice unless EPA receives adverse comment by *September 2, 2015.* If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal**

Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of COMAR 26.11.13. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action which approves changes to COMAR 26.11.13 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 20, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising entries for ''26.11.13.04'' and ''26.11.13.05'' to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.13 Control of Gasoline and Volatile Organic Compound Storage and Handling				
*	*	*	*	*
26.11.13.04	Loading Operations	5/28/14	8/3/15, [Insert *Federal Register* citation].	Addition of alternative compliance procedure and administrative changes.
26.11.13.05	Gasoline Leaks from Tank Trucks.	5/28/14	8/3/15, [Insert *Federal Register* citation].	Administrative changes.
*	*	*	*	*

* * * * *

[FR Doc. 2015–18828 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

RIN 1090–AB10

[156D0102DM/DS10700000/DMSN00000.000000/DX.10701.CEN00000]

Privacy Act Regulations; Exemption for the Indian Arts and Crafts Board

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is issuing a final rule to amend its regulations to exempt certain records in the Indian Arts and Crafts Board system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: This final rule is effective September 2, 2015.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240. Email at *Privacy@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior (DOI) published a notice of proposed rulemaking in the **Federal Register** on May 14, 2015, 80 FR 27623, proposing to exempt certain records in the Indian Arts and Crafts Board system of records in accordance with 5 U.S.C. 552a(k)(2) of the Privacy Act because of criminal, civil, and administrative law enforcement requirements. The Indian Arts and Crafts Board system of records notice was published in the **Federal Register** on May 14, 2015, 80 FR 27700. Comments were invited on the Indian Arts and Crafts Board system of records notice and the notice of proposed rulemaking. DOI received no comments on the published system of records notice and one general comment on the notice of proposed rulemaking that required no revisions, and will therefore implement the rulemaking as proposed.

Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it does not meet the criteria for a significant regulatory action. The results of our evaluation are given below.

(a) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A

takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on Federally recognized Indian tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

— Be logically organized;

— Use the active voice to address readers directly;

— Use clear language rather than jargon;

— Be divided into short sections and sentences; and

— Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

Dated: July 21, 2015.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. Amend § 2.254 by adding paragraph (b)(17) to read as follows:

§ 2.254 Exemptions.

* * * * *

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

* * * * *

(17) Indian Arts and Crafts Board, DOI–24.

* * * * *

[FR Doc. 2015–18864 Filed 7–31–15; 8:45 am]

BILLING CODE 4334–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–8393]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Bret Gates, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4133.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective

enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Chester, City of, Delaware County	420404	December 10, 1971, Emerg; August 1, 1979, Reg; September 2, 2015, Susp.	September 2, 2015.	September 2, 2015
Chester, Township of, Delaware County	420405	December 3, 1971, Emerg; May 15, 1984, Reg; September 2, 2015, Susp.	*.....do	Do.
Collingdale, Borough of, Delaware County.	420408	October 13, 1972, Emerg; February 2, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Colwyn, Borough of, Delaware County	420409	September 15, 1972, Emerg; May 2, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Darby, Township of, Delaware County	421603	November 8, 1974, Emerg; April 3, 1984, Reg; September 2, 2015, Susp.	.....do	Do.
Eddystone, Borough of, Delaware County.	420413	September 15, 1972, Emerg; February 2, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Folcroft, Borough of, Delaware County	420415	February 2, 1973, Emerg; August 1, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Glenolden, Borough of, Delaware County.	420416	June 30, 1972, Emerg; November 18, 1981, Reg; September 2, 2015, Susp.	.....do	Do.
Lower Chichester, Township of, Delaware County.	421604	October 9, 1974, Emerg; September 22, 1978, Reg; September 2, 2015, Susp.	.....do	Do.
Marcus Hook, Borough of, Delaware County.	420419	June 10, 1975, Emerg; September 16, 1981, Reg; September 2, 2015, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Nether Providence, Township of, Delaware County.	420424	November 12, 1971, Emerg; December 1, 1978, Reg; September 2, 2015, Susp.	.....do	Do.
Norwood, Borough of, Delaware County	420425	August 18, 1972, Emerg; May 3, 1982, Reg; September 2, 2015, Susp.	.....do	Do.
Parkside, Borough of, Delaware County	420426	December 10, 1971, Emerg; July 5, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Prospect Park, Borough of, Delaware County.	420427	September 19, 1974, Emerg; March 18, 1980, Reg; September 2, 2015, Susp.	.....do	Do.
Ridley, Township of, Delaware County	420429	September 8, 1972, Emerg; January 6, 1983, Reg; September 2, 2015, Susp.	.....do	Do.
Ridley Park, Borough of, Delaware County.	420430	August 29, 1974, Emerg; January 2, 1980, Reg; September 2, 2015, Susp.	.....do	Do.
Sharon Hill, Borough of, Delaware County.	420433	July 19, 1974, Emerg; August 15, 1979, Reg; September 2, 2015, Susp.	.....do	Do.
Tinicum, Township of, Delaware County	421605	February 7, 1975, Emerg; May 1, 1980, Reg; September 2, 2015, Susp.	.....do	Do.
Trainer, Borough of, Delaware County	420437	December 10, 1971, Emerg; September 30, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Upland, Borough of, Delaware County	420438	December 3, 1971, Emerg; December 10, 1976, Reg; September 2, 2015, Susp.	.....do	Do.
Upper Chichester, Township of, Delaware County.	420439	December 17, 1971, Emerg; May 16, 1977, Reg; September 2, 2015, Susp.	.....do	Do.
Virginia:				
King William County, Unincorporated Areas.	510304	May 22, 1975, Emerg; February 6, 1991, Reg; September 2, 2015, Susp.	.....do	Do.
West Point, Town of, King William County.	510083	April 16, 1975, Emerg; June 18, 1990, Reg; September 2, 2015, Susp.	.....do	Do.
Region IV				
North Carolina:				
Charlotte, City of, Mecklenburg County	370159	April 12, 1973, Emerg; August 15, 1978, Reg; September 2, 2015, Susp.	.....do	Do.
Cornelius, Town of, Mecklenburg County.	370498	N/A, Emerg; September 30, 1997, Reg; September 2, 2015, Susp.	.....do	Do.
Huntersville, Town of, Mecklenburg County.	370478	January 11, 1995, Emerg; February 4, 2004, Reg; September 2, 2015, Susp.	.....do	Do.
Mecklenburg County, Unincorporated Areas.	370158	May 17, 1973, Emerg; June 1, 1981, Reg; September 2, 2015, Susp.	.....do	Do.
Pineville, Town of, Mecklenburg County	370160	May 6, 1975, Emerg; March 18, 1987, Reg; September 2, 2015, Susp.	.....do	Do.
Region VII				
Kansas:				
Bonner Springs, City of, Wyandotte County.	200361	June 6, 1975, Emerg; January 3, 1979, Reg; September 2, 2015, Susp.	.....do	Do.
Douglas County, Unincorporated Areas	200087	May 30, 1975, Emerg; March 2, 1981, Reg; September 2, 2015, Susp.	.....do	Do.
Edwardsville, City of, Wyandotte County.	200362	May 13, 1975, Emerg; September 29, 1978, Reg; September 2, 2015, Susp.	.....do	Do.
Kansas City, City of, Wyandotte County	200363	December 10, 1974, Emerg; August 3, 1981, Reg; September 2, 2015, Susp.	.....do	Do.
Lawrence, City of, Douglas County	200090	June 15, 1973, Emerg; March 2, 1981, Reg; September 2, 2015, Susp.	.....do	Do.
Wyandotte County, Unincorporated Areas.	200562	March 7, 1975, Emerg; December 18, 1979, Reg; September 2, 2015, Susp.	.....do	Do.
Region VIII				
North Dakota:				
Alexander, City of, McKenzie County ...	380055	March 10, 1976, Emerg; September 18, 1987, Reg; September 2, 2015, Susp.	.....do	Do.

*.....do and Do. = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp —Suspension.

Dated: July 17, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–18983 Filed 7–31–15; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 15–9]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collection associated with the Commission's Fourth Report and Order that adopted rules requiring Commercial Mobile Radio Service (CMRS) providers to conform with tightened wireless E911 location accuracy requirements. This document is consistent with the Fourth Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 20.18(i)(2)(ii)(A) and (B); 20.18(i)(2)(iii) and (iv); 20.18(i)(3)(i), (ii), and (iii); 20.18(i)(4)(i), (ii), (iii) and (iv); 20.18(j)(2) and (3), published at 80 FR 11806, March 4, 2015, are effective August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Timothy May, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–1463, or email: *timothy.may@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 20, 2015, OMB approved the information collection requirements relating to the wireless E911 location accuracy rules contained in the Commission's Fourth Report and Order, FCC 15–9, published at 80 FR 11806 March 4, 2015. The OMB Control Number is 3060–1210. The Commission publishes this document as an announcement of the effective date of the rules.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Benish Shah, Federal Communications Commission, Room 1–A866, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1210, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on July 20, 2015, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 20. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1210. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1210.

OMB Approval Date: July 20, 2015.

OMB Expiration Date: July 31, 2018.

Title: Wireless E911 Location Accuracy Requirements.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit institutions; and state, local or tribal governments.

Number of Respondents and Responses: 4,394 respondents; 29,028 responses.

Estimated Time per Response: 1—100 hours.

Frequency of Response: Recordkeeping requirements, and third-party disclosure requirement.

Obligation to Respond: Mandatory and voluntary. Statutory authority for this information collection is contained in 47. U.S.C. 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 143,138 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or business-sensitive information are resolved in a manner consistent with the Commission's rules.

Privacy Act Impact Assessment: This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

Needs and Uses: Section 20.18(i)(2)(ii)(A) rule requires that, within three years of the effective date of rules, CMRS providers shall deliver to uncompensated barometric pressure data from any device capable of delivering such data to PSAPs. This requirement is necessary to ensure that PSAPs are receiving all location information possible to be used for dispatch. This requirement is also necessary to ensure that CMRS providers implement a vertical location solution in the event that the proposed ''dispatchable location'' solution does not function as intended by the three-year mark and beyond.

Section 20.18(i)(2)(ii)(B) requires that the four nationwide providers submit to the Commission for review and approval a reasonable metric for z-axis (vertical) location accuracy no later than 3 years from the effective date of rules. The requirement is critical to ensure that the vertical location framework adopted in the Fourth Report and Order is effectively implemented.

Section 20.18(i)(2)(iii) requires CMRS providers to certify compliance with the Commission's rules at various benchmarks throughout implementation of improved location accuracy. This requirement is necessary to ensure that CMRS providers remain ''on track'' to reach the goals that they themselves agreed to.

Section 20.18(i)(2)(iv) provides that PSAPs may seek Commission enforcement of the location accuracy requirements within their geographic service area, as long as they have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP, and, prior to seeking Commission enforcement, a PSAP must provide the CMRS provider with 30 days written notice, and the CMRS provider shall have an opportunity to address the issue informally.

Section 20.18(i)(3)(i) requires that within 12 months of the effective date, the four nationwide CMRS providers must establish the test bed described in the Fourth Report and Order, which will validate technologies intended for

indoor location, The test bed is necessary for the compliance certification framework adopted in the Fourth Report and Order.

Section 20.18(i)(3)(ii) requires that beginning 18 months from effective date of rules, nationwide CMRS providers providing service in any of the six Test Cities identified by ATIS (Atlanta, Denver/Front Range, San Francisco, Philadelphia, Chicago, and Manhattan Borough of New York City) must collect and report aggregate data on the location technologies used for live 911 calls. This reporting requirement is necessary to validate and verify the compliance certifications made by CMRS providers.

Section 20.18(i)(3)(iii) requires that CMRS providers shall retain testing and live call data gathered pursuant to this section for a period of 2 years.

Section 20.18(i)(4)(i) and (ii) require that no later than 18 months from the effective date, each CMRS provider shall submit to the Commission its plan for implementing improved indoor location accuracy and a report on its progress toward doing so. Non-nationwide CMRS providers will have an additional 6 months to submit their progress reports. All CMRS providers shall provide an additional progress report no later than 36 months from the effective date of the adoption of this rule. The 36-month reports shall indicate what progress the provider has made consistent with its implementation plan.

Section 20.18(i)(4)(iii) requires that prior to activation of the NEAD but no later than 18 months from the effective date of the adoption of this rule, the nationwide CMRS providers shall file with the Commission and request approval for a security and privacy plan for the administration and operation of the NEAD. This requirement is necessary to ensure that the four nationwide CMRS providers are building in privacy and security measures to the NEAD from its inception.

Section 20.18(i)(4)(iv) requires that before use of the NEAD or any information contained therein, CMRS providers must certify that they will not use the NEAD or associated data for any non-911 purpose, except as otherwise required by law. This requirement is necessary to ensure the privacy and security of any personally identifiable information that may be collected by the NEAD.

Section 20.18(j) requires CMRS providers to provide standardized confidence and uncertainty (C/U) data for all wireless 911 calls, whether from outdoor or indoor locations, on a per-call basis upon the request of a PSAP. This requirement will serve to make the use of C/U data easier for PSAPs

Section 20.18(k) requires that CMRS providers must record information on all live 911 calls, including, but not limited to, the positioning source method used to provide a location fix associated with the call, as well as confidence and uncertainty data. This information must be made available to PSAPs upon request, as a measure to promote transparency and accountability for this set of rules.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2015–18734 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 12–299; FCC 14–48]

Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to a final regulation, which was published in the **Federal Register** on Tuesday, June 3, 2014 (79 FR 31877). The regulation relates to the contents of applications for international common carriers.

DATES: Effective August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Veronica Garcia-Ulloa, Policy Division, International Bureau at 202–418–0481; David Krech, Policy Division, International Bureau at 202–418–7443; Susan O'Connell, Policy Division, International Bureau at 202–418–1484.

SUPPLEMENTARY INFORMATION: In a final rule published on Tuesday, June 3, 2014 (79 FR 31877), the revision description of § 63.18(k) incorrectly states that ''Section 63.18 is amended by revising paragraph (k) introductory text,'' instead of correctly stating that ''Section 63.18 is amended by revising paragraph (k),'' leading the published final regulation § 63.18(k) to incorrectly keep subparagraphs (1)–(3), which should be removed. This correcting amendment document removes subparagraphs (1)–(3) of § 63.18(k).

List of Subjects in 47 CFR Part 63

Communications common carriers.

Accordingly, 47 CFR part 63 is corrected by making the following correcting amendment:

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 2. Section 63.18 is amended by revising paragraph (k) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(k) For any country that the applicant has listed in response to paragraph (j) of this section that is not a member of the World Trade Organization, the applicant shall make a demonstration as to whether the foreign carrier has market power, or lacks market power, with reference to the criteria in § 63.10(a).

NOTE TO PARAGRAPH (k): Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

* * * * *

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2015–18799 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AI43

Defense Federal Acquisition Regulation Supplement: Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2014–D025); Partial Withdrawal

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

ACTION: Final rule; partial withdrawal.

SUMMARY: Defense Acquisition Regulations System published in the **Federal Register** of June 26, 2015, at 80 FR 36903, a document to implement the inflation adjustment of acquisition-related dollar thresholds. Inadvertently, by an amendment to DFARS section 207.170–3, paragraph (a) was escalated from $6 million to $6.5 million. This document withdraws that amendment.

DATES: *Effective:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION: DARS published a document in the **Federal Register** of June 26, 2015, (80 FR 36903) escalating the acquisition-related dollar threshold in DFARS, which included an adjustment to section 207.170–3 to revise the threshold from $6 million to $6.5 million. As published in the **Federal Register** on June 26, 2015 (80 FR 36903), the DFARS final rule 2014–D025 contains an error, which is in need of correction. To address this error, this correction removes the amendment to DFARS section 207.170–3 thereby reinstating the $6 million threshold.

List of Subjects in 48 CFR Part 207

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

In final rule **Federal Register** document (80 FR 36903) published on June 26, 2015, make the following correction:

■ On page 36904, in the center column, remove amendatory instruction number 6 amending 207.170–3.

[FR Doc. 2015–18939 Filed 7–31–15; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register
Vol. 80, No. 148
Monday, August 3, 2015

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0577; Directorate Identifier 2013–SW–042–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise airworthiness directive (AD) 2015–12–09 for Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters. AD 2015–12–09 currently requires inspecting certain washers for movement and making the appropriate repairs if the washers move. As published, AD 2015–12–09 references an incorrect date for the service information in the Credit for Previous Actions section. This proposed AD would correct the error while retaining the requirements of AD 2015–12–09. These proposed actions are intended to prevent loss of concerned control axis and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by August 18, 2015.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* 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 proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *matt.wilbanks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On June 18, 2015, at 80 FR 34831, the **Federal Register** published AD 2015–12–09, Amendment 39–18184, for Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters. AD 2015–12–09 requires inspecting certain washers for movement in the attachment hardware that connects the Smart Electro Mechanical Actuator (SEMA) and the control rod of the longitudinal, lateral, and yaw actuators. If a washer can be moved, AD 2015–12–09 requires replacing the four screws, installing two additional washers, and torque-tightening the screws. AD 2015–12–09 was prompted by play found between the SEMA and the control rod during installation work on a helicopter. The requirements of AD 2015–12–09 are intended to prevent loss of concerned control axis and subsequent loss of control of the helicopter.

AD 2015–12–09 was prompted by AD No. 2013–0176, dated August 7, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Deutschland GmbH Model EC 135 P1 (CDS), EC 135 P1 (CPDS), EC 135 P2+, EC 135 P2 (CPDS), EC 135 T1 (CDS), EC 135 T1 (CPDS), EC 135 T2+, EC 135 T2 (CPDS), EC 635 P2+, EC 635 T1 (CPDS), EC 635 T2+, and MBB–BK 117 C–2 helicopters. EASA advises that during installation work on a helicopter, it was discovered that it was not possible to install attachment hardware on a threaded blind borehole between the SEMA and the control rod without play. EASA advises that this condition, if not detected and corrected, could lead to loss of the concerned control axis, possibly resulting in loss of helicopter

control. For these reasons, EASA AD No. 2013–0176 requires a one-time inspection of the affected SEMA attachment hardware to detect improper connection and play and, depending on the findings, replacement of the affected hardware. After the issuance of EASA AD No. 2013–0176, Eurocopter Deutschland GmbH changed its name to Airbus Helicopters Deutschland GmbH.

When AD 2015–12–09 was published, an incorrect reference to the date of Eurocopter Alert Service Bulletin (ASB) EC135–22A–015, Revision 0, dated May 13, 2008, appeared in the text of the rule. Specifically, AD 2015–12–09 includes the following under paragraph (f), Credit for Previous Actions: ''If you performed the actions in Eurocopter Alert Service Bulletin EC135–22A–015, Revision 0, dated May 13, 2018, or Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 0, May 13, 2008, before the effective date of this AD, you met the requirements of this AD.'' As published, the reference to May 13, 2018, is incorrect. The correct date for Eurocopter ASB EC135–22A–015, Revision 0, is May 13, 2008.

The FAA has determined that it is appropriate to revise AD 2015–12–09 to correct the date for Eurocopter ASB EC135–22A–015, Revision 0. Further, we are changing the physical address of the FAA Southwest Regional Office throughout the NPRM and the email address in paragraph (g), Alternative Methods of Compliance (AMOCs). Since AD 2015–12–09 was issued, the FAA Southwest Regional Office has relocated and a group email address has been established for requesting an FAA AMOC for a helicopter of foreign design. We are not proposing to change any other part of the preamble or regulatory information. The final rule would be reprinted in its entirety for the convenience of affected operators.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

Eurocopter reported in ASBs EC135–22A–015, Revision 1, dated January 28, 2013, and MBB BK117 C–2–22A–009, Revision 1, dated August 3, 2009, that it was discovered during the installation work on a helicopter that it was not possible to establish attachment hardware on a threaded blind borehole between the SEMA and the control rod without play. The ASBs state that ''unfavourable adding of the tolerances'' of the individual attachment hardware elements caused the screw to push against the bottom of the threaded blind borehole on the SEMA, preventing any clamping force on the screw head. The ASBs call for inspecting the SEMA attachment hardware connected to their respective control rods for play and making the proper adjustments to eliminate any play.

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

Proposed AD Requirements

This proposed AD would continue to require, within 50 hours time-in-service, inspecting whether the washers can be moved in the attachment hardware that connects the SEMA and the control rod of the longitudinal, lateral, and yaw actuators. For Model MBB BK117 C–2 helicopters, this inspection is only for the hardware connecting the Yaw-SEMA and the Yaw-SEMA control rod. If none of the washers can be moved, then no further action is needed. If a washer can be moved, then this proposed AD would require replacing the four screws, installing two additional washers, and torque-tightening the screws to 5–6 Nm.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Eurocopter Model EC635P2+, EC635T1 and EC635T2+ helicopters. This proposed AD does not apply to these model helicopters because they have no FAA type certificate.

Costs of Compliance

We estimate that this proposed AD would affect 385 helicopters of U.S. Registry and that labor costs would average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting for movement of the washers would require 1.5 work-hours for a labor cost of $128 per helicopter and $49,280 for the U.S. fleet.
- Replacing the screws and related work would require an additional 0.5 work-hours for a labor cost of $43. Screws would cost $4 each while washers would cost $10 each. We estimate the cost would be $79 per repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska 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 proposed 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–12–09, Amendment 39–18184 (80 FR 34831, June 18, 2015), and adding the following new AD:

Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH) (Airbus Helicopters): Docket No. FAA–2014–0577; Directorate Identifier 2013–SW–042–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as loose attachment hardware between the Smart Electro Mechanical Actuator (SEMA) and a control rod. This condition could result in loss of the control axis and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by August 18, 2015.

(d) Compliance

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

(e) Required Actions

(1) Within 50 hours time-in-service (TIS), for Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, and EC135T2+ helicopters, do the following:

(i) Using Figure 1 and Figure 2 of Eurocopter Alert Service Bulletin EC135–22A–015, Revision 1, dated January 28, 2013 (ASB EC135–22A–015) as reference, inspect the attachment hardware between the SEMA and the longitudinal actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, part number (P/N) EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(ii) Using Figure 1 and Figure 2 of ASB EC135–22A–015 as reference, inspect the attachment hardware between the SEMA and the lateral actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(iii) Using Figure 1, Figure 3, and Figure 4 of ASB EC135–22A–015 as reference, inspect the attachment hardware between the SEMA and the yaw actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(2) Within 50 hours TIS, for Model MBB BK117 C–2 helicopters, using Figure 1 of Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 1, dated August 3, 2009, as reference, inspect the attachment hardware between the Yaw-SEMA and the Yaw-SEMA control rod to determine whether any of the washers can be moved.

(i) If no washer can be moved, no further action is needed.

(ii) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm and apply polyurethane lacquer onto the attachment hardware.

(f) Affected ADs

This AD revises AD 2015–12–09, Amendment 39–18184 (80 FR 34831, June 18, 2015).

(g) Credit for Previous Actions

If you performed the actions in Eurocopter Alert Service Bulletin EC135–22A–015, Revision 0, dated May 13, 2008, or Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 0, May 13, 2008, before the effective date of this AD, you met the requirements of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2013–0176, dated August 7, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0577.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2213, Flight Controller

Issued in Fort Worth, Texas, on July 24, 2015.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–18865 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2967; Directorate Identifier 2014–NM–072–AD]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2002–23–20, for certain Dassault Aviation Model FALCON 900EX and MYSTERE–FALCON 900 airplanes. AD 2002–23–20 currently requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. AD 2002–23–20 currently requires a revision of the airplane flight manual. Since we issued AD 2002–23–20, the maintenance manual has been revised. This proposed AD would require revising the maintenance or inspection program, as applicable, to include the maintenance tasks and airworthiness limitations specified in the Airworthiness Limitations section of the airplane maintenance manual. This proposed AD also removes the Model FALCON 900EX airplanes from the applicability of the existing AD. We are proposing this AD to prevent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by September 17, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2967; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–2967; Directorate Identifier 2014–NM–072–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 3, 2003, we issued AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579). AD 2002–23–20 requires actions intended to address an unsafe condition on certain Dassault Aviation Model FALCON 900EX and MYSTERE–FALCON 900 airplanes.

Since we issued AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579), the maintenance manual has been revised. In addition, we are removing the Model 900EX airplanes from the applicability of the existing AD and those airplanes are addressed through a separate AD action (AD 2014–16–26, Amendment 39–17950 (79 FR 51077, August 27, 2014)).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0053, dated March 4, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all MYSTERE–FALCON 900 series airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the Mystère-Falcon 900 type design are included in Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). EASA issued AD 2008–0221[*http://ad.easa.europa.eu/blob/easa_ad_2008_0221_Corrected.pdf/AD_2008–0221_1*] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F900 AMM chapter 5–40 referenced DGT 113873 at revision 16.
>
> Since that [EASA] AD was issued, Dassault Aviation issued revision 20 of F900 AMM chapter 5–40 which contains new or more restrictive maintenance requirements and/or airworthiness limitations and introduces, among others, the following changes:
>
> —Tasks renumbering;
> —Introduction of a Corrosion Prevention Control Program (CPCP);
> —Upgrade of screwjack of flap actuators from the older to the latest -3 version;
> —Revised Time Between Overhaul for screwjack of flap actuators -3 version;
> —Revised interval for checking the screw/nut play on screwjack of flap actuators -3 version;
> —Removal of calendar limit for checking the screw/nut play on screwjack of external flap actuators -1 and -2 versions;
> —Removal of service life limit for screwjack of flap actuators;
> —Test of flap asymmetry protection system. Compliance with this test is required by [a certain AD ***], but F900 AMM chapter 5–40 at revision 20 introduces an extended inspection interval;
> —Inspection procedures of fuselage and wings;
> —Check of overpressure tightness on pressurization control regulating valves. Compliance with this check is required by EASA AD 2008–0072 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0072.pdf/AD_2008–0072_1*] [which corresponds to FAA AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010], but F900 AMM chapter 5–40 at revision 20 introduces an extended inspection interval;
> —Check of overpressure relief valve vacuum supply lines.
>
> The maintenance tasks and airworthiness limitations, as specified in the F900 AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the F900 type design. Failure to comply with AMM chapter 5–40 at revision 20 may result in an unsafe condition [reduced structural integrity of the airplane].
>
> For the reasons described above, this [EASA] AD requires the implementation of the maintenance tasks and airworthiness limitations, as specified in the Dassault Aviation F900 AMM chapter 5–40 DGT 113873 at revision 20.

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–2015–2967.

Related Service Information Under 1 CFR Part 51

We reviewed Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual. This service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe

condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 112 airplanes of U.S. registry.

We estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $9,520, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579); and adding the following new AD:

DASSAULT AVIATION: Docket No. FAA–2015–2967; Directorate Identifier 2014–NM–072–AD.

(a) Comments Due Date

We must receive comments by September 17, 2015.

(b) Affected ADs

This AD replaces AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579). This AD also affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010).

(c) Applicability

This AD applies to all DASSAULT AVIATION Model MYSTERE–FALCON 900 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by our determination of the need for a revision to the airplane airworthiness limitations to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual, is within the applicable times specified in the maintenance manual or within 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) Terminating Action

Accomplishing paragraph (g) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for DASSAULT AVIATION Model MYSTERE–FALCON 900 airplanes.

(i) No Alternative Actions and Intervals

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

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0053, dated March 4, 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–2015–2967.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 23, 2015.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–18689 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109370–10]

RIN 1545–BJ34

Allocable Cash Basis and Tiered Partnership Items

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the determination of a partner's distributive share of certain allocable cash basis items and items attributable to an interest in a lower-tier partnership during a partnership taxable year in which a partner's interest changes. These proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by November 2, 2015. As of August 3, 2015, the notice of proposed rulemaking that was published in the **Federal Register** on May 24, 2005 (70 FR 29675), is partially withdrawn.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109370–10), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–109370–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov/(IRSREG-109370-10*).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Benjamin H. Weaver, (202) 317–6850; concerning submissions of comments and requests for public hearing, Regina Johnson, (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 706 of the Internal Revenue Code (the Code) generally provides rules for the taxable years of partners and partnerships. Section 72 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494 (1984)) added section 706(d) to the Code to prevent a partner who acquires an interest in the partnership late in the taxable year from deducting partnership expenses incurred prior to the partner's entry into the partnership (retroactive allocations). Section 706(d)(1) provides that, except as provided in section 706(d)(2) and (d)(3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

On April 14, 2009, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–144689–04) (the 2009 proposed regulations) in the **Federal Register** to provide guidance under section 706(d)(1) and to conform the Income Tax Regulations for certain provisions of section 1246 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)) and section 72 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494 (1984)). The Treasury Department and the IRS are publishing final regulations under section 706(d)(1) (the final regulations) contemporaneously with these proposed regulations. However, the Treasury Department and the IRS have decided to propose an amendment to the final regulations expanding the list of extraordinary items to include two new items: (1) For publicly traded partnerships, any item of income that is an amount subject to withholding as defined in § 1.1441–2(a) (excluding amounts effectively connected with the conduct of a trade or business within the United States) or a withholdable payment under § 1.1473–1(a) occurring during a taxable year if, for that taxable year, the partners agree to treat all such items as extraordinary items, and (2) for any partnership, deductions for the transfer of partnership equity in connection with the performance of services. In addition, these proposed regulations provide guidance under sections 706(d)(2) and (3).

1. Allocable Cash Basis Items

Section 706(d)(2) provides rules for certain allocable cash basis items. Section 706(d)(2)(A) provides that if during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined (i) by assigning the appropriate portion of such item to each day in the period to which it is attributable, and (ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day. Section 706(d)(2)(B) defines ''allocable cash basis item'' as any of the following items with respect to which the partnership uses the cash receipts and disbursements method of accounting (cash method): (i) Interest, (ii) taxes, (iii) payments for services or for the use of property, or (iv) any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of section 706(d)(2) is appropriate to avoid significant misstatements of the income of the partners. Section 706(d)(2)(C) further provides that if any portion of any allocable cash basis item is attributable to (i) any period before the beginning of the taxable year, such portion shall be assigned under section 706(d)(2)(A)(i) to the first day of the taxable year, or (ii) any period after the close of the taxable year, such portion shall be assigned under section 706(d)(2)(A)(i) to the last day of the taxable year. Finally, section 706(d)(2)(D) provides that if any portion of a deductible cash basis item is assigned under section 706(d)(2)(C)(i) to the first day of any taxable year, (i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests

in the partnership during such period, and (ii) any amount allocated under section 706(d)(2)(C)(i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

The legislative history explains that section 706(d)(2) was enacted to prevent cash method partnerships from avoiding the retroactive allocation rules:

> [P]artnerships may attempt to avoid the retroactive allocation rules by using the cash method of accounting and deferring actual payment of deductible items until near the close of the partnership's taxable year. For example, if a partnership defers the payment of an expense (*e.g.*, interest) until December 31, and the partnership uses the interim closing method of allocations, a partner admitted on December 31 may be allowed a deduction for a full portion of the expense. This may be the case although the expense has economically accrued at an equal rate throughout the taxable year . . . In adding these rules, Congress rejected the argument that the retroactive allocations were proper because the funds invested by the new partners served to reimburse the original partners for their expenditures so that, as an economic matter, the new partners had incurred the costs for which they were claiming deductions.

H.R. Rep. No. 98–432, at 1212–1213 (1984).

On November 30, 1984, the Treasury Department and the IRS issued temporary regulations under section 706(d)(2) (§ 1.706–2T (TD 7991)) to address the interaction of sections 706(d)(2) and 267(a)(2). The temporary regulations provide that a deduction for any expense that is deferred under section 267 constitutes an allocable cash basis item under section 706(d)(2)(B)(iv). Specifically, the temporary regulations provide:

> Question 1: For purposes of section 706(d), how is an otherwise deductible amount that is deferred under section 267(a)(2) treated?
>
> Answer 1: In the year the deduction is allowed, the deduction will constitute an allocable cash basis item under section 706(d)(2)(B)(iv).

Neither the 2009 proposed regulations nor the final regulations provide guidance under section 706(d)(2). However, the 2009 proposed regulations specifically requested comments on issues that arise concerning allocable cash basis items, in particular whether the list of items in section 706(d)(2)(B) should be expanded (to include, for example, items such as property insurance), as well as any other issues with regard to allocating cash basis items. The Treasury Department and the IRS received comments relating to allocable cash basis items in response to the 2009 proposed regulations. The comments are discussed in this preamble.

2. Tiered Partnerships

Section 706(a) provides that, in computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner. Prior to the issuance of Rev. Rul. 77–311, 1977–2 CB 218, in 1977 and the enactment of section 706(d)(3) in 1984, some taxpayers took the position that, in the case of tiered partnerships, the language of section 706(a) means that an upper-tier partnership's distributive share of items from a lower-tier partnership is sustained by the upper-tier partnership on the last day of the lower-tier partnership's taxable year. These taxpayers therefore allocated the upper-tier partnership's share of the lower-tier partnership's items based solely upon the upper-tier partnership's partners' interests as of the last day of the lower-tier partnerships' taxable year. Rev. Rul. 77–311 rejected that position, and explains through an example that an upper-tier partnership's distributive share of any items of income, gain, loss, deduction, or credit from a lower-tier partnership is considered to be realized or sustained by the upper-tier partnership at the same time and in the same manner as such items were realized or sustained by the lower-tier partnership. Therefore, in allocating items from a lower-tier partnership, the upper-tier partnership must take into account variations among its partners' interests throughout the year, rather than merely looking to its partners' interests as of the last day of the lower-tier partnership's taxable year.

Section 706(d)(3) was enacted in 1984 and confirms the analysis of Rev. Rul. 77–311. Section 706(d)(3) provides that if during any taxable year of the partnership there is a change in any partner's interest in the partnership (the ''upper-tier partnership''), and such partnership is a partner in another partnership (the ''lower-tier partnership''), then (except to the extent provided in regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of section 706(d)(2)(C) and (D)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day.

Neither the 2009 proposed regulations nor the final regulations provide guidance under section 706(d)(3). However, the 2009 proposed regulations specifically requested comments on issues that arise concerning tiered partnerships, and stated that the daily allocation method, used for cash basis items, applies to all items of the lower-tier partnership if there is a change in the partnership interests in the upper-tier partnership. The Treasury Department and the IRS received comments relating to tiered partnerships in response to the 2009 proposed regulations. The comments are discussed in this preamble.

Explanation of Provisions and Summary of Comments

1. Allocable Cash Basis Items

With respect to allocable cash basis items, the proposed regulations generally restate the statutory provisions. Commenters requested that regulations clarify whether section 706(d)(2) applies only to items of deduction and loss or whether it also applies to items of income and gain. Generally, under the Code, the word ''item'' includes items of income, gain, deduction, and loss. Other than the item ''taxes,'' the items listed in section 706(d)(2)(B) can be either items of income (and gain) or deduction (and loss), depending on a taxpayer's particular circumstances. Section 706(d)(2)(B)(iv) also provides broad regulatory authority for the Secretary to add ''any other item . . . with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.'' A significant misstatement of the income of partners can occur equally through an item of deduction or loss or an item of income or gain. Partnerships using the cash method that also use the interim closing method for accounting for partners' varying interests can use this distortion to affect the allocation of income to an incoming or outgoing partner. For these reasons, the proposed regulations provide that the allocable cash basis item rules apply to items of deduction, loss, income, and gain.

The proposed regulations provide that the term ''allocable cash basis item'' generally includes items of deduction, loss, income, or gain specifically listed

in the statute: (i) interest, (ii) taxes, and (iii) payments for services or for the use of property. However, as discussed in part 4 of this preamble, the proposed regulations contain an exception for deductions for the transfer of an interest in the partnership in connection with the performance of services; such deductions generally must be allocated under the rules for extraordinary items in § 1.706–4(d).

Section 706(d)(2)(B)(iv) specifically grants the Secretary regulatory authority to include additional items in the list of allocable cash basis items to avoid significant misstatements of the income of the partners. Pursuant to the regulatory authority granted in section 706(d)(2)(B)(iv), the proposed regulations provide that the term ''allocable cash basis item'' includes any allowable deduction that had been previously deferred under section 267(a)(2). This provision incorporates the concept of § 1.706–2T and includes within the meaning of ''allocable cash basis item'' amounts deferred under section 267(a)(2) in the year in which the deduction is allowed. Accordingly, § 1.706–2T is proposed to be withdrawn by final regulations issued under section 706(d)(2).

Finally, pursuant to the regulatory authority granted in section 706(d)(2)(B)(iv), the proposed regulations provide that the term ''allocable cash basis item'' also includes any item of income, gain, loss, or deduction that accrues over time and that would, if not allocated as an allocable cash basis item, result in the significant misstatement of a partner's income. To provide additional clarification on the scope of the rule in proposed § 1.706–2(a)(2)(v), the Treasury Department and the IRS believe that items such as rebate payments, refund payments, insurance premiums, prepayments, and cash advances are examples of items which, if not allocated in the manner described in section 706(d)(2), could result in the significant misstatement of a partner's income. The Treasury Department and the IRS request comments on the inclusion of these items and other items within the meaning of ''allocable cash basis items.''

One commenter noted that section 706(d)(2) imposes the same administrative burden on partnerships regardless of the percentage of the partner's total expenses that are allocable cash basis items and therefore recommended that regulations under section 706(d)(2) include a de minimis rule. The Treasury Department and the IRS agree that a de minimis rule is appropriate given the scope of the proposed regulations. Accordingly, the proposed regulations provide that an allocable cash basis item will not be subject to the rules in section 706(d)(2) if, for the partnership's taxable year: (1) The total of the particular class of allocable cash basis items (for example, all interest income) is less than five percent of the partnership's (a) gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or (b) gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and (2) the total amount of allocable cash basis items from all classes of allocable cash basis items amounting to less than five percent of the partnership's (a) gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or (b) gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such allocable cash basis items as positive amounts.

Additionally, the Treasury Department and the IRS request comments on whether the final regulations should provide an exception for certain items of income or deduction arising from payments for services or for the use of property. For example, comments are requested on whether payments for services or for the use of property should be excluded from the rules in section 706(d)(2) if they arise and are, as applicable, paid or received in the ordinary course of the partnership's business (such as the regular payment of wages to employees), and whether deferred compensation or contingency or success-based fees and other payments for services based on performance conditions (which are not calculated based on an hourly rate) should be subject to the rules of section 706(d)(2) (and, if so, on the proper method for assigning the appropriate portion of such item to each day in the period).

The proposed regulations contain two examples illustrating the operation of section 706(d)(2)(D)(ii), which requires certain portions of deductible cash basis items to be capitalized in the manner provided in section 755 in the event that the deduction is otherwise partially allocable to a former partner who is no longer a partner as of the first day of the partnership's taxable year. The Treasury Department and the IRS request comments on the appropriate interaction between the principles and rules of section 755 and section 706(d), including whether the final regulations should provide an exception to the capitalization rules of section 706(d)(2)(D)(ii) in cases where the former partner ceased to be a partner in the partnership as a result of the partner's contribution of its partnership interest to another entity in a non-recognition transaction.

2. Tiered Partnerships

With respect to tiered partnerships, the proposed regulations provide that the daily allocation method used for cash basis items applies to all items of the lower-tier partnership if there is a change in any partner's interest in the upper-tier partnership.

Commenters noted the administrative burden of the daily allocation method on tiered partnerships. Commenters stated that obtaining information from a lower-tier partnership to track changes in the ownership interest in an upper-tier partnership is burdensome, and often impractical, unless the upper-tier partnership owns a controlling interest in the lower-tier partnership. One commenter suggested that the Treasury Department and the IRS issue interim guidance to provide that section 706(d)(3) should not apply to a change in a partner's interest in an upper-tier partnership unless the upper-tier partnership owns an interest in more than 50 percent of the profits and capital of the lower-tier partnership. Another commenter recommended an exception when the upper-tier partnership owns a relatively small portion (such as 10 percent or less) of the lower-tier partnership. The Treasury Department and the IRS acknowledge that a lack of information sharing among tiered partnerships may make it difficult to comply with a daily allocation requirement. Thus, the proposed regulations provide an exception from section 706(d)(3) if the upper-tier partnership directly owns an interest in less than 10 percent of the profits and capital of the lower-tier partnership (''a de minimis upper-tier partnership''), all de minimis upper-tier partnerships in aggregate own an interest in less than 30 percent of the profits and capital of the lower-tier partnership, and if no partnership is created with a purpose of avoiding the application of the tiered partnership rules of section 706(d)(3). The application of this exception is determined at each tier, depending on the interests held by the direct partners at each tier. Thus, in the case of an upper-tier partnership owning an interest in a middle tier partnership, which in turn owns an interest in a lower-tier partnership, it may be the case that the exception applies to the upper-tier partnership's interest in the

middle tier partnership, but not to the middle tier partnership's interest in the lower-tier partnership (or vice-versa).

If the de minimis upper-tier partnership exception applies, the upper-tier partnership may, but is not required to, apply the general rules of § 1.706–4 in allocating items attributable to the lower-tier partnership. However, as explained in Rev. Rul. 77–311, an upper-tier partnership's distributive share of any items of income, gain, loss, deduction, or credit from a lower-tier partnership is considered to be realized or sustained by the upper-tier partnership at the same time and in the same manner as such items were realized or sustained by the lower-tier partnership. Thus, if the de minimis upper-tier partnership exception applies to an upper-tier partnership using the interim closing method, the upper-tier partnership's allocations of the lower-tier partnership items under the general rules of § 1.706–4 will generally reach the same result as applying the rules of section 706(d)(3). On the other hand, if the de minimis upper-tier partnership exception applies to an upper-tier partnership using the proration method, the upper-tier partnership may prorate the items from the lower-tier partnership across the upper-tier partnership's segments (or, if the upper-tier partnership has only one segment for its entire taxable year, it may prorate the items across its entire taxable year). Even if the de minimis upper-tier partnership exception applies, the upper-tier partnership may choose to allocate the items attributable to the lower-tier partnership according the tiered partnership rules instead. However, the proposed regulations do not impose on lower-tier partnerships an obligation to disclose to upper-tier partnerships the timing of the lower-tier partnership's items. The proposed regulations contain three examples illustrating these principles.

Commenters also requested additional guidance on the application of section 706(d)(3) in certain circumstances. One commenter requested that the final regulations provide guidance on tiered partnerships that would allow an upper-tier partnership to determine the items from the lower-tier partnership that are allocable to the upper-tier partnership segments based on an interim closing method (as of any upper-tier partnership segment end) applied to the lower-tier partnership if the upper-tier partnership: (i) Has the same taxable year as its lower-tier partnership; (ii) holds a fixed percentage interest in the lower-tier partnership during a taxable year; and (iii) uses the interim closing method. This commenter also recommended that guidance provide that an upper-tier partnership that has the same taxable year as its lower-tier partnership and holds a fixed percentage interest in that lower-tier partnership during the upper-tier partnership's taxable year may prorate the non-extraordinary items of the lower-tier partnership to each day of the upper-tier partnership's taxable year, without regard to whether the upper-tier partnership uses the proration method or the interim closing method.

However, as explained in this preamble, the Treasury Department and the IRS believe that because an upper-tier partnership's distributive share of any items of income, gain, loss, deduction, or credit from a lower-tier partnership is considered to be realized or sustained by the upper-tier partnership at the same time and in the same manner as such items were realized or sustained by the lower-tier partnership, application of the interim closing method will generally reach the same result as applying the rules of section 706(d)(3). The Treasury Department and the IRS also believe that allowing an upper-tier partnership that uses the interim closing method to prorate items from a lower-tier partnership across the upper-tier partnership's entire taxable year would be inconsistent with the principles explained in Rev. Rul. 77–311. Therefore, the proposed regulations do not adopt these comments. However, the Treasury Department and the IRS request comments on safe harbors that might be appropriate in these circumstances as well as comments on the treatment of an upper-tier partnership and a lower-tier partnership that have different taxable years.

One commenter also recommended that guidance provide that the default method for tiered partnerships is the proration method unless the upper-tier partnership agrees to use the interim closing method and receives sufficient information from the lower-tier partnership to use that method. Under section 706(d)(1) as implemented by § 1.706–4, the interim closing method is the default method unless the partners agree in writing to use the proration method. Because the recommended rule would be inconsistent with section 706(d)(1) as implemented by § 1.706–4, the Treasury Department and the IRS did not adopt this rule in the proposed regulations.

A commenter further recommended that any conventions applicable to the upper-tier partnership should apply to income from the lower-tier partnership. In general, the Treasury Department and the IRS believe that any conventions applicable to the upper-tier partnership should apply to items from the lower-tier partnership, but are continuing to consider this recommendation in the context of section 706(d)(3) and request comments on safe harbors when the upper-tier partnership and the lower-tier partnership use the same method, but different conventions.

Another commenter recommended that the final regulations permit partnerships to voluntarily apply the rules of section 706(d)(3) if the upper-tier partnership and the lower-tier partnership have an advance agreement establishing the allocation method for items derived from the upper-tier partnership's interest in the lower-tier partnership. As described in this preamble, the Treasury Department and the IRS are requesting comments on appropriate safe harbors and will continue to consider this recommendation.

The Treasury Department and the IRS also request comments on appropriate rules, if any, when there is a variance at both the upper-tier partnership and lower-tier partnership.

More generally, the Treasury Department and the IRS request comments on the appropriate coordination between the rules of sections 706(d)(2) and (3) and the rules of § 1.706–4. In particular, the Treasury Department and the IRS request comments on whether certain items such as contingency or success-based fees and other payments for services based on performance conditions are more appropriately addressed under the rules of section 706(d)(2) and (3), which require allocation of items across the period to which they are attributable, or under the rules for the allocation of extraordinary items under § 1.706–4(e), which requires allocation of items according to the partners' interests at the time of day on which the extraordinary item occurs. Additionally, the Treasury Department and the IRS request comments on whether certain items subject to section 706(d)(2) and (3) may instead be simply allocated under the proration method of § 1.706–4(d) without impinging on the Congressional intent behind sections 706(d)(2) and (3) or resulting in a substantial distortion of income.

3. Additional Extraordinary Item for Publicly Traded Partnerships (PTPs)

Section 1.706–4(e) of the final regulations provides rules for the allocation of certain ''extraordinary items.'' In general, extraordinary items must be allocated among the partners in proportion to their interests in the partnership item at the time of day on

which the extraordinary item occurs. Section 1.706–4(e)(2) contains a list of extraordinary items. These proposed regulations add two additional extraordinary items to that list.

The first proposed additional extraordinary item responds to comments received on the 2009 proposed regulations regarding the administrative difficulty PTPs face in satisfying withholding obligations under section 1441 if PTPs are not permitted to use a quarterly convention. As explained in Part 1.C.iii of the preamble to the final regulations, the final regulations do not permit PTPs to use a quarterly convention. One commenter on the 2009 proposed regulations suggested other options of addressing this issue if the Treasury Department and the IRS are concerned that allowing a quarterly convention would be too broad. One option suggested was to permit PTPs that have income subject to withholding under section 1441 to treat that income as an extraordinary item allocated to PTP unit holders who are the record holders on the date the distribution is declared. The Treasury Department and the IRS agree that a special rule is desirable to link each partner's distributive share to the related cash distributions, thereby enabling PTPs and their transfer agents to satisfy their withholding obligations under chapter 4 of the Code and sections 1441 through 1443 from distributions. Therefore, these proposed regulations generally adopt this suggested alternative to a quarterly convention.

Specifically, these proposed regulations provide that for PTPs, all items of income that are amounts subject to withholding as defined in § 1.1441–2(a) (excluding income effectively connected with the conduct of a trade or business within the United States) or withholdable payments under § 1.1473–1(a) occurring during a taxable year may be treated as extraordinary items if the partners agree (within the meaning of § 1.706–4(f)) to consistently treat all such items as extraordinary items for that taxable year. If the partners so agree, then for purposes of section 706 such items shall be treated as occurring at the next time as of which the recipients of a distribution by the PTP are determined, or, to the extent such income items arise between the final time during the taxable year as of which the recipients of a distribution are determined and the end of the taxable year, such items shall be treated as occurring at the final time during the taxable year as of which the recipients of a distribution by the PTP are determined. However, this rule does not apply unless the PTP has a regular practice of making at least four distributions (other than de minimis distributions) to its partners each taxable year. The proposed regulations contain an example illustrating this rule.

The final regulations generally require extraordinary items to be allocated without regard to the partnership's method or convention. However, § 1.706–4(e)(1) of the final regulations provides that PTPs may, but are not required to, respect the applicable conventions in determining who held their publicly traded units at the time of the occurrence of an extraordinary item. The Treasury Department and the IRS believe that this exception should be turned off for all items subject to the new proposed extraordinary item rule for PTPs to ensure that each partner's distributive share of such items is linked to the related cash distributions. Accordingly, the proposed regulations modify the rule in § 1.706–4(e)(1) to provide that PTPs that choose to treat items subject to withholding under section 1441 as extraordinary items must allocate those items among the partners in proportion to their interests in those items at the time as of which the recipients of the relevant distribution are determined, regardless of the method and convention otherwise used by the PTP.

Taxpayers may rely on this proposed additional extraordinary item until final regulations are published. The proposed regulations do not use the phrase ''record holders on the date the distribution is declared,'' because the Treasury Department and the IRS understand that the recipients of a distribution by a PTP may be determined as of a time other than on the date the distribution is declared. The Treasury Department and the IRS request comments on the operation of this special rule, and on the interaction between the rules under section 706 and PTP allocations generally.

4. Coordination With Proposed Partnership Equity for Services Regulations

On May 24, 2005, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–105346–03, 70 FR 29675) in the **Federal Register**, the proposed Partnership Equity for Services regulations, relating to the tax treatment of certain transfers of partnership interests in connection with the performance of services. The proposed Partnership Equity for Services regulations provide rules for coordinating section 83 with partnership taxation principles. On June 13, 2005, the Treasury Department and the IRS published Notice 2005–43, I.R.B. 2005–24, setting forth a proposed revenue procedure providing additional related guidance. The proposed Partnership Equity for Services regulations and the proposed revenue procedure are not effective until finalized. Notice 2005–43 provides that, until then, taxpayers may continue to rely on Rev. Proc. 93–27, 1993–2 C.B. 343, and Rev. Proc. 2001–43, 2001–2 C.B. 191. The Treasury Department and the IRS continue to consider the interaction of section 83 with partnership taxation principles. No inferences should be drawn from these proposed regulations as to the resolution of the issues addressed in the proposed Partnership Equity for Services regulations or any other related issues.

The proposed Partnership Equity for Services regulations contain two provisions relating to the varying interest rule under section 706. First, proposed § 1.706–3(a) of the proposed Partnership Equity for Services regulations is intended to provide an exception to the allocable cash basis item rules of section 706(d)(2) for deductions for the transfer of partnership interests and other property subject to section 83. The preamble to the proposed Partnership Equity for Services regulations indicates that the exception was intended to allow partnerships to allocate such deductions under a closing of the books method. The preamble indicates that the Treasury Department and the IRS had concluded that, absent treatment under the allocable cash basis item rules of section 706(d)(2), the application of section 706(d)(1) would adequately ensure that partnership deductions that are attributable to the portion of the partnership's taxable year prior to a new partner's entry into the partnership are allocated to the historic partners.

The Treasury Department and the IRS have concluded that, in the case of a transfer of a partnership interest in connection with the performance of services, no portion of the partnership's deduction should be allocated to the person who performs the services. However, the Treasury Department and the IRS have also concluded that the scope of the exception to allocable cash basis treatment in proposed § 1.706–3(a) may have been too broad because it applies to all transfers of property subject to section 83, for which the Treasury Department and the IRS request comments under these proposed regulations. Therefore, the Treasury Department and the IRS withdraw proposed § 1.706–3(a). Instead, these

proposed regulations provide an exception to allocable cash basis treatment for deductions for transfers of partnership interests in connection with the performance of services. Additionally, to ensure that such deductions are allocated solely to partners other than the person who performed the services, the proposed regulations add to the list of extraordinary items in § 1.706–4(d)(2) any deduction for the transfer of an interest in the partnership in connection with the performance of services, and clarify that such extraordinary item is treated as occurring immediately before the transfer or vesting of the partnership interest that results in compensation income for the person who performs the services.

As explained in the final § 1.706–4 in the Rules and Regulations section of this issue of the **Federal Register**, extraordinary items generally must be allocated among the partners in proportion to their interests in the partnership item at the time of day on which the extraordinary item occurs. However, there are exceptions to the extraordinary item rules for certain small items in § 1.704–4(e)(3) and for partnerships for which capital is not a material income-producing factor in § 1.706–4(b)(2)). To ensure that partnership deductions attributable to the transfer of interests in the partnership in connection with the performance of services are always allocated solely to the historic partners, the proposed regulations turn off these exceptions to extraordinary item treatment for such deductions. Thus, treatment as an extraordinary item subject to the special timing rule will ensure that, for both accrual and cash-method partnerships, no portion of the deduction for the transfer of a partnership interest in connection with the performance of services will be allocated to the person who performs the services.

Second, proposed § 1.706–3(b) of the proposed Partnership Equity for Services regulations provides that a partnership must make certain forfeiture allocations upon forfeiture of a partnership interest for which a section 83(b) election was made. In particular, proposed § 1.706–3(b) provides that although the person forfeiting the interest may not have been a partner for the entire taxable year, forfeiture allocations may be made out of the partnership's items for the entire taxable year. The Treasury Department and the IRS anticipate that if the rules for forfeiture allocations in proposed § 1.706–3(b) are adopted when the proposed Partnership Equity for Services regulations are finalized, those rules will include in § 1.706–3(b) an additional exception to the general application of the varying interest rule. In the meantime, these proposed regulations move § 1.706–3(b) of the proposed Partnership Equity for Services regulations to new proposed § 1.706–6(a) to accommodate the new proposed regulations in § 1.706–3.

Proposed Effective Date

The regulations are proposed to apply to partnership taxable years beginning on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Reliance on Proposed Regulations

Taxpayers may rely on §§ 1.706–4(e)(1) and 1.706–4(e)(2)(ix) of the proposed regulations (relating to a publicly traded partnership's treatment of all amounts subject to withholding as defined in § 1.1441–2(a) that are not effectively connected with the conduct of a trade or business within the United States or withholdable payments under § 1.1473–1(a) as extraordinary items) until final regulations are issued.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation, and because this proposed regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Benjamin H. Weaver, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 706(d)(2), § 1.706–3(a) of the notice of proposed rulemaking that was published in the **Federal Register** on May 24, 2005 (70 FR 29675), is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

§ 1.706–2 also issued under 26 U.S.C. 706(d)(2)

§ 1.706–3 also issued under 26 U.S.C. 706(d)(3).

§ 1.706–4 also issued under 26 U.S.C. 706(d).* * *

■ **Par. 2.** Section 1.706–0 is amended by removing the entry for § 1.706–2T and adding entries for §§ 1.706–2, 1.706–3, and 1.706–6 to read as follows:

§ 1.706–0 Table of contents.

* * * * *

§ 1.706–2 Certain cash basis items prorated over period to which attributable.

(a) Allocable cash basis items prorated over period to which attributable.

(1) In general.

(2) Allocable cash basis item.

(3) Items attributable to periods not within taxable year.

(4) Treatment of deductible items attributable to prior periods.

(b) Example.

(c) De minimis exception.

(d) Effective/applicability date.

§ 1.706–3 Items attributable to interest in lower-tier partnership prorated over entire taxable year.

(a) General rule.
(b) Safe harbor.
(c) De minimis upper-tier partner exception.
(d) Effective/applicability date.

* * * * *

§ 1.706–6 Property transferred in connection with the performance of services.
(a) Forfeiture allocations.
(b) Effective date.

■ **Par. 3.** Section 1.706–2 is added to read as follows:

§ 1.706–2 Certain cash basis items allocable.

(a) *Allocable cash basis items prorated over period to which attributable*—(1) *In general.* If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then each partner's distributive share of any allocable cash basis item shall be determined—

(i) By assigning the appropriate portion of such item to each day in the period to which it is attributable; and

(ii) By allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(2) *Allocable cash basis item.* For purposes of this section, the term *allocable cash basis item* means any of the following items of deduction, loss, income, or gain with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest;

(ii) Taxes;

(iii) Payments for the use of property or for services (other than deductions for the transfer of an interest in the partnership in connection with the performance of services; such deductions generally must be allocated under the rules for extraordinary items in § 1.706–4(d));

(iv) Any allowable deduction that had been previously deferred under section 267(a)(2);

(v) Any deduction, loss, income, or gain item that accrues over time and that would, if not allocated as an allocable cash basis item, result in the significant misstatement of a partner's income.

(3) *Items attributable to periods not within taxable year.* If any portion of any allocable cash basis item is attributable to—

(i) Any period before the beginning of the taxable year, such portion shall be assigned under paragraph (a)(1)(i) of this section to the first day of the taxable year, or

(ii) Any period after the close of the taxable year, such portion shall be assigned under paragraph (a)(1)(i) of this section to the last day of the taxable year.

(4) *Treatment of deductible items attributable to prior periods.* If any portion of a deductible cash basis item is assigned under paragraph (a)(3)(i) of this section to the first day of any taxable year—

(i) Such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period; and

(ii) Any amount allocated under paragraph (a)(4)(i) of this section to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and allocated among partnership assets under the principles of section 755 (applying the principles of § 1.755–1(b) for partners who sold or exchanged their interest, and the principles of § 1.755–1(c) for partners who received a distribution from the partnership in exchange for their interest).

(b) Example 1. On January 1, 2015, A, B, and C are equal one-third partners in PRS, a calendar year partnership that uses the cash receipts and disbursements method of accounting. On July 1, 2015, A sells her entire interest in PRS to D. On December 1, 2015, PRS pays a $12,000 interest expense that is attributable to every day in PRS's taxable year. Assume the de minimis exception of paragraph (c) of this section does not apply, and that the $12,000 interest expense must be allocated under the rules of paragraph (a) of this section. A was a partner in PRS for 181 days, and D was a partner in PRS for 184 days, including on July 1 pursuant to paragraph (a)(1)(ii) of this section. Under paragraph (a) of this section, A is entitled to 181/365 of her otherwise allocable share of deductions for the $12,000 interest expense, and D is entitled to 184/365 of his otherwise allocable share of deductions for the $12,000 interest expense. Thus, PRS allocates the interest expense deductions $1,983.56 to A, $2,016.44 to D, and $4,000 to each B and C.

Example 2. In 2015, E, F, and G are equal one-third partners in PRS, a calendar year partnership that uses the cash receipts and disbursements method of accounting. On December 31, 2015, E sells her entire interest in PRS to H. In November 2016, PRS makes a $6,000 payment for the use of property that is attributable to the period from January 1, 2015 to December 31, 2016. Assume the de minimis exception of paragraph (c) of this section does not apply, and that the $6,000 payment for the use of property must be allocated under the rules of paragraph (a) of this section. Under paragraph (a)(3)(i) of this section, half of the $6,000 expense is attributable to 2015 and must be assigned to January 1, 2016. Of this $3,000 assigned to January 1, 2016, one-third is allocable to each E, F, and G under paragraph (a)(4)(i) of this section. However, because E is not a partner in 2016, PRS must capitalize E's $1,000 share of the expense under paragraph (a)(4)(ii) of this section. Because E sold her interest to H, PRS must treat the capitalized $1,000 similar to a section 743(b) adjustment for H allocated among PRS's property under the principles of § 1.755–1(b).

Example 3. Assume the same facts as Example 2, except that on December 31, 2015, PRS distributed property to E in complete redemption of E's interest, and H never becomes a partner in PRS. PRS must capitalize E's $1,000 share of the expense under paragraph (a)(4)(ii) of this section. However, because E was redeemed, PRS must instead treat the capitalized $1,000 similar to a section 734(b) common basis adjustment allocated among PRS's property under the principles of § 1.755–1(c).

(c) *De minimis exception.* An item described in paragraph (a)(2) of this section will not be subject to the rules of this section if, for the partnership's taxable year the total amount of the particular class of allocable cash basis items described in paragraph (a)(2)(i) through (v) of this section (but in no event counting an item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of allocable cash basis items from all classes of allocable cash basis items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such allocable cash basis items as positive amounts.

(d) *Effective/applicability date.* This section applies to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**.

§ 1.706–2T [Removed]

■ **Par. 4.** Section 1.706–2T is removed.

■ **Par. 5.** Section 1.706–3 is added to read as follows:

§ 1.706–3 Items attributable to interest in lower-tier partnership.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, if during any taxable year of the partnership—

(1) There is a change in any partner's interest in the partnership (the upper-tier partnership); and

(2) Such partnership is a partner in another partnership (the lower-tier partnership),

then each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of § 1.706–2(a)(3) and (4)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. An upper-tier partnership's distributive share of any items of income, gain, loss, deduction, or credit from a lower-tier partnership is considered to be realized or sustained by the upper-tier partnership at the same time and in the same manner as such items were realized or sustained by the lower-tier partnership. For an additional example of the application of the principles of this paragraph (a), see Revenue Ruling 77–311, 1977–2 CB 218. *See* section 601.601(d)(2)(ii)(b).

(b) *De minimis upper-tier partnership exception.* A de minimis upper-tier partnership is not required to, but may, apply paragraph (a) of this section. For purposes of this paragraph, a de minimis upper-tier partnership is a partnership that directly owns an interest in less than 10 percent of the profits and capital of the lower-tier partnership. This paragraph (b) only applies if all de minimis upper-tier partnerships own an interest in, in the aggregate, less than 30 percent of the profits and capital of the lower-tier partnership, and if no partnership is created with a purpose of avoiding the application of this section.

(c) Example 1. On January 1, 2015, A, B, and C are equal one-third partners in UTP, a calendar year partnership that uses the proration method and calendar day convention to account for variations during its taxable year. UTP is itself a partner in a lower-tier partnership, LTP, which is also a calendar year partnership. UTP owns a 15 percent interest in the profits and capital of LTP throughout 2015. On August 1, 2015, A sells her entire interest in UTP to D. During 2015, LTP incurred $100,000 of ordinary deductions, which were attributable to the period from January 1, 2015, to July 1, 2015. None of LTP's deductions were extraordinary items within the meaning of § 1.706–4(e). UTP's distributive share of LTP's deductions is $15,000. Under paragraph (a) of this section, UTP must assign the $15,000 equally among all days from January 1, 2015 to July 1, 2015, and allocate the assigned daily portions among its partners in accordance with their interests in UTP on those days. Accordingly, A, B, and C are each allocated $5,000 of the deduction, and D is not allocated any portion of the deduction.

Example 2. Assume the same facts as Example 1, except that UTP owned a 9 percent interest in the profits and capital of LTP throughout 2015, and that LTP had only one other partner, which owned the remaining 91 percent of LTP. UTP's distributive share of LTP's $100,000 ordinary deductions is $9,000. UTP qualifies as a de minimis upper-tier partnership under paragraph (b) of this section, and therefore UTP is not required to apply the rules of paragraph (a) of this section. Instead, UTP may apply the rules of § 1.706–4 to the $9,000 ordinary deduction. If UTP decides to apply the rules of § 1.706–4, UTP prorates the $9,000 deduction equally over its entire taxable year, and allocates it according to its partners' interests on each day. Because A was a partner in UTP for 213 days, and D was a partner in UTP for 152 days, UTP allocates the $9,000 deduction $3,000 to each of B and C, $1,750.68 to A, and $1,249.32 to D.

Example 3. Assume the same facts as Example 2, except that UTP uses the interim closing method rather than the proration method. UTP qualifies as a de minimis upper-tier partnership under paragraph (b) of this section, and therefore UTP is not required to apply the rules of paragraph (a) of this section. Instead, UTP may apply the rules of § 1.706–4 to the $9,000 ordinary deduction. UTP's distributive share of LTP items is considered to have been realized or sustained by UTP at the same time and in the same manner as such items were realized or sustained by LTP. Accordingly, even if UTP decides to apply the rules of § 1.706–4, UTP's application of the interim closing method of § 1.706–4 to the $9,000 deduction results in UTP allocating to each of A, B, and C $3,000 of the deduction, and not allocating any portion of the deduction to D. UTP would reach the same result if it had instead chosen to apply the rules of paragraph (a) of this section.

(d) *Effective/applicability date.* This section applies to partnership taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**.

§ 1.706–3(b) and (c) [Redesignated as § 1.706–6(a) and (b)]

■ **Par. 6.** As proposed to be added May 24, 2005 (70 FR 29675), redesignate § 1.706–3(b) and (c) as § 1.706–6(a) and (b).

■ **Par. 7.** Section 1.706–4 is amended by:

■ a. Adding a new sentence to the end of paragraph (b)(2);

■ b. Revising paragraph (e)(1);

■ c. Redesignating paragraphs (e)(2)(ix), (x), and (xi) as paragraphs (e)(2)(xi), (xii), and (xiii) respectively;

■ d. Adding new paragraphs (e)(2)(ix) and (e)(2)(x);

■ e. Adding a new sentence to the end of paragraph (e)(3);

■ f. Revising paragraph (e)(4) Example 3; and

■ g. Revising the first sentence of paragraph (f).

The additions and revisions read as follows:

§ 1.706–4 Determination of distributive share when a partner's interest varies.

* * * * *

(b) * * *

(2) * * * However, this paragraph (b)(2) does not apply to any deduction for the transfer of an interest in the partnership in connection with the performance of services. Instead, such deduction must be allocated under the extraordinary item rules of paragraphs (e)(1) and (2) of this section.

* * * * *

(e) * * *(1) *General principles.* Extraordinary items may not be prorated. The partnership must allocate extraordinary items among the partners in proportion to their interests in the partnership item at the time of day on which the extraordinary item occurred, regardless of the method (interim closing or proration method) and convention (daily, semi-monthly, or monthly) otherwise used by the partnership. These rules require the allocation of extraordinary items as an exception to the proration method, which would otherwise ratably allocate the extraordinary items across the segment, and the conventions, which could otherwise inappropriately shift extraordinary items between a transferor and transferee. However, publicly traded partnerships (as defined in section 7704(b)) that are treated as partnerships may, but are not required to, apply their selected convention in determining who held publicly traded units (as described in § 1.7704–1(b) or § 1.7704–1(c)(1)) at the time of the occurrence of any extraordinary item except extraordinary items described in paragraph (e)(2)(ix) of this section. Publicly traded partnerships that choose to treat items described in paragraph (e)(2)(ix) of this section as extraordinary items must allocate those items among the partners in proportion to their interests in those items at the time of day on which the items are deemed to have occurred according to the special timing rules for those items in paragraph (e)(2)(ix) of this section, regardless of the method and convention otherwise used by the partnership. Extraordinary items continue to be subject to any special limitation or requirement relating to the

timing or amount of income, gain, loss, deduction, or credit applicable to the entire partnership taxable year (for example, the limitation for section 179 expenses).

(2) * * *

(ix) For publicly traded partnerships (as defined in section 7704(b)), any item of income that is an amount subject to withholding as defined in § 1.1441–2(a) (excluding amounts effectively connected with the conduct of a trade or business within the United States) or a withholdable payment under § 1.1473–1(a) occurring during a taxable year if the partners agree (within the meaning of paragraph (e) of this section) to consistently treat all such items as extraordinary items for that taxable year. If the partners so agree, then for purposes of section 706 such items shall be treated as occurring at the next time as of which the recipients of a distribution by the partnership are determined, or, to the extent such income items arise between the final time during the taxable year as of which the recipients of a distribution by the partnership are determined and the end of the taxable year, such items shall be treated as occurring at the final time during the taxable year as of which the recipients of a distribution by the partnership are determined. This paragraph (e)(2)(ix) does not apply unless the partnership has a regular practice of making at least four distributions (other than de minimis distributions) to its partners during each taxable year.

(x) Any deduction for the transfer of an interest in the partnership in connection with the performance of services. Such an extraordinary item is treated as occurring immediately before the transfer or vesting of the partnership interest that results in compensation income for the person who performs the services, but in no case shall the item be treated as occurring prior to the beginning of the partnership's taxable year.

* * * * *

(3) * * * However, this paragraph (e)(3) does not apply to any deduction for the transfer of an interest in the partnership in connection with the performance of services. Instead, such deduction must be allocated under the extraordinary item rules of paragraphs (e)(1) and (2) of this section.

(4) * * *

Example 3. (i) Assume the same facts as in *Example 2,* except that PRS is a publicly traded partnership (within the meaning of section 7704(b)), A held a publicly traded unit (as described in § 1.7704–1(b) or § 1.7704–1(c)(1)) in PRS, and the extraordinary item recognized at 3:15 p.m. on December 7, 2015 is not described in paragraph (e)(2)(ix) of this section. Under PRS's monthly convention, the December 12 variation is deemed to have occurred for purposes of this section at the end of the day on November 30, 2015. Pursuant to paragraph (e)(1) of this section, a publicly traded partnership (as defined in section 7704(b)) may choose to respect its conventions in determining who held its publicly traded units (as described in § 1.7704–1(b) or § 1.7704–1(c)(1)) at the time of the occurrence of an extraordinary item, except for extraordinary items described in paragraph (e)(2)(ix) of this section. Therefore, PRS may choose to treat A as not having been a partner in PRS for purposes of this paragraph (e) at the time the extraordinary item arose, and thus PRS may choose not to allocate A any share of the extraordinary item.

(ii) Assume the same facts as in paragraph (i) of this *Example 3,* except that on November 5, 2015, PRS recognizes an item of income that is an amount subject to withholding as defined in § 1.1441–2(a) (and that is not effectively connected with the conduct of a trade or business within the United States). PRS has a regular practice of making quarterly distributions to its partners each taxable year. PRS determines that the recipients of its fourth-quarter distribution will be interest holders of record at the close of business on December 15, 2015. The partners of PRS agree (within the meaning of paragraph (f) of this section) to consistently treat all such items during the taxable year as extraordinary items. Pursuant to paragraph (e)(2)(ix) of this section, the item of income that arose on November 5 is treated as an extraordinary item occurring at the next time as of which the recipients of a distribution by the partnership are determined (unless that time occurs in a different taxable year). Because December 15 occurs before the end of PRS's taxable year, the item of income is treated as occurring at the close of business on December 15, and must be allocated according to PRS's partners' interests at that time, determined without regard to PRS's applicable convention. Therefore, A will not be allocated any share of the item because A disposed of its entire interest in PRS before the close of business on December 15.

(iii) Assume the same facts as in paragraph (ii) of this *Example 3,* except that PRS determines that the recipients of its fourth-quarter distribution will be interest holders of record at the close of business on January 15, 2016, and PRS determines that the recipients of its third-quarter distribution will be interest holders of record at the close of business on October 21, 2015. Therefore, the last time during 2015 as of which the recipients of a distribution by PRS are determined is at the close of business on October 21, 2015. Pursuant to paragraph (e)(2)(ix) of this section, because the item of income subject to withholding as defined in § 1.1441–2(a) which arises on November 5 arises between the final time during the taxable year as of which the recipients of a distribution are determined and the end of the taxable year, such item shall be treated as occurring at the final time during the taxable year as of which the recipients of a distribution by the partnership are determined. Therefore, the item of income subject to withholding as defined in § 1.1441–2(a) which arises on November 5, 2015 is treated as occurring at the close of business on October 21, 2015, and must be allocated according to PRS's partners' interests at that time.

(f) *Agreement of the partners.* For purposes of paragraphs (a)(3)(iii) (relating to selection of the proration method), (c)(3) (relating to selection of the semi-monthly or monthly convention), (d)(1) (relating to performance of regular semi-monthly or monthly interim closings), (e)(2)(ix) (relating to a publicly traded partnership's treatment of all amounts subject to withholding as defined in § 1.1441–2(a) that are not effectively connected with the conduct of a trade or business within the United States or withholdable payments under § 1.1473–1(a) as extraordinary items), and (e)(2)(xi) (relating to selection of additional extraordinary items) of this section, the term agreement of the partners means either an agreement of all the partners to select the method, convention, or extraordinary item in a dated, written statement maintained with the partnership's books and records, including, for example, a selection that is included in the partnership agreement, or a selection of the method, convention, or extraordinary item made by a person authorized to make that selection, including under a grant of general authority provided for by either state law or in the partnership agreement, if that person's selection is in a dated, written statement maintained with the partnership's books and records.

* * * * *

Karen L. Schiller,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–18817 Filed 7–31–15; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 22, 85, 86, 600, 1033, 1036, 1037, 1039, 1042, 1065, 1066, and 1068

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 512, 523, 534, 535, 537, and 583.

[EPA–HQ–OAR–2014–0827; NHTSA–2014–0132; FRL–9931–77–OAR]

RIN 2060–AS16; RIN 2127–AL52

Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2; Notice of Public Hearings

AGENCY: Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) are announcing a public hearing to be held for the joint proposed rules ''Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,'' and also for NHTSA's Draft Environmental Impact Statement. The proposed rules were published in the **Federal Register** on July 13, 2015. The Draft Environmental Impact Statement was published on June 19, 2015, and is available on the NHTSA Web site mentioned below. This hearing will be the second of two hearings, which will be held on August 6 and August 18, 2015. The August 6, 2015 hearing was announced in a separate **Federal Register** notice on July 28, 2015.

DATES: NHTSA and EPA will jointly hold a public hearing on Tuesday, August 18, 2015, beginning at 9:00 a.m. local time. EPA and NHTSA will make every effort to accommodate all speakers that arrive and register. The hearing will continue until everyone has had a chance to speak. If you would like to present oral testimony at this public hearing, please contact the person identified under **FOR FURTHER INFORMATION CONTACT** by August 11, 2015.

In order to provide commenters 30 days after the last public hearing, the comment period for the proposal has been extended through September 17, 2015.

ADDRESSES: The August 18, 2015 hearing will be held at the Westin Hotel Long Beach, 333 East Ocean Boulevard, Long Beach, California. The hearing will be held at sites accessible to individuals with disabilities. Written comments on the proposed rule may also be submitted to EPA and NHTSA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact JoNell Iffland at EPA by the date specified under **DATES**, at: Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4454; fax number: (734) 214–4050; email address: *iffland.jonell@epa.gov* (preferred method for registering). Please provide the following information: Name, affiliation, address, email address, and telephone and fax numbers, and whether you require accommodations such as a sign language interpreter.

Questions concerning the NHTSA proposed rule or Draft Environmental Impact Statement should be addressed to NHTSA: Ryan Hagen or Analiese Marchesseault, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992. Questions concerning the EPA proposed rule should be addressed to EPA: Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4332; fax number: (734) 214–4050; email address: *wysor.tad@epa.gov.* You may learn more about the jointly proposed rules by visiting NHTSA's or EPA's Web sites at *http://www.nhtsa.gov/fuel-economy* or *http://www.epa.gov/otaq/climate/regs-heavy-duty.htm* or by searching the rulemaking dockets (EPA–HQ–OAR–2014–0827; NHTSA–2014–0132;) at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the public hearing is to provide the public an opportunity to present oral comments regarding NHTSA and EPA's proposal for ''Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2.'' The hearing also offers an opportunity for the public to provide oral comments regarding NHTSA's Draft Environmental Impact Statement, accompanying the proposed NHTSA fuel efficiency standards. The proposed rules would establish a second round of standards for the agencies' comprehensive Heavy-Duty National Program, which would further reduce greenhouse gas emissions and increase fuel efficiency for on-road heavy-duty vehicles. These new standards would phase in over time, beginning in the 2018 model year and entering into full effect in model year 2027. NHTSA's proposed fuel consumption standards and EPA's proposed carbon dioxide (CO_2) emission standards are tailored to each of four regulatory categories of heavy-duty vehicles: (1) Combination Tractors; (2) Trailers used in combination with those tractors; (3) Heavy-duty Pickup Trucks and Vans; and (4) Vocational Vehicles. The proposal also includes separate fuel efficiency and greenhouse gas standards for the engines that power combination tractors and vocational vehicles.

The joint proposed rules for which EPA and NHTSA are holding this public hearing were published in the **Federal Register** on July 13, 2015 (80 FR 40138), and are also available at the Web sites listed above under **FOR FURTHER INFORMATION CONTACT**. NHTSA's Draft Environmental Impact Statement is available on the NHTSA Web site and in NHTSA's rulemaking docket, both referenced above. Once NHTSA and EPA learn how many people have registered to speak at the public hearing, we will allocate an appropriate amount of time to each participant, allowing time for necessary breaks. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. For planning purposes, each speaker should anticipate speaking for approximately five minutes, although we may need to shorten that time if there is a large turnout. We request that you bring two copies of your statement or other material for the EPA and NHTSA panels.

EPA and NHTSA will conduct the hearing informally, and technical rules of evidence will not apply. We will arrange for a written transcript of each hearing and keep the official record for the proposed rule open for 30 days after this public hearing to allow speakers to submit supplementary information. Panel members may ask clarifying questions during the oral statements but will not respond to the statements at that time. You may make arrangements for copies of the transcripts directly with the court reporter. Written

statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearings. The comment period for the proposed rule has been extended such that the closing date is 30 days after this public hearing. Therefore, written comments on the proposal must be postmarked no later than September 17, 2015.

Dated: July 28, 2015.

Raymond R. Posten,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

Dated: July 28, 2015.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Environmental Protection Agency.

[FR Doc. 2015–19004 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0498; A–1–FRL–9927–51–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Approval of NO_X Emission Offset Credits as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. The revision consists of amendments to two existing Trading and Agreement Orders for new source review nitrogen oxides (NO_X) emission offsets at PSEG Power Connecticut's facility in Bridgeport, Connecticut. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before September 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2014–0498 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: dahl.donald@epa.gov*

3. *Fax:* (617) 918–0657

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2014–0498'', Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. Hand Delivery or Courier. Deliver your comments to: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th floor, (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Please see the direct final rule which is located in the Rules and Regulations section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: April 29, 2015.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2015–18871 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0854; FRL–9931–53–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Gasoline and Volatile Organic Compound Storage and Handling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing amendments to Code of Maryland Regulation (COMAR) 26.11.13, Control of Gasoline and Volatile Organic Compound Storage and Handling. The amendments consist of establishing an alternative and equivalent method of transfer of high pressure materials as well as changing incorrect references in regulations .04 and .05. In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0854 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Email: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2014–0854, Cristina Fernandez, Associate Director,

Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0854. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 20, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–18827 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, 14–192, 11–42, 09–197; DA 15–851]

Wireline Competition Bureau Seeks To Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau seeks to refresh the record on pending issues related to Eligible Telecommunications Carrier (ETC) designations and obligations in areas served by price cap carriers.

DATES: Comments are due on or before September 2, 2015 and reply comments are due on or before September 17, 2015.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90, 14–192, 11–42 or 09–197, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Heidi Lankau, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's document in WC Docket No. 10–90, 14–192, 11–42 and 09–197; DA 15–851, released July 23, 2015. The complete text of these documents are available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554.

I. Introduction

1. Against the backdrop of the relief already granted in the *December 2014 Connect America Order,* 80 FR 4446, January 27, 2015. The Wireline Competition Bureau (Bureau) seeks to refresh the record on issues raised in various proceedings related to ETC designations and obligations in areas served by price cap carriers. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the Commission noted that ETC service obligations and funding should be ''appropriately matched, while avoiding consumer disruption in access to communications services.'' It sought comment on how existing voice telephony service obligations for ETCs would change as funding shifts to new, more targeted mechanisms, including potentially via forbearance from the relevant requirements of section 214(e)(1). In the *April 2014 Connect America FNPRM,* 79 FR 39196, July 9, 2014, the Commission sought to develop the record further on how relieving incumbent local exchange carriers (LECs) of their ETC obligations would comport with section 214 of the Communications Act and what specific obligations incumbent LECs would be relieved of in areas where they do not receive high-cost support. In October 2014, USTelecom submitted a petition seeking, among other things, forbearance from the enforcement of section 214(e)(1)(A) where a price cap carrier receives no high-cost support. And recently the Commission released a FNPRM for the Lifeline program seeking comment on proposals for ETC relief

from Lifeline obligations and incorporating the record from the Connect America and USTelecom forbearance petition proceedings into that docket.

2. Specifically, the Bureau seeks to refresh the record on the issues that remain pending and how the actions already taken in the *December 2014 Connect America Order* might affect the Commission's analysis with respect to these pending issues in several open dockets. In the *December 2014 Connect America Order,* the Commission did not resolve the issues that were raised in the Connect America Fund rulemaking proceeding and the forbearance petition regarding possible forbearance or other relief from the price cap carriers' ETC designations or the regulatory requirements imposed on ETCs for those census blocks where forbearance was not granted. Moreover, the Commission did not resolve the issue of granting broader forbearance or other relief from the ETC designations of the price cap carriers serving the census blocks where limited forbearance was granted. The Commission neither accepted nor rejected commenters' various arguments—whether in favor of, or against—such proposals. These issues remain pending to the extent originally raised in the rulemaking proceeding or the forbearance proceeding (or both).

II. Procedural Matters

1. Initial Regulatory Flexibility Act Analysis

3. The *USF/ICC Transformation FNPRM* and *April 2014 Connect America FNPRM* included Initial Regulatory Flexibility Analyses (IRFAs) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposal concerning potential relief from ETC obligations. We invite parties to file comments on the IRFAs in light of this request to refresh the record.

2. Paperwork Reduction Analysis

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

3. Filing Requirements

5. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments are to reference WC Docket Nos. 10–90, 14–192, 11–42, 09–197 and DA 15–851 and may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

(1) All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

(2) Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

(3) U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

6. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

7. This matter shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

8. For further information, please contact Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau at 202–418–7400; or at TTY (202) 418–0484.

Federal Communications Commission.

Ryan B. Palmer,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2015–18993 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 15–805; MB Docket No. 15–167; RM–11751]

Radio Broadcasting Services; Grant, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes, at the request of Katherine Pyeatt (''Pyeatt''), the allotment of FM Channel 286A at Grant, Oklahoma. The

document also treats a conflicting application (File No. BPH–20141028AAK) filed by Liberman Broadcasting of Dallas Licensee LLC (''Liberman''), licensee of Station KZMP–FM, Pilot Point, Texas, for a construction permit to implement a previously granted upgrade in KZMP's channel class from Channel 285C1 to 285C0 (''Pilot Point Application'') as a counterproposal. Finally, to accommodate Pyeatt's proposal, an *Order to Show Cause* is issued to Liberman as to why KZMP's channel class should not be involuntarily downgraded. *See* SUPPLEMENTARY INFORMATION, *supra.*

DATES: Comments must be filed on or before August 31, 2015, and reply comments on or before September 15, 2015.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the rule making petitioner and the counter proponent as follows: Katherine Pyeatt, 2215 Cedar Springs Rd., #1605, Dallas, Texas 75201; James R. Bayes, Esq., Mark N. Lipp, Esq., and Marnie K. Sarver, Esq., Wiley Rein LLP, 1776 K Street NW., Washington, DC 20006 (Counsel to Liberman).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* (''NPRM'') and *Order to Show Cause* (''OSC''), MB Docket No. 15–167, adopted July 9, 2015, and released July 10, 2015. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The document solicits comment on the proposed allotment of Channel 286A at Grant (population 289) because it could result in a first local service to that community. The proposed reference coordinates for Channel 286A at Grant are 33–57–16 NL and 95–36–30 WL. The NPRM also addresses Liberman's concerns regarding the credibility of Pyeatt's expression of interest in the proposed Grant allotment.

Next, the OSC proposes the involuntary downgrade of KZMP, Pilot Point, Texas, from Channel 285C0 to 285C1 because nearly seven years have passed since KZMP was upgraded and Liberman has not implemented the upgrade.

Finally, the NPRM also states that the public interest would be served by considering the Pilot Point Application because it could result in the provision of service to an additional 1,507,667 people and treating it as a counterproposal to Pyeatt's Petition for Rule Making. Both Pyeatt and Liberman are invited to submit comments, seeking to demonstrate why their proposals better serve the public interest under the FM Allotment Priorities. The Pilot Point Application reference coordinates are 33–32–14 NL and 96–49–54 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Grant, Channel 286A.

[FR Doc. 2015–18985 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, 215, and 252

RIN 0750–AI64

Defense Federal Acquisition Regulation Supplement: Evaluating Price Reasonableness for Commercial Items (DFARS Case 2013–D034)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2013 that requires the issuance of guidance on the use of the authority to require the submission of other than cost or pricing data.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 2, 2015, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2013–D034, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D034'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D034.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D034'' on your attached document.
- *Email: osd.dfars@osd.mil.* Include DFARS Case 2013–D034 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition

Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement portions of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). Title 10, United States Code (U.S.C.), mandates that offerors submitting proposals for negotiated procurements provide certified cost or pricing data under certain circumstances if the estimated value of the procurement is above a certain dollar threshold. For other types of procurements, *e.g.,* commercial-item acquisitions, the law requires only that an offeror provide ''data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price'' (10 U.S.C. 2306a(d)(1)). Section 831 requires the issuance of guidance on the use of the authority to require the submission of other than cost or pricing data. Specifically, section 831, paragraph (a) provides that the guidance accomplish the following:

1. Include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price;

2. Include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price;

3. Ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations; and

4. Provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient nongovernment sales to establish reasonableness of price.

II. Discussion and Analysis

This rule proposes to amend the DFARS as follows to—

- Add new definitions at 202.101 for ''market-based pricing'' and ''uncertified cost data'' and at 215.401 for ''nongovernment sales,'' ''relevant sales data,'' and ''sufficient nongovernment sales to establish reasonableness of price'';
- Add section 212.209 entitled ''Determination of price reasonableness'';
- Add guidelines at 215.402(a)(3), for obtaining data other than certified cost or pricing data;
- Add instructions at 215.403–5 for the submission of certified cost or pricing data and data other than certified cost or pricing data;
- Add guidelines at 215.404–1 concerning proposal analysis techniques;
- Renumber the paragraph structure at 215.404–1–70;
- Revise the clause prescription at 215.408, paragraph(3)(i), and add three new provision prescriptions at paragraph (6); and
- Add three new provisions in part 252.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule does not add to or remove any of the existing requirements for the submission of other than certified cost or pricing data for the purpose of determining the reasonableness of prices proposed for commercial items. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603. It addresses additional guidance to be included in the Defense Federal Acquisition Regulation Supplement (DFARS) concerning the appropriate amount and type of other than certified cost or pricing information that contracting officers must require an offeror to submit in order to determine whether proposed prices for commercial items are fair and reasonable. The rule also proposes to add three new provisions.

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 included section 831, entitled ''Guidance and Training Related to Evaluating Reasonableness of Price.'' Paragraph (a) of section 831 required the issuance of guidance addressing the following four areas:

1. Requirement to include standards for determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price.

2. Requirement to include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price.

3. Ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations.

4. Provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient non-Government sales to establish reasonableness of price.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule merely provides guidance to contracting officers on the use of the existing authority to require the submission of other than cost or pricing data.

The reporting requirements for small entities do not differ from those for large entities and are covered by OMB Control Number 9000–0013, Cost or Pricing Data Exemption. This proposed rule does not add to or remove any of the existing requirements; it does clarify the limits on the amount and types of data that may be required from offerors so that contracting officers do not inadvertently impose submission requirements on small entities or other types of businesses that are excessive.

The rule does not duplicate, overlap, or conflict with any other Federal rules. Consistent with the stated objectives of section 831 of the NDAA for FY 2013 and with the statutory requirements for cost or pricing data in title 10, United States Code (U.S.C.), there is no alternative to applying the requirements for other than cost or pricing data equally to small and large entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D034), in correspondence.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at Federal Acquisition Regulation (FAR) subpart 15.4, Contract Pricing (in particular, FAR 15.403, Obtaining Certified Cost or Pricing Data) and the clauses at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, and FAR 52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications, currently approved under OMB Control Number 9000–0013, entitled ''Cost or Pricing Data Exemption,'' in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because the DFARS change does not add or remove requirements for submission of other than cost or pricing data. The DFARS merely provides clarification of the circumstances under which the FAR requires contracting officers to obtain other than cost or pricing data solely for the purpose of determining reasonableness of prices proposed by offerors for commercial items. There are no changes to the existing requirement for supporting cost data for determining price reasonableness.

List of Subjects in 48 CFR Parts 202, 212, 215, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 212, 215, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 202, 212, 215, and 252 continues to read as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, the definitions for ''market-based pricing'' and ''uncertified cost data'' to read as follows:

202.101 Definitions.

* * * * *

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

* * * * *

Uncertified cost data means the subset of ''data other than certified cost or pricing data'' (see FAR 2.101) that relates to cost.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Add section 212.209 to subpart 212.2 to read as follows:

212.209 Determination of price reasonableness.

In order to establish a fair and reasonable price based on market-based pricing (see 215.404–1), the contracting officer shall obtain adequate commercial marketplace sales data (see 215.404–1(b)) to ensure the price offered to the Government is reasonably consistent with market-based pricing. When obtaining such data, follow the order of preference at FAR 15.402(a)(2), and otherwise comply with the requirements of FAR part 15, part 215, and PGI part 215.

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Add section 215.401 to subpart 215.4 to read as follows:

215.401 Definitions.

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see 215.402(a)(3)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

■ 5. Amend section 215.402 by adding paragraph (a)(3) to read as follows:

215.402 Pricing policy.

* * * * *

(a)(3) When obtaining data other than certified cost or pricing data (Pub. L. 112–239 sec. 831)—

(A) The standard to be used by contracting officers in determining the adequacy of information on prices at which same or similar items have been sold is whether a prudent person would conclude that it is sufficient to determine whether the proposed price is fair and reasonable. See 215.404–1 and PGI 215.404–1; and

(B) In cases when uncertified cost data is necessary to determine that the price is fair and reasonable, the contracting officer should request uncertified cost data only to the extent that a prudent person would consider necessary to determine a fair and reasonable price.

■ 6. Amend section 215.403–5 by adding paragraphs (a) and (b)(2) to read as follows:

215.403–5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(a) The contracting officer shall not limit the Government's ability to obtain any data that may be necessary to support a determination of fair and reasonable pricing.

(b)(2) If the contracting officer requires the offeror to provide uncertified cost data, it shall be the form in which it is regularly maintained by the offeror in its business operations (Pub. L. 112–239 sec. 831).

* * * * *

■ 7. Revise section 215.404–1 to read as follows:

215.404–1 Proposal analysis techniques.

(b)(2)(ii) In the absence of adequate price competition in response to the solicitation, market-based pricing is the preferred method to establish a fair and reasonable price (Pub. L. 112–239 sec. 831).

(A)(*i*) Relevant sales data are a valid basis for price comparison, in the following order of preference:

(*a*) Relevant sales data for the same good or service being acquired that reflect market-based pricing.

(*b*) Relevant sales data for substantially similar goods or services that reflect market-based pricing.

(*c*) Relevant sales data for the same good or services being acquired that do not reflect market-based pricing.

(*d*) Relevant sales data for substantially similar goods or services that do not reflect market-based pricing.

(*ii*) The contracting officer may obtain additional data necessary to verify the price to be paid is fair and reasonable. However, if relevant sales data for the same supplies or services being acquired reflects market-based pricing, and is made available for the contracting officer to review, the contracting officer shall not obtain uncertified cost data.

(*iii*) When evaluating sales data, contracting officers shall exercise prudent business judgment and consider standards such as the following, using the order of preference in FAR 15.402(a) and 215.402(a)(3):

(*a*) *Market-based pricing.* See 202.101.

(*b*) *Age of data.*

(*1*) Whether data is too old to be relevant depends on the industry (*e.g.,* rapidly evolving technologies), product maturity (*e.g.,* stable), economic factors (*e.g.,* new sellers in the marketplace), and various other considerations.

(*2*) A pending sale may be relevant if it is probable at the anticipated price, and the sale could reasonably be expected to materially influence the contracting officer's determination of price reasonableness. Consult with the offeror's corporate or divisional administrative contracting officer (if applicable) about future sales.

(*c*) *Volume.* The number of transactions must be sufficient to permit the contracting officer to make a determination on price reasonableness based on the relevant sales data. If the number of transactions is insufficient to make a determination, the contracting officer shall consider broadening the search (*e.g.,* identify whether all customers were included) to obtain additional relevant sales data as necessary to make the determination, following the order of preference at 215.404–1(b)(2)(ii)(A)(*i*), and complying with FAR 15.402(a)(2).

(*d*) *Nature of transactions.* The nature of a sales transaction includes the information necessary to understand the transaction, such as terms and conditions, date, quantity sold, sale price, the intended end-user, the type of customer (government, distributor, retail end-user, etc.), and related agreements. It also includes information such as warranty information, key product technical specifications, maintenance agreements, or preferred customer rewards, if they substantially impact price differences among sales. When relevant sales data has materially differing terms and conditions (see 215.404–1(b)(2)(ii)(B)), the contracting officer shall adjust the prices as required by FAR 15.404–1(b)(2)(ii)(B).

(*e*) *Catalog Prices.* Catalog prices are reliable when consistent with relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments).

(B) Terms and conditions, quantities, and market and economic factors, are materially differing if the differences could reasonably be expected to influence the contracting officer's determination of price reasonableness.

(C) The DoD cadre of experts is identified at PGI 215.404–2(a)(iii).

■ 8. Add section 215.404–1–70 to read as follows:

215.404–1–70 Procedures.

(a) Follow the procedures at PGI 215.404–1 for proposal analysis.

(b) For spare parts or support equipment, perform an analysis of—

(1) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available data;

(2) Those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(3) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(4) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, *e.g.,* experience with the offeror and the reliability of its estimating and accounting systems.

■ 9. Amend section 215.408 by—

■ a. Revising paragraph (3)(i)(A)(*1*) introductory text;

■ b. Revising paragraph (3)(i)(A)(*2*) introductory text;

■ c. Revising paragraph (3)(i)(B) introductory text; and

■ d. Adding paragraph (6).

The revisions and addition read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(3) * * *

(i)(A) * * *

(*1*) In lieu of 252.215–70XX, Requirement for Data Other Than Certified Cost or Pricing Data, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation that is—

* * * * *

(*2*) In lieu of 252.215–70XX in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a sole source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (3)(i)(A)(1), if approval is obtained as required at 225.870–4(c)(2)(ii); and

(B) Do not use 252.225–7003 in lieu of 252.215–70XX in competitive acquisitions.

* * * * *

(6) *Requirements for certified cost or pricing data and data other than certified cost or pricing data.*

(i) Use the provision at 252.215–70XX, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations and contracts when it is reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required.

(A) Use the basic provision when the submission of certified cost or pricing data may not be required at the time of solicitation, or when submission of certified cost or pricing data is required to be in the format required by FAR Table 15–2.

(B) Use the Alternate I provision to specify a format for certified cost or pricing data other than the format required by FAR Table 15–2.

(ii) Use the provision at 252.215–70YY, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor, when using the basic or alternate of the provision at 252.215–70XX if copies of the proposal are to be sent to the ACO and contract auditor.

(iii) Use the provision at 252.215–70ZZ, Requirements for Submission of Proposals via Electronic Media, when using the basic or alternate of the provision at 252.215–70XX if submission via electronic media is required.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 252.215–70XX to read as follows:

252.215–70XX Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

Basic. As prescribed in 215.408(6)(i) and (6)(i)(A), use the following provision:

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Basic (DATE)

(a) *Definitions.* As used in this provision—

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see DFARS 215.402(a)(3)(A)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

(b) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information shall include—

(A) For items priced based on a catalog—

(*1*) A copy of the offeror's current catalog showing the price for that item; and

(*2*) Either of the following two alternative statements, included in the proposal:

(*i*) ''The catalog provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the contracting officer.''

(*ii*) ''The catalog provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets or other adjustments).]*'';

(B) For items priced using market-based pricing, a description of: the nature of the commercial market; the methodology used to establish a market-based price; and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description. If relevant sales data exist, the Offeror shall make such data available to the contracting officer for review within 10 days of a written request from the contracting officer; and

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price.

(c) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall prepare and submit certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Offeror agree to a different format and change this provision to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(d) *Requirements for data other than certified cost or pricing data.*

(1) Data other than certified cost or pricing data submitted in accordance with this provision shall include all data necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS 215.402 and DFARS 215.404–1.

(2) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the offeror or prospective subcontractor in its business operations.

(3) The Offeror shall provide information described as follows: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403–3.]*

(4) Within 10 days of a written request from the contracting officer to the offeror for additional information to support proposal analysis, the Offeror shall either provide the requested information, or provide a written explanation for the inability to fully comply with the request. Before providing an explanation for noncompliance, offerors are encouraged to clarify the request with the contracting officer.

(5) *Subcontract price evaluation.*

(i) Offerors shall obtain from subcontractors whatever information is necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS art 215. It may include cost data to support a commerciality determination, cost realism analysis, should-cost review, or any other type of analysis addressed by FAR part 15 and DFARS part 215. The data needed from a prospective subcontractor may include data other than certified cost or pricing data (which includes uncertified cost data obtained from the subcontractor), and information on the prices at which the same or similar items have previously been sold.

(ii) No additional cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary to support the conclusion that—

(A) The items are technically similar; and,

(B) Any dissimilarities should not produce a material price difference.

(e) The Offeror shall require all prospective subcontractors above the simplified acquisition threshold in FAR part 2 to adhere to the requirements of paragraph (c) of this provision when determining that the proposed prices from prospective lower-tier subcontractors are fair and reasonable.

(End of provision)

Alternate I. As prescribed in 215.408(6)(i) and (6)(i)(B), use the following provision, which includes a different paragraph (c)(1).

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Alternate I (DATE)

(a) *Definitions.* As used in this provision—

Nongovernment sales means sales of the supplies or services to nongovernmental entities for purposes other than governmental purposes.

Market-based pricing means pricing that results when nongovernmental buyers drive the price in a commercial marketplace. When nongovernmental buyers in a commercial marketplace account for a preponderance (50 percent or more) of sales by volume of a particular item, there is a strong likelihood the pricing is market based.

Relevant sales data means the subset of an offeror's sales data that, as considered by a prudent person, could reasonably be expected to influence the contracting officer's determination of price reasonableness, taking into consideration the age, volume, and nature of the transactions (including any

related discounts, refunds, rebates, offsets or other adjustments) in the data subset.

Sufficient nongovernment sales to establish reasonableness of price (see DFARS 215.402(a)(3)(A)) exist when relevant sales data reflects market-based pricing, are made available for the contracting officer to review, and contains enough information to make adjustments covered by FAR 15.404 1(b)(2)(ii)(B).

(b) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For items priced based on a catalog—

(*1*) A copy of the offeror's current catalog showing the price for that item; and

(*2*) Either of the following two alternative statements, included in the proposal:

(*i*) ''The catalog provided with this proposal is consistent with all relevant sales data (including any related discounts, refunds, rebates, offsets or other adjustments). Relevant sales data shall be made available upon request of the contracting officer.''

(*ii*) ''The catalog provided with this proposal is not consistent with all relevant sales data, due to the following: *[Insert a detailed description of differences or inconsistencies between or among the relevant sales data, the proposed price, and the catalog price (including any related discounts, refunds, rebates, offsets or other adjustments).]*'';

(B) For items priced using market-based pricing, a description of the nature of the commercial market; the methodology used to establish a market-based price; and all relevant sales data. The description shall be adequate to permit the Department of Defense to verify the accuracy of the description. If relevant sales data exist, the Offeror shall make such data available to the contracting officer for review within 10 days of a written request from the contracting officer; and

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price.

(c) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: *[Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.408, Table 15–2, Note 2. The description may be inserted at the time of issuing the solicitation, or the Contracting Officer may specify that the format regularly maintained by the offeror or prospective subcontractor in its business operations will be acceptable, or the description may be inserted as the result of negotiations].*

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2.

(d) *Requirements for data other than certified cost or pricing data.*

(1) Data other than certified cost or pricing data submitted in accordance with this provision shall include all data necessary to permit a determination that the proposed price is fair and reasonable, to include the requirements in DFARS 215.402 and DFARS 215.404–1.

(2) In cases in which uncertified cost data is required, the information shall be provided in the form in which it is regularly maintained by the offeror or prospective subcontractor in its business operations.

(3) The Offeror shall provide information described as follows: *[Insert description of the data and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with FAR 15.403–3.]*

(4) Within 10 days of a written request from the contracting officer to the offeror for additional information to support proposal analysis, the Offeror shall either provide the requested information, or provide a written explanation for refusing to comply with the request. Before providing a refusal and explanation, offerors are encouraged to clarify the request with the contracting officer.

(5) *Subcontract price evaluation.*

(i) Offerors shall obtain from subcontractors whatever information is necessary to support a determination of price reasonableness, as described in FAR part 15 and DFARS part 215. The information may include cost data to support a commerciality determination, cost realism analysis, should-cost review, or any other type of analysis addressed by FAR part 15 and DFARS part 215. The data needed from a prospective subcontractor may include data other than certified cost or pricing data (which includes uncertified cost data obtained from the subcontractor), and information on the prices at which the same or similar items have previously been sold.

(ii) No additional cost information may be required from a prospective subcontractor in any case in which there are sufficient nongovernment sales of the same item to establish reasonableness of price.

(iii) If the offeror relies on relevant sales data for similar items to determine the price is reasonable, the Offeror shall obtain only that technical information necessary to support the conclusion that—

(A) The items are technically similar; and

(B) Any dissimilarities should not produce a material price difference.

(e) The Offeror shall require all prospective subcontractors above the simplified acquisition threshold in FAR part 2 to adhere to the requirements of paragraph (c) of this provision when determining that the proposed prices from prospective lower-tier subcontractors are fair and reasonable.

(End of provision)

■ 11. Add section 252.215–70YY to read as follows:

252.215–70YY Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor.

As prescribed in 215.408(6)(iii), use the following provision:

Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor (DATE)

When the proposal is submitted, the Offeror shall also submit one copy each to—

(a) The Administrative Contracting Officer, and

(b) The Contract Auditor.

(End of provision)

■ 12. Add section 252.215–70ZZ to read as follows:

252.215–70ZZ Requirements for Submission of Proposals via Electronic Media.

As prescribed in 215.408(6)(iv), use the following provision:

Requirements for Submission of Proposals Via Electronic Media (DATE)

The Offeror shall submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.].*

(End of provision)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 140725620–4620–01]

RIN 0648–BE43

Endangered and Threatened Species: Proposed Regulations for the Designation of Experimental Populations Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose regulations to amend the Code of Federal Regulations (CFR) to implement the Endangered Species Act (ESA) regarding experimental populations. The CFR would be amended to establish definitions and procedures for: establishing and/or designating certain populations of species otherwise listed as endangered or threatened as experimental populations; determining whether experimental populations are ''essential'' or ''nonessential;'' and promulgating appropriate protective measures for experimental populations. We seek public comment on this proposal.

DATES: To allow us adequate time to consider your comments on this proposed rule, they must be received no later than October 2, 2015.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2014–0104, by any of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0104.*

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

—or—

- Mail: Submit written comments to Dwayne Meadows, Endangered Species Division F/PR3, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713–4060.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

Congress amended the ESA in 1982 (Pub. L. 97–304). Among the changes made to the law at that time was the addition of a new section, 10(j), which established procedures for designating a specific population of a listed species as an ''experimental population.'' Prior to the 1982 amendments we, and the U.S. Fish and Wildlife Service (USFWS), which implements the ESA for terrestrial, freshwater, and some other species of wildlife and plants, were authorized to translocate a listed species into unoccupied portions of its range in order to aid in the recovery of the species. Significant opposition to translocation efforts often occurred, however, usually due to concerns over the rigid protections and prohibitions applicable to these translocated populations. ESA section 10(j) was designed to resolve these conflicts by providing new administrative flexibility for selectively applying the prohibitions of the ESA to experimental populations of listed species (see, *e.g.,* H.R. Rep. No. 567, 97th Cong. 2d Sess. 34 (1982)).

Section 10(j)(1) of the ESA (16 U.S.C. 1539(j)(1)) defines an experimental population as a population that has been authorized for release by the Secretary of Commerce (Secretary) or Secretary of Interior, but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. The Secretary may authorize the release (and related transportation) of any experimental population (including eggs, propagules, or individuals) of a listed species outside of the species' current range if the Secretary determines that the release would ''further the conservation of'' the listed species (16 U.S.C. 1539(j)(2)(A)). Section 10(j)(2)(B) also requires that, before authorizing the release of an experimental population, the Secretary ''identify'' the experimental population by regulation and determine, based on the best available information, whether the experimental population is ''essential to the continued existence'' of the listed species (16 U.S.C. 1539(j)(2)(B)).

Section 10(j) of the ESA further establishes that an experimental population shall be treated as a threatened species under the ESA, with two exceptions that apply if an experimental population is determined to be not essential to the listed species' continued existence (*i.e.,* is nonessential): (1) A nonessential experimental population (NEP) shall be treated as a species proposed for listing for purposes of section 7 of the ESA, except when the NEP occurs in an area within the National Wildlife Refuge System or the National Park System; and (2) critical habitat shall not be designated for a NEP. Treatment of an experimental population as ''threatened'' under the ESA enables the Secretary to issue regulations under the authority of section 4(d) of the ESA that he or she deems necessary and advisable to provide for the conservation of the species, which may be less restrictive than taking prohibitions applicable to endangered species under ESA section 9. For essential experimental populations, treatment as a threatened species also means ESA section 7(a)(2) applies, requiring each Federal agency to consult with us to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of the experimental population or result in the destruction or adverse modification of the experimental population's critical habitat. When a NEP occurs within the National Wildlife Refuge System or National Park System, it also must be treated as a threatened species for the purposes of ESA section 7, and section 7(a)(2) consultations are required. Under the first exception described above, however, the only provisions of section 7 that apply to a NEP outside of a National Wildlife Refuge or National Park are sections 7(a)(1) and 7(a)(4). Section 7(a)(1) requires that Federal agencies use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species. Section 7(a)(4) requires Federal agencies to confer,

rather than consult, with us on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature.

The provisions of section 10(j) of the ESA, as summarized above, introduce some terminology and concepts that are not otherwise used or defined in the ESA or in our current implementing regulations. These terms and concepts include: ''further the conservation of,'' ''experimental population,'' identifying an experimental population, and determining whether an experimental population is essential to the continued existence of the species. The USFWS promulgated regulations in 1984 (49 FR 33885, August 27, 1984) to guide their implementation of ESA section 10(j) (50 CFR 17.80 through 17.83), including provisions related to the terms and concepts noted above. The USFWS has designated dozens of experimental populations using those regulations (see 50 CFR 17.84 through 17.85). Although the USFWS regulations do not govern regulatory actions by NMFS, we have explicitly considered those regulations recently in the only three experimental population designations we have made: Middle Columbia River steelhead trout in the Deschutes River Basin (78 FR 2893, January 15, 2013); Central Valley spring-run Chinook Salmon in the San Joaquin River (78 FR 79622, December 31, 2013); and upper Columbia River spring-run Chinook Salmon in the Okanogan River Subbasin (79 FR 40004, July 11, 2014).

We believe that there is a need for us to have regulations laying out NMFS's interpretation of and procedures for implementing ESA section 10(j), beyond what Congress has specifically directed, just as USFWS did in their section 10(j) implementing regulations. Now that we have gained some experience in designating experimental populations, we are in a position to develop our own implementing regulations for ESA section 10(j) that will help provide clarity and reduce uncertainty for the public about our future practices. In developing this proposal, we reviewed the ESA, legislative history of the 1982 ESA amendments, existing USFWS ESA section 10(j) regulations, public comments from the USFWS rulemaking to develop their ESA section 10(j) regulations, and relevant public comments from our own recent experimental population designations, and we consulted with USFWS staff. We then convened a group of NMFS staff with experience in ESA section 10(j) designations to help develop this proposal. In the following sections, we discuss our proposed regulations section by section. We compare our proposal to the existing USFWS regulations to make clear the areas where our regulations will differ from the USFWS regulations. We strove to maintain consistency between our proposed regulations and the existing USFWS regulations as much as possible to provide for consistent implementation of ESA section 10(j) between the agencies, but we are proposing changes we believe are necessary to implement the statutory requirements in a manner appropriate for species under NMFS' jurisdiction. NMFS' intent when designating an experimental population under ESA section 10(j) is that the population will retain that designation until the donor species is delisted, or until, for some unforeseen reason, the experimental population fails, for example, due to lack of donor stock or problems with implementation.

Definitions

Section 10(j) of the ESA states that an ''experimental population'' means ''any population (including any offspring arising solely there from) authorized by the Secretary for release under [section 10(j)(2)], but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.'' Where members of an experimental population overlap with natural populations of the same species, they are not deemed to be an experimental population. In its ESA section 10(j) regulations at 50 CFR 17.80, USFWS added that a population shall be treated as experimental only when the times of geographic separation are ''reasonably predictable'', for example, with ''fixed migration patterns, natural or man-made barriers.'' They further stated that ''[a] population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.'' USFWS full definition of ''experimental population'' is:

> ''The term experimental population means an introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as the population is wholly separate geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with natural populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; *e.g.,* fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.''

We believe USFWS's interpretation is applicable for situations in which complete temporal or physical barriers exist that ensure the geographic isolation of an experimental population for at least part of the year or life cycle of the individuals in the experimental population. Thus, we propose to adopt the same definition as USFWS for ''experimental population,'' with two small changes. First, we propose to substitute ''any'' for the word ''an'' in the first sentence of USFWS's definition, to match the statutory language. Second, in the second sentence of their definition, USFWS uses the word ''natural'' to distinguish populations not designated as experimental from experimental populations. In our experience with our species, the term natural can be confusing when dealing with situations where some nonexperimental animals or populations derive from hatchery, aquaculture, or other captive breeding programs (*e.g.,* such programs for salmonids). Therefore, we propose to substitute the word ''nonexperimental'' for ''natural'' in the definition to improve clarity for species under NMFS's jurisdiction.

Therefore, we propose that an ''experimental population'' means ''any introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart [of the regulations] but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with nonexperimental populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; *e.g.,* fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.''

In order to implement ESA section 10(j) for any new experimental population, the ESA requires a determination as to whether or not the experimental population is essential to the continued existence of the species. ESA section 10(j), however, does not provide a definition of an ''essential experimental population.'' The USFWS defined an ''essential experimental population'' as an experimental population ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild,'' and stated that ''[a]ll other experimental populations are to be classified as nonessential.'' This definition closely follows language in the report of the Congressional Conference Committee when the 1982 ESA amendments were passed (see Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 97–835 (1982), at 15). Here again we believe the definition used by USFWS is helpful, is consistent with congressional intent and has worked well to date; and we recognize that adopting an identical definition for this fundamental term will provide consistency between NMFS and USFWS in the implementation of ESA section 10(j). We therefore propose to adopt the same definition as USFWS.

Listing

The beginning of the ''Listing'' section of the USFWS section 10(j) regulations (50 CFR 17.81(a)) describes the experimental population designation process and specifies that it is the Secretary of the Interior who has the authority to designate and release an experimental population of a listed species under USFWS jurisdiction into suitable habitat outside of the species' current natural range. In our proposed regulations, we similarly specify that it is the Secretary of Commerce who has the authority to designate and release an experimental population for species under our jurisdiction.

Consistent with the general intent of Congress with regard to the adoption of regulations and the specific requirement in ESA section 10(j)(2)(B) that an experimental population be identified by regulation, USFWS included a requirement that regulations designating experimental populations be adopted in accordance with 5 U.S.C. 553 (see 50 CFR 17.81(a)), which contains the informal rulemaking provisions of the Administrative Procedure Act. Therefore, we propose to adopt this provision as well.

Current Range

The USFWS regulations at 50 CFR 17.81(a) provide for the designation of an experimental population that has been or will be released into suitable habitat ''outside the current natural range'' of the species. However, ESA section 10(j)(2)(A) only uses the phrase ''outside the current range'' rather than ''outside the current natural range'' to identify the geographic area in which an experimental population is authorized for release. Further, there is no definition of ''range'', ''current range,'' or ''current natural range'' in the ESA or 50 CFR parts 222 (NMFS ESA implementing regulations) or 424 (Joint NMFS/USFWS ESA implementing regulations). The USFWS ESA section 10(j) regulations at 50 CFR 17.80 through 17.83 also do not define ''natural''. Based on our experience with our species, we do not believe addition of the word ''natural'' in the phrase ''outside the current range'' is necessary for our species. Therefore, we do not propose to include the word ''natural'' as a qualifier for the current range of a species.

The USFWS regulations at 50 CFR 17.81(a) also establish a limitation that release of an experimental population outside of the probable historic range of a species is allowed only if the Director of the USFWS makes a finding that ''the primary habitat of the species has been unsuitably and irreversibly altered or destroyed.'' This provision is not required under the ESA, and we believe it unnecessarily limits our ability to implement section 10(j) of the ESA in a manner that conserves our listed species. Therefore, we do not include this language in our proposed rule.

Furthering the Conservation of the Species

As noted above, ESA section 10(j) requires that before authorizing the release of an experimental population outside the current range of the species, the Secretary must determine that such release will further the conservation of the species. The ESA provides little guidance on how to make such a determination. The ESA does define ''conservation'' as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary.'' In their ESA section 10(j) regulations, USFWS identified four factors that, using the best scientific and commercial data available, they consider in making a finding that the experimental population release will further the conservation of the species: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) The likelihood that any such experimental population will become established and survive in the foreseeable future; (3) The relative effects that establishment of an experimental population will have on the recovery of the species; and (4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (50 CFR 17.81(b)).

The first factor USFWS considers is related to effects on the source populations of the organisms used to establish or enhance an experimental population. The remaining three factors they consider relate to the likelihood or extent the experimental population will survive, thrive, and contribute to the recovery and conservation of the species. These three factors focus on key steps in the implementation of an experimental population: (1) initial establishment, (2) the contribution of an established experimental population to the recovery of the listed species, and (3) the effect any nearby human activities might have on the experimental population and its potential contribution to the species recovery.

We have found that using the list of factors developed by USFWS gives the public adequate general information about how we plan to interpret the provision for ''furthering the conservation of the species,'' without introducing needless complexity. In rulemakings we have already completed to designate experimental populations (see above), we have provided detailed discussions of relevant species-specific information that we considered in order to make the ''further the conservation of'' finding based on these four factors, and we intend to continue this practice in future rulemakings. We also note the desirability of maintaining consistency between our regulations and those of USFWS. Therefore, we propose to adopt the same language and four factors as the USFWS regulations for making the determination that release of an experimental population will further the conservation of the species, with two small editorial revisions. First, we added a comma in the second sentence of paragraph (b) because it is appropriate grammatically. Second, the third factor in USFWS's regulations says USFWS will consider the ''relative effects'' the experimental population will have on recovery of the species. In our experience with our species, we have found the term ''relative'' in this factor is superfluous, and we therefore

do not include it in our proposal. Neither of these changes is intended to make our proposed regulation functionally different than USFWS's corresponding regulation.

Identification of the Experimental Population

In their ESA section 10(j) implementing regulations, USFWS requires that any regulation designating an experimental population shall provide, among other things, ''[a]ppropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s)'' (50 CFR 17.81(c)(1)). We believe these examples of means of identifying an experimental population are relevant and helpful, and we propose to include them in our regulations. However, we add the qualifier ''if appropriate'' to our proposal to make it clear that not all of the listed means will be relevant to each experimental population designation for our species. With the addition of the ''if appropriate'' qualifier, we also change the commas separating the examples to semicolons to more clearly separate them.

Finding Whether the Experimental Population Is or Is Not Essential

The USFWS ESA section 10(j) regulations at 50 CFR 17.81(c)(2) incorporate the requirement of the ESA that the designation of an experimental population include a determination as to whether the experimental population is essential to the continued existence of the listed species. The language is as follows: ''(c) Any regulation promulgated under paragraph (a) of this section shall provide: . . . (2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild[.]'' Based on our experience, this language is adequate to describe the statutory requirement, and we propose to adopt identical language. We have already discussed above that we will adopt the same definition as the USFWS regulations for ''essential experimental population.''

Protective Measures

In 50 CFR 17.81(c)(3) of their ESA section 10(j) regulations, USFWS establishes that their rulemakings for designating experimental populations will also provide: ''Management restrictions, protective measures, or other special management concerns of that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations[.]'' This provision addresses the linkage between designating experimental populations under section 10(j) of the ESA and implementing companion protective regulations under ESA section 4(d). The language also specifies actions needed to successfully implement an experimental population release. We agree that it is helpful to clarify the relationship between sections 4(d) and 10(j) of the ESA and the intent of Congress and the agency in implementing ESA section 10(j). Based on our experience with our species, however, we believe additional clarifying language in this section is appropriate for our species.

We believe this section should make it clear that management restrictions, protective measures, and other special management concerns would be applied to an experimental population *as appropriate* to the specific situation as not all of these measures would be applicable for all of our species. We therefore add this clarification to our proposed regulatory language. Second, we again propose using the word ''nonexperimental,'' instead of the word ''natural,'' to describe nonexperimental populations, as discussed above. Third, we add language to further clarify the distinction between regulations adopted under the provisions of ESA section 4(d) and those adopted under ESA section 10(j). Finally, we add a comma after ''include,'' because it is appropriate grammatically to separate the ''but are not limited to'' clause. These clarifications are not intended to make our proposed regulations functionally differ from those of USFWS. Therefore, our proposed regulatory language is: ''Management restrictions, protective measures, or other special management concerns of that population, as appropriate, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations and protective regulations established pursuant to section 4(d) of the Act.''

Periodic Review

50 CFR 17.81(c)(4) of the USFWS section 10(j) regulations requires that any regulation designating an experimental population shall provide a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. We agree with this provision to help ensure the success of experimental population designations and to formally and publicly review these designations. We note that the ESA requires that we conduct a status review every 5 years for each listed species under our jurisdiction. We intend to use the 5 year review process for tracking the status of experimental populations and ensuring that experimental population designations further the conservation of the species as expected.

Permits To Allow Establishment and Maintenance of an Experimental Population

In their ESA section 10(j) regulations, USFWS notes that they may issue a permit under section 10(a)(1)(A) of the ESA, if appropriate under the standards set out in subsections 10(d) and (j) of the ESA, to allow acts necessary for the establishment and maintenance of an experimental population. This provision highlights the intent of Congress that experimental populations be implemented through provisions of the ESA and provides the relevant mechanism by which this would normally occur. Our implementing practices are similar to those of USFWS, and we therefore propose to include this provision in our regulations, with some edits solely to improve clarity and streamline the provision. In the USFWS regulations at 50 CFR 17.81, this provision is an un-numbered sentence as part of paragraph (4) under subparagraph (b), which otherwise deals with the factors to consider in making a determination that an experimental population will further the conservation of the species. In order to emphasize the provision as a stand-alone provision and to make it easier to directly cite, in our proposed rule we place this provision in its own numbered subparagraph (d). We also propose to not include the following phrase from the USFWS regulations: ''under the standards set out in subsections 10(d) and (j) of the ESA,'' because the phrase is unnecessary. Under the provisions of the statute, any permit for an experimental population issued under ESA section 10(a)(1)(A) would have to meet the standards set out in those subsections, so it is not necessary to explicitly list the subsections in the regulations. Our proposed regulations will thus read, ''The Secretary may issue a permit under section 10(a)(1)(A) of the Act, if appropriate, to allow acts necessary for the establishment and maintenance of an experimental population.''

Stakeholder Consultations

In their regulations implementing ESA section 10(j), USFWS establishes that, in the process of developing and implementing experimental population rules, they will consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners, including through public meetings, when appropriate (50 CFR 17.81(d)). USFWS further establishes in this paragraph that, to the maximum extent practicable, any regulation promulgated pursuant to this section shall represent an agreement between USFWS, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population. We strongly believe that consultations with affected parties are critical to the success of experimental population designations and propose to adopt this language in our regulations. We believe that our trust responsibilities with regard to tribal governments warrant explicitly including consultation with tribes in our ESA section 10(j) regulations. We have therefore listed tribal governments in our proposal. This addition is not intended to suggest that USFWS's regulations do not allow for consultation with tribal governments, and, in fact, USFWS has consulted with tribal governments on ESA section 10(j) designations. Therefore, listing tribal governments in our regulations would not make our provision functionally differ from the corresponding provision in USFWS's regulations. We would just like to explicitly list tribal governments in our regulations based on our experience with our species. In fact, tribal governments have been integral in the development of experimental populations we have already designated (see above).

We propose one other addition in this section of our regulations. The USFWS regulations at 50 CR 17.81(d) identify persons holding an interest in land which may be affected by an experimental population designation as a stakeholder group to be consulted. Based on our experience and work in aquatic habitat and the fact that all of our species are aquatic species, we believe the addition of persons holding interests in water (*i.e.,* aquatic habitat), which may be affected by an experimental population designation, as an additional stakeholder group is warranted and have included that addition in this proposed rule.

Location of Experimental Population Regulations in the Code of Federal Regulations

In their ESA section 10(j) regulations, USFWS provides that special rules relating to a designation of an experimental population will be published in specific sections of the CFR as appropriate, and that experimental populations will be separately listed in the lists of threatened and endangered plants and animals in the CFR as appropriate. In our proposed regulations, we similarly state that our regulations relating to specific experimental populations will continue to be published in Title 50, part 223 of the CFR, with our regulations related to threatened species, and that our designated experimental populations also will be separately listed in the lists of threatened and endangered plants and animals in the CFR as appropriate. We note that the regulations relating to listing and designation of an experimental population that are being proposed in this rulemaking would be published in Title 50, part 222 of the CFR, with our other ESA implementing regulations.

Critical Habitat for Experimental Populations Determined To Be Essential

The Secretary may designate critical habitat, as defined in section (3)(5)(A) of the ESA, for an experimental population determined to be essential (but not for populations determined to be nonessential). In their ESA section 10(j) regulations, USFWS emphasizes that the designation of critical habitat for an essential experimental population will be made in accordance with section 4 of the ESA (50 CFR 17.81(f)). We agree that emphasizing the provisions of ESA section 4 in the ESA section 10(j) regulations is useful, and we therefore propose to include the same language in our regulations. In our proposed regulations, we made two changes from the language in 50 CFR 17.81(f), however. First, the USFWS regulations say: ''No designation of critical habitat will be made for nonessential populations.'' We add the word ''experimental'' after ''nonessential,'' to emphasize that the nonessential populations are, in fact, ESA section 10(j) experimental populations.

Second, in their regulations, USFWS adds additional language regarding critical habitat for experimental populations (50 CFR 17.81(f)). The language USFWS uses is: ''In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat will be designated for the area of overlap, unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself.'' This language is not included in the ESA, and in our experience with our species this language has been unnecessary to understand and implement the relevant provisions of the ESA. We therefore do not include this language in our proposed rule.

Prohibitions

The USFWS ESA section 10(j) regulations at 50 CFR 17.82 reiterate the ESA section 10(j) provision that each member of an experimental population shall be treated as if it were listed as a threatened species and add that this applies for purposes of establishing protective regulations under section 4(d) of the ESA. Based on our experience with our species, even with the language in 50 CFR 17.82, stakeholders still have questions regarding the relationship between ESA sections 10(j) and 4(d). Therefore, we propose modified language for our regulations to clarify and explain in more detail the relationship between these two sections. This modified language is not intended to function differently or lead to different outcomes than the USFWS language, but is only intended to provide greater explanation about the relationship between ESA sections 10(j) and 4(d). The first sentence would read the same as 50 CFR 17.82: ''Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population.'' However, we propose to replace the second sentence of the USFWS regulations at 50 CFR 17.82 (''The Special rules (protective regulations) adopted for an experimental population under § 17.81 will contain applicable prohibitions, as appropriate, and exceptions for that population.'') with the following text in our regulations: ''Accordingly, when designating, or revising, an experimental population under section 10(j) of the Act, the Secretary may also exercise his or her authority under section 4(d) of the Act to include protective regulations necessary and advisable to provide for the conservation of such species as part of the special rule for the experimental population. Any protective regulations applicable to the species from which the experimental population was sourced do not apply to the experimental

population unless specifically included in the special rule for the experimental population.''

Interagency Cooperation

In their regulations implementing ESA section 10(j), USFWS includes a section on provisions related to interagency cooperation under section 7 of the ESA (50 CFR 17.83) that describes what types of analyses are conducted under ESA section 7 with respect to experimental populations. Much of this section reiterates language in section 10(j) of the ESA itself (see ESA section 10(j)(2)(C)). However, USFWS does include an additional provision that any biological opinion prepared pursuant to section 7(b) of the ESA and any agency determination made pursuant to section 7(a) of the ESA ''shall consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.''

We propose to adopt the language used by USFWS in 50 CFR 17.83(a) and (b) in our own regulations, with the addition of citations to the relevant parts of ESA section 7 that are referenced in each subparagraph (*i.e.,* section 7(a)(4) in subparagraph (a) and section 7(a)(1) in subparagraph (b)) for ease of reference, to direct the reader to the applicable part of the ESA, and with the addition of the phrase ''of the Act'' in paragraph (a) to explicitly specify that the regulation refers to section 7 of the statute. However, we do not propose to include the additional USFWS provision quoted above related to ESA section 7, as section 10(j) of the ESA and our proposed regulations already describe how ESA section 7 is to be implemented with respect to experimental populations, and based on our experience, this additional language is unnecessary for our species. None of these differences are intended to cause our regulation to functionally differ from USFWS's corresponding regulation.

Relationship to Existing Experimental Populations

We have already designated three experimental populations of salmonids (see above). We do not intend the proposed implementing regulations herein to require us to review or revise those designations. We do not believe the implementing regulations we are proposing in this proposed rule would meaningfully alter the findings we came to in our prior designations and rulemakings.

Request for Information

We intend that any rule finally adopted be as effective as possible in implementing the ESA. Any final regulation based on this proposal will consider information and recommendations timely submitted from all interested parties. Therefore, we solicit comments, information, and recommendations on this proposed regulation from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties. Comments should be as specific as possible and refer to sections and paragraphs involved. Specifically we request information and comments on:

(1) The terms we define above and in the proposed regulations, and

(2) The proposed listing and experimental population designation process and considerations.

This rulemaking does not materially modify our current methods and procedures for designating experimental populations.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (Section 515 of Pub. L. 106–554), which was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this proposed rule that meet this criteria.

Classification

Executive Order 12866

This proposed rule has been determined to be not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notification of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation, Department of Commerce, will certify to the Chief Counsel for Advocacy at the Small Business Administration that this proposed rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The proposed regulations clarify how we implement the provisions of section 10(j) of the ESA. The proposed regulations do not materially alter our current practices. The proposed regulations do not expand our reach. We are the only entity that is directly affected by this proposed rule because we are the only entity that can designate experimental populations of threatened or endangered species under NMFS jurisdiction. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this proposed rule. Therefore, the only potential effect on any external entities large or small would likely be positive, through reducing any uncertainty on the part of the public about our process for designating experimental populations by formalizing our practices and procedures.

Executive Order 12630

In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required because this rulemaking: (1) Would not effectively compel a property owner to have the government physically invade property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rulemaking would substantially advance a legitimate government interest (conservation and recovery of listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Executive Order 13132

In accordance with E.O. 13132, we have determined that this rule does not have federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NOAA's Administrative Order regarding NEPA compliance (NAO 216–6 (May 20, 1999)).

We have determined that this proposed rule is categorically excluded from NEPA documentation requirements, consistent with 40 CFR 1508.4. We have determined that this action satisfies the standards for reliance upon a categorical exclusion under NOAA Administrative Order (NAO) 216–6. Specifically, this action fits within the categorical exclusion for ''policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' NAO 216–6, section 6.03c.3(i). This action would not trigger an exception precluding reliance on the categorical exclusion because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats (*Id.* sec. 5.05c). As such, it is categorically excluded from the need to prepare an Environmental Assessment. In addition, we find that because this proposed rule will not result in any effects to the physical environment, much less any adverse effects, there would be no need to prepare an Environmental Assessment even aside from consideration of the categorical exclusion. See, *e.g., Oceana, Inc.* v. *Bryson,* 940 F. Supp. 2d 1029 (N.D. Cal. April 12, 2013). Issuance of this proposed rule does not alter the legal and regulatory status quo in such a way as to create any environmental effects. See, *e.g., Humane Soc. of U.S.* v. *Johanns,* 520 F. Supp. 2d. 8 (D.D.C. 2007).

Government-to-Government Relationship With Tribes (E.O. 13175)

E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes), we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

We invite all interested tribes to discuss the proposed rule with us at their convenience should they choose to have a government-to-government consultation.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

This proposed rule has been determined not to be a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 222

Endangered and threatened species.

Dated: July 24, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, part 222, of chapter II, title 50 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

■ 2. Add subpart E to part 222 to read as follows:

Subpart E—Experimental Populations

Sec.

Subpart E—Experimental Populations

§ 222.501 Definitions.

(a) The term *experimental population* means any introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with nonexperimental populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be

recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; *e.g.,* fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.

(b) The term *essential experimental population* means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as *nonessential.*

§ 222.502 Listing.

(a) The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable habitat outside the species' current range, subject to the further conditions specified in this section, *provided,* that all designations of experimental populations must proceed by regulation adopted in accordance with 5 U.S.C. 553 and the requirements of this subpart.

(b) Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Secretary must find by regulation that such release will further the conservation of the species. In making such a finding, the Secretary shall utilize the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

(c) Any regulation promulgated under paragraph (a) of this section shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location; actual or anticipated migration; number of specimens released or to be released, if appropriate; and other criteria appropriate to identify the experimental population(s);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;

(3) Management restrictions, protective measures, or other special management concerns of that population, as appropriate, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations and protective regulations established pursuant to section 4(d) of the Act; and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

(d) The Secretary may issue a permit under section 10(a)(1)(A) of the Act, if appropriate, to allow acts necessary for the establishment and maintenance of an experimental population.

(e) The National Marine Fisheries Service shall consult with appropriate State fish and wildlife agencies, affected tribal governments, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. When appropriate, a public meeting will be conducted with interested members of the public. Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the National Marine Fisheries Service, the affected State and Federal agencies and tribal governments, and persons holding any interest in land or water which may be affected by the establishment of an experimental population.

(f) Any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with this subpart shall be identified by special rule in part 223 as appropriate and separately listed in 50 CFR 17.11(h) (wildlife) or 50 CFR 17.12(h) (plants) as appropriate.

(g) The Secretary may designate critical habitat as defined in section (3)(5)(A) of the Act for an essential experimental population as determined pursuant to paragraph (c)(2) of this section. Any designation of critical habitat for an essential experimental population will be made in accordance with section 4 of the Act. No designation of critical habitat will be made for nonessential experimental populations.

§ 222.503 Prohibitions.

(a) Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population.

(b) Accordingly, when designating, or revising, an experimental population under section 10(j) of the Act, the Secretary may also exercise his or her authority under section 4(d) of the Act to include protective regulations necessary and advisable to provide for the conservation of such species as part of the special rule for the experimental population. Any protective regulations applicable to the species from which the experimental population was sourced do not apply to the experimental population unless specifically included in the special rule for the experimental population.

§ 222.504 Interagency cooperation.

(a) Any experimental population designated for a listed species determined pursuant to § 222.502(c)(2) not to be essential to the survival of that species and not occurring within the National Park System or the National Wildlife Refuge System, shall be treated for purposes of section 7 of the Act (other than this paragraph (a) thereof) as a species proposed to be listed under the Act as a threatened species, and the provisions of section 7(a)(4) of the Act shall apply.

(b) Any experimental population designated for a listed species that either has been determined pursuant to § 222.502(c)(2) to be essential to the survival of that species, or occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, shall be treated for purposes of section 7 of the Act as a threatened species, and the provisions of section 7(a)(2) of the Act shall apply.

[FR Doc. 2015–18894 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 80, No. 148
Monday, August 3, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/srnf/workingtogether/advisorycommittee.*

DATES: The meeting will be held September 1, 2015, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest (NF) Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, RAC Coordinator, by phone at 707–441–3562 or via email at *hwright02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

- Provide updates regarding status of Secure Rural Schools Title II program and funding; and
- Review and recommend potential projects eligible for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 21, 2015 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Lynn Wright, RAC Coordinator, Six Rivers NF Office, 1330 Bayshore Way, Eureka, CA 95501; by email to *hwright02@fs.fed.us,* or via facsimile to 707–445–8677.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: July 25, 2015.

Merv George Jr.,

Forest Supervisor.

[FR Doc. 2015–18937 Filed 7–31–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request To Conduct a New Information Collection

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection to gather data related to the costs incurred by farmers to improve the pollination of their crops through the use of honey bees and other pollinators.

DATES: Comments on this notice must be received by October 2, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Cost of Pollination Survey.

OMB Control Number: 0535—NEW.

Type of Request: Intent to seek approval to conduct a new information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture, and also to conduct the Census of Agriculture.

Pollinators (honey bees, bats, butterflies, hummingbirds, etc.) are vital

to the agricultural industry for pollinating numerous food crops for the world's population. Concern for honey bee colony mortality has risen since the introduction of *Varroa* mites in the United States in the late 1980s and the appearance of Colony Collapse Disorder in the past decade.

In the Pollinator Research Action Plan, the President's Pollinator Health Task Force identified nearly 200 tasks that need to be conducted and coordinated from across the government to research all aspects of pollinator health and to come up with suggestions for improving this vital part of our food system. The Task Force's plan will involve conducting research and collecting data for the following categories: Status & Trends, Habitats, Nutrition, Pesticides, Native Plants, Collections, Genetics, Pathogens, Decision Tools, and Economics. The pollinators have been classified into Honey Bee, Native Bee, Wasp, Moth/Butterfly, Fly, and Vertebrate. The departments that will conduct the bulk of the research are the Department of the Interior (DOI), the Environmental Protection Agency (EPA), the National Science Foundation (NSF), the Smithsonian Institute (SI), and the United States Department of Agriculture (USDA).

NASS has been given the tasks of collecting economic data related to honey bees and quantifying the number of colonies that were lost or reduced. NASS was approved to conduct the Quarterly and Annual Colony Loss Surveys under OMB approval number 0535–0255. NASS plans to also collect the economic data under this new collection. NASS collects data from crop farmers who rely on pollinators for their crops (fruits, nuts, vegetables, etc.). Data relating to the targeted crops will be collected for the total number of acres that rely on honey bee pollination, the number of honey bee colonies that were used on those acres, and any cash fees associated with honey bee pollination. Crop Farmers will also be asked if beekeepers who were hired to bring their bees to their farm were notified of pesticides used on the target acres, how many acres they were being hired to pollinate, and how much they were being paid to pollinate the targeted crops.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and the Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register,** Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response. Publicity materials and an instruction sheet for reporting via internet will account for 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Once a year, NASS will contact approximately 53,000 crop farmers who rely on honey bees to pollinate their fruit, nut, vegetable, and other crops. NASS will conduct the annual survey initially using a mail and internet approach. This will be followed up with phone and personal enumeration for non-respondents. NASS will attempt to obtain at least an 80% response rate.

Respondents: Farmers.

Estimated Number of Respondents: 53,000.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80%, we estimate the burden to be 13,400 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 24, 2015.

Joseph T. Reilly,

Administrator.

[FR Doc. 2015–18975 Filed 7–31–15; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Solicitation of Applications (NOSA) for the Multifamily Preservation and Revitalization (MPR) Demonstration Program Under Section 514, Section 515, and Section 516 for Fiscal Year 2015

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (Agency) announces the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing Rural Rental Housing (RRH) projects under Section 514, Section 515, and Section 516 of the Housing Act of 1949, as amended. Under this demonstration program, existing Section 515 Multi-Family Housing (MFH) loans and Sections 514/516 Off-Farm Labor Housing (FLH) loans will be restructured to ensure sufficient resources are available to preserve the ability of rental projects to provide safe and affordable housing for very low-, low-, or moderate-income residents. Projects participating in this program will be expected to be revitalized to extend their affordable use without displacing tenants because of increased rents. No additional Agency Rental Assistance (RA) will be made available under this program.

DATES: For Fiscal Year 2015, the Agency will facilitate use of the Fiscal Year 2015 Multifamily Preservation and Revitalization (MPR) funding tools by holding a competitive application round for MPR applications requesting other MPR funding tools, in addition to the available MPR deferral assistance, and by adding a continuous open application process for any transfer applications that request only the MPR loan deferral assistance. Application deadlines for these opportunities are:

(1) For MPR applications requesting debt deferral of eligible Section 514 or Section 515 loans, plus other MPR funding tools, complete applications must be received no later than 5:00 p.m. Eastern Time,120 calendar days after August 3, 2015, and

(2) For any MPR applications requesting debt deferral only for eligible Section 514 or Section 515 loans, complete applications may be submitted on an ongoing basis through COB 5:00 p.m. Eastern Time, December 31, 2015.

The pre-application closing deadline is firm as to date and hour. The Agency will not consider any pre-application that is received after the closing deadline. Applicant's intending to mail

pre-applications must allow sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage-due pre-applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Dean Greenwalt, *dean.greenwalt@wdc.usda.gov,* (314) 457–5933, and/or Abby Boggs *abby.boggs@wdc.usda.gov,* (615) 783 1382, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782, (Room 1263–S) U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0782. All hard copy pre-applications and required documents (attachments) must be submitted to this address. (Please note these telephone numbers are not a toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Fiscal Year (FY) 2015 funding for the MPR demonstration program will be posted on the Rural Development Web site, *www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* The commitment of program dollars will be made to applicants of selected applications that have fulfilled the necessary requirements for obligation, to the extent an appropriation act provides funding for the MPR demonstration program.

Expenses incurred in applying for this Notice will be borne by and be at the applicant's risk.

Of particular note this year, the Rural Housing Service (the Agency) will assign additional points to pre-applications for projects based in or serving census tracts with poverty rates greater than or equal to 20 percent. This emphasis will support Rural Development's (RD) mission of improving the quality of life for Rural Americans and commitment to directing resources to those most in need.

A synopsis of this program and the pre-application's universal resource locator will be listed by Catalog of Federal Domestic Assistance Number or at Federal Grants Wire at *http://www.federalgrantswire.com.*

Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570–0190.

Overview

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Multifamily Preservation and Revitalization Demonstration Program—Section 514, Section 515, and Section 516 for Fiscal Year 2015.

Announcement Type: Inviting responses in the form of pre-applications from interested applicants.

Catalog of Federal Domestic Assistance Number (CFDA): 10.447.

I. Funding Opportunity Description

The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, signed December 16, 2014, authorized the Agency to conduct a demonstration program for the preservation and revitalization of the Section 515 MFH portfolio and Sections 514/516 Off-FLH portfolio. Section 514, Section 515 and Section 516 MFH programs are authorized by the Housing Act of 1949, as amended (42 U.S.C. 1484, 1485 and 1486) and provide Rural Development with the authority to provide financial assistance for low- income MFH and FLH and related facilities, as described in 7 CFR part 3560.

This Notice solicits pre-applications from interested borrowers/applicants to restructure existing MFH projects already participating in the Agency's Section 515 MFH portfolio and Sections 514/516 FLH portfolio for the purpose of revitalization and preservation. Eligible borrowers are sometimes referred to in this Notice as ''applicants,'' ''borrowers,'' ''applicant/borrowers,'' or ''owners'' as seems most appropriate for the context of the relevant Notice provision. The MPR demonstration program shall be referred to in this Notice as the Multifamily Preservation and Revitalization demonstration program. Agency regulations for the Section 515 MFH program and the Sections 514/516 FLH program are published at 7 CFR part 3560.

The intent of the MPR demonstration program is to ensure that existing rental projects will continue to deliver decent, safe and sanitary affordable rental housing for 20 years, the remaining term of any Agency loan, or the remaining term of any existing Restrictive-Use Provisions (RUP) or prohibition, whichever ends later.

Note: All pre-applications will be selected by the Agency using the process described in this Notice, and the selected applicants will be invited to participate in the MPR demonstration program. Upon written notification to the Agency from the selected applicant of their acceptance to participate, an independent third-party Capital Needs Assessment (CNA) will be conducted to provide a fair and objective review of projected capital needs. The Agency shall implement any restructuring proposal that may be offered under this Notice through an MPR Conditional Commitment (MPRCC) with the eligible borrower/applicant, which will include all the terms and conditions offered by the Agency.

One of the MPR tools to be used in this program is debt deferral for up to 20 years of the existing Section 514 or Section 515 loans obligated prior to October 1, 1991. The cash flow from the deferred payment will be deposited, as directed by the Agency, to the reserve account to help meet the future physical needs of the project, support new debt or to reduce rents, as determined by the Agency.

A. Debt deferral is described as follows:

1. *MPR Debt Deferral.* A deferral of the existing Section 514 or Section 515 Agency loan(s), obligated prior to October 1, 1991, for 20 years. If the term of any existing Section 514 or Section 515 loans is less than 20 years, the Agency will offer a re-amortization of the existing loans extending the term to a minimum of 20 years. Section 514 or Section 515 loans obligated prior to October 1, 1991, and subsequently transferred on new rates and terms may not be eligible for deferral. Any questions on whether or not a loan is eligible for deferral should be directed to the local RD State Office at: *http://teamrd.usda.gov/rd/emp_services/directory/states/Combined.doc.* All terms and conditions of the deferral will be described in the MPR Debt Deferral Agreement. A balloon payment of principal and accrued interest will be due at the end of the deferral period. Interest will accrue at the promissory note rate and, if applicable, the subsidy will be applied as set out in the Agency's ''*Multiple Family Housing Interest Credit Agreement*'' Form RD 3560–9, which is available at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-9.PDF.*

B. Other Agency MPR funding tools are as follows:

1. *MPR Grant.* A grant limited to non-profit applicants/borrowers only. The grant will be limited to the cost of correcting health and safety violations of a project identified by a CNA accepted by the Agency. The grant administration will be in accordance with applicable provisions of 2 CFR parts 200 and 400.

2. *MPR Zero Percent Loan.* A loan at zero percent interest. The loan's maximum term and amortization will be as authorized by the respective program authority.

(a) For Section 515 RRH projects, the maximum loan term is 30 years amortized over a maximum term of 50 years.

(b) For Sections 514/516 projects, the loan will be amortized over a maximum term of 33 years.

3. *MPR Soft-Second Loan.* A loan with a one percent interest rate that will have its accrued interest and principal deferred to a balloon payment. The balloon payment will be due at the same time the latest maturing Section 514 or Section 515 loan already in place at the time of closing, or the maturity date of any current loan being re-amortized as part of the restructuring, is due.

MPR funds cannot be used to build community rooms, add additional parking areas, playgrounds, laundry rooms or additional new units, unless the additional unit(s) are needed for the project to meet the 5 percent fully accessible requirement as defined by Uniform Federal Accessibility Standards (UFAS), and the Agency concurs. However, other funding sources as outlined below in (a) through (f) can be used either for such revitalization and/or improvements:

4. Other Sources of Funds

(a) Rural Development Section 515 Rehabilitation loan funds;

(b) Rural Development Sections 514/516 Off-Farm rehabilitation loan/grant funds;

(c) Rural Development Section 538 Guaranteed Rural Rental Housing (GRRH) program financing;

(d) Rural Development Multi-Family Housing Preservation Revolving Loan Funds program;

(e) Third-party loans, grants, tax credits and tax-exempt financing; and

(f) Owner-provided capital contributions in the form of a cash infusion. A cash infusion cannot be a loan.

Transfers, subordinations, and consolidations may be approved as part of an MPR transaction in accordance with 7 CFR part 3560. If a transfer is part of the MPR transaction, and the transfer includes a seller payment and/or increase in the allowable Return to Owner (RTO), the transfer must first be underwritten to meet the requirements of 7 CFR 3560.406. The transfer underwriting may assume the deferral of all eligible Sections 514/516 or Section 515 loans. After the transfer has been underwritten and concurred with by the Agency's Multifamily Housing Preservation and Direct Loan Division, the MPR transaction may be underwritten.

For the purposes of the MPR demonstration program, the restructuring transactions will be identified by the Agency in three categories:

- Simple Transactions: These involve no change in ownership.
- Complex Transactions: These may consist of a project transfer to a new ownership, processed in accordance with 7 CFR 3560.406, with or without a consolidation, or transactions requiring a subordination agreement as a result of third-party funds. The applicant will submit one pre-application. If a consolidation is proposed, all projects to be consolidated must be submitted on one pre-application and be located in the same market area.

To be considered in the same market area, projects must be in a neighborhood or similar area where the property competes for tenants; managed under one management plan and one management agreement; and, in sufficiently close proximity to permit convenient and efficient management of the property.

Applicants should discuss proposed consolidations with the Rural Development State Office in the State(s) where the projects are located prior to filing their MPR pre-application to ensure Rural Development concurs with the applicant's market area estimation.

If either the Agency or the owner chooses to remove one or more projects from the proposal, this may be done without affecting the eligibility of the complex transaction. To be a complex transaction, the Agency assumes only one project remains at the MPR closing.

- Portfolio transactions: These include two or more projects with one stay-in owner, or two or more projects with multiple project sale transactions to a common purchaser all located in one State. A stay-in-owner is defined as an existing Section 515 or Sections 514/516 borrower who owns two or more properties either as a single ownership entity or as separate legal entities with at least one common general partner/managing member. Each project included in the portfolio will be submitted on a separate pre-application form unless some projects are located in the same market area, as defined above, and are being consolidated. Any projects in the portfolio proposed to be consolidated should be listed on the same pre-application form. Each pre-application must have the same portfolio name. If the owner chooses to remove one or more projects from the proposal, at least two projects must remain in order to be classified as a portfolio transaction. At the end of the transaction, the Agency assumes there will be two or more projects. The projects of the stay-in owner or common purchaser must have at least one general partner/managing member in common.

Transactions within each category may utilize any or all MPR funding tools described above in paragraph I, ''Funding Opportunity Description.'' MPR tools available through the MPR demonstration program will be used to address preservation and rehabilitation needs identified in the Agency accepted CNA.

Liens against the project, with the exception of Agency deferred debt, cannot exceed the Agency-approved security value of the project. All Agency debt, either in first lien position or a subordinated lien position, must be secured by the project, except deferred debt, which is not included in the Agency's total lien position for computation of the Agency's security value. Payment of any deferred debt will not be required from normal project operations income. Payment of any deferred debt will be required from excess cash generated from project operations after all other secured debts are satisfied or as directed by the Agency.

Maturing Mortgage Applications

The Agency recognizes that a number of Section 515 and Sections 514/516 properties are financed through mortgages scheduled to mature through calendar year 2018. The Agency will make an MPR debt deferral available to properties with all Agency mortgages maturing on or before December 31, 2018, in order to extend the affordable use of the housing and continue its eligibility for Section 521 Rental Assistance. Notwithstanding any other provisions of this Notice, applicants applying for a deferral of their eligible mortgage debt will be required to meet the eligibility requirements in either 7 CFR 3560.55 or 3560.555, as determined applicable by the Agency. Applicants applying solely for deferral of eligible maturing mortgages will only be required to submit the MPR pre-application within the established deadlines set out in the **DATES** section of this Notice; no additional supporting documentation is required.

The applicant will complete the MPR pre-application documenting the date the Agency loans will mature. The Agency reserves the right to approve an MPR debt deferral under this paragraph in its sole discretion, based on factors including but not limited to: The preceding 12-month average physical vacancy; analysis of current ownership; evidence the property is financially solvent; the current physical condition of the property; amount of assistance needed to meet immediate and long term physical needs of the property; and

the availability of other subsidized housing within the community.

If other MPR tools are needed, in addition to debt deferral, the Agency will require selected applicants to submit an approved Capital Needs Assessment to provide a fair and objective review of the property's projected physical needs.

II. Award Information

All Agency funding of pre-applications selected under this Notice will carry over to the next fiscal year and be considered for funding. However, pre-applications selected under this Notice must be approved by the Agency no later than December 31, 2017. Any pre-applications selected under this Notice, not approved by the Agency prior to December 31, 2017, will be considered automatically withdrawn. Applicants may reapply for funding under future Notices.

Applicants are alerted the Agency has unfunded applications carried over from prior Notices that will receive priority consideration for funding approval in FY 2015 based on the terms of those Notices. If fiscal year funds available for the MPR demonstration program are fully committed before all eligible pre-applications selected for further processing under this Notice are funded, the Agency may suspend further processing of the pre-applications at that time.

MPR funding tools will be used in accordance with 7 CFR part 3560. The program will be administered within the resources available to the Agency through Public Law 113–235 and any future appropriations for the preservation and revitalization of Sections 514/516 and Section 515-financed projects. In the event that any provisions of 7 CFR part 3560 conflict with this Notice, the provisions of this Notice will take precedence.

III. Eligibility Information

A. Applicants (and the principals associated with each applicant) must meet the following requirements:

1. All applicants must meet the eligibility requirements included in 7 CFR 3560.55 or 3560.555, as determined appropriate by the Agency. This Notice requires selected applicants to make the required equity contribution as outlined in 3560.63(c) for any new Section 515 loan offered as part of the MPR. Funds committed under Section I may be used to fund all or a portion of the required equity contribution. Loan applicants will not be given consideration for any increased equity value the property may have since the initial loan was made. Eligibility also includes the continued ability of the borrower/applicant to provide acceptable management and will include an evaluation of any current outstanding deficiencies. Any outstanding violations or extended open findings as defined in Section V, and recorded in the Agency's automated Multi-Family Information System (MFIS), will preclude further processing of any MPR applications associated with the applicant/borrower as well as any affiliated entity having a 10 percent or more ownership interest unless there is a current, approved workout plan in place and the plan has been satisfactorily followed for a minimum of 6 consecutive months, as determined by the Agency.

2. For Section 515 RRH projects, the average physical vacancy rate for the 12 months preceding this Notice's publication date can be no more than 10 percent for projects consisting of 16 or more revenue units and no more than 15 percent for projects less than 16 revenue units unless an exception applies under section VI paragraph (1) of this Notice. If a project consolidation is involved, the consolidation will remain eligible so long as the average vacancy rate for each individual project meets the occupancy standard noted in this paragraph. Projects that do not meet the occupancy threshold at the time of filing the application, regardless of reason, may be withdrawn by the owner or the Agency without jeopardizing the application.

3. For Sections 514/516 FLH projects, rather than an average physical vacancy rate as noted in section (ii) above, a positive cash flow for the previous full 3 years of operation is required unless an exception applies as described section III(A)(2), above.

4. Ownership of and ability to operate the project after the transaction is completed. In the event of a transfer, the proposed transferee must submit evidence of site control. Evidence may include a Purchase Agreement, Letter of Intent, or other documentation acceptable to the Agency.

5. An Agency approved CNA (for guidance refer to *http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants*) and an Agency financial evaluation must be conducted to ensure that utilization of the restructuring tools of the MPR demonstration program is financially feasible and necessary for the revitalization and preservation of the project for affordable housing. Initial eligibility for processing will be determined as of the date of the pre-application filing deadline. The Agency reserves the right to discontinue processing any application due to material changes in the applicant's status occurring at any time after the initial eligibility determination.

6. All grant-eligible applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the Central Contractor Registration (CCR) prior to submitting a pre-application pursuant to 2 CFR 25.200. In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal Financial Assistance are required to report information about first-tier, sub-awards and executive compensation, in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

IV. Application and Submission Information

A. The general steps of the MPR application process are as follows:

1. *Pre-application:* Applicants submit a pre-application described in Section IV below along with any supporting documentation as outlined in the Notice. Failure to timely submit all required documentation will result in an incomplete pre-application. This pre-application process is designed to lessen the cost burden on all applicants, including those who may not be eligible or whose proposals may not be feasible.

Note: If you receive a loan or grant award under this Notice, USDA reserves the right to post all information submitted as part of the pre-application/application package, which is not protected under the Privacy Act, on a public Web site with free and open access to any member of the public.

2. *Eligible Projects:* Using criteria described below in Section III, the Agency will conduct an initial screening for eligibility. As described in Section VI, the Agency will conduct an additional eligibility screening later in the application process.

3. *Scoring and Ranking:* All complete, eligible and timely-filed pre-applications will be scored, ranked and put in potential funding categories as discussed in Sections VI and VII below.

4. *Formal Applications:* Top ranked pre-applicants will receive a letter from the Agency inviting them to submit a formal application. As discussed in Section III of this Notice, the Agency will require the owner to provide a CNA, completed in accordance with the

Agency's published guidance (available at *http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants*) to underwrite the proposal to determine financial feasibility. Applicants will be informed of any proposals that are determined to be incomplete, ineligible or financially infeasible. Any proposal denied by the Agency will be returned to the applicant, and the applicant will be given appeal rights pursuant to 7 CFR part 11.

5. *Financial Feasibility:* The Agency will use the results of the CNA to help identify the need for resources and applicant provided information regarding anticipated or available third-party financing, in order to determine the financial feasibility of each potential transaction, using restructuring tools available either through existing regulatory authorities or specifically authorized through the MPR demonstration program. A project is financially feasible when it can provide affordable, decent, safe, and sanitary housing for 20 years or the remaining term of any Agency loan, whichever ends later, by using the authorities of this program while minimizing the cost to the Agency, and without increasing rents for eligible tenants or farm laborers, except when necessary to meet normal and necessary operating expenses, as determined by the Agency. If the transaction is determined financially feasible by the Agency, the borrower will be offered a restructuring proposal, subject to available funding. This will include a requirement that the borrower execute, for recordation, an Agency-approved Restrictive-Use Covenant (RUC) for a period of 20 years, the remaining term of any loans, or the remaining term of any existing RUPs, whichever ends later. The restructuring proposal will be established in the MPRCC.

6. *MPR Agreements:* If the offer is accepted by the applicant, the applicant must sign and return the MPRCC. By signing the offer, the applicant agrees to the terms of the MPRCC. Any third-party lender will be required to subordinate to the Agency's RUC unless the Agency determines, on a case-by-case basis, that the lender's refusal to subordinate will not compromise the purpose of the MPR demonstration program.

7. *General Requirements:* The MPR transactions may be conducted with a stay-in owner (simple) or may involve a change in ownership (complex or portfolio). Any housing or related facilities that are constructed or repaired must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed or rehabbed, Section 515 MFH and Sections 514/516 FLH projects must be managed in accordance with 7 CFR part 3560. Tenant eligibility will be limited to persons who qualify as an eligible household under Agency regulations. Tenant eligibility requirements are contained in 7 CFR 3560.152.

B. The application submission and scoring process will be completed in two phases in order to avoid unnecessary effort and expense on the part of applicants, are as follows:

1. Phase I—The first phase is the pre-application process. Applicants must submit a complete pre-application by the deadline listed under the **DATES** section of this Notice. The applicant's submission will be classified as ''complete'' when the MPR pre-application is received in the correct format and place as described in this Notice for each existing property the applicant wishes to be considered in the demonstration program. In the event the MPR proposal involves a project consolidation, it will be completed in accordance with 7 CFR 3560.410. One pre-application for the proposed consolidated project is required and must identify each project included in the consolidation. If the MPR proposal involves a portfolio transaction (sale or stay-in owner), one pre-application for each project in the portfolio is required and each pre-application must identify each project included in the portfolio transaction. In order for the pre-application to be considered complete, all applicable information requested on the MPR pre-application form must be provided. Additional information that must be provided with the pre-application to be considered complete, when applicable, includes:

(a) For all transfers of ownership, evidence of site control must be provided.

(b) Current market data (defined as no more than 6 months old at time of filing) for any project not meeting the occupancy standards cited in sections III(2) and III(3) above. The market data must demonstrate there is need *f*or the project evidenced by waiting lists and a housing shortage confirmed by local housing agencies and realtors and accepted by the Agency. The market data must show a clear need and demand for the project once a restructuring transaction is completed. The results of the survey of existing or proposed rental or labor housing, including complex name, location, number of units, bedroom mix, family or elderly type, year built, and rent charges must be provided, as well as the existing vacancy rate of all available rental units in the community, their waiting lists and amenities, and the availability of RA or other subsidies. The Agency will determine whether or not the proposal has market feasibility based on the data provided by the applicant. Any costs associated with the completion of the market data is not an eligible program project expense.

(c) For a property that has been sold to a non-profit entity under the Sale to Non-Profit process defined in 3560, Subpart N, a copy of the recorded Deed.

Unless an exception under this section applies, the requirements stated in Section III, paragraphs (2) and (3) of this Notice must be met.

Note: All documents must be received on or before the pre-application closing deadline to be considered complete and timely filed. Pre-applications that do not include evidence of site control for transfer proposals or current market data for projects that do not meet the occupancy standards of Section III paragraphs (2) and (3) of this Notice, will be considered incomplete and will be returned to the applicant.

2. Phase II—The second phase of the application process will be completed by the Agency based on Agency records and the pre-application information submitted. All complete, eligible, and timely-filed pre-applications will be scored and ranked based on points received during this two-phase application process. Further, the Agency will categorize each MPR proposal as being a Simple, Complex, or Portfolio transaction based on the information submitted on the pre-application, in accordance with the category descriptions provided in Section I of this Notice.

Pre-applications can be submitted either electronically or in hard copy. The Agency will record pre-applications received electronically by the actual date and time received in the MPR Web site mail box. This date may impact ranking of the pre-application as discussed under section VI. For all hard copy pre-applications received, the recorded receipt time will be the close of business time for the day received, for the location to which the pre-applications are sent. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office. USDA Rural Development MFH State Office contacts can be found at *http://teamrd.usda.gov/rd/emp_services/directory/states/Combined.doc*

(**Note:** Telephone numbers listed in the Web site are not toll-free.)

The pre-application is in Adobe Acrobat format and may be completed as a fillable form. The form contains a button labeled ''Submit by Email.'' Clicking on the button will result in an email containing a completed pre-application being sent to the MPR Web site mail box for consideration. If a purchase agreement or market data is required, these additional documents are to be attached to the resulting email prior to submission.

Pre-applications may be downloaded from the Agency's Web site at *http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants* or obtained by contacting the State Office in the State the project is located. Hard copy pre-applications and additional materials can be mailed to the attention of Dean Greenwalt or Abby Boggs, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782, (Room 1263–S), U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0782.

V. Application Review Information

A. Pre-application ranking points will be based on information provided during the submission process, and in Agency records. Only timely, complete pre-applications requesting debt deferral of eligible Section 514 or Section 515 loans plus other MPR funding tools will be ranked. Points will be awarded as follows:

1. *Contribution of other sources of funds.* Other funds are those discussed in Section I.B, ''Other Sources of Funds'' paragraph, items (a) through (f), above. Points will be awarded based on documented written evidence that the funds are *committed,* as determined by the Agency. ''Commitment'' means an actual award of funds, or another contractual agreement between a third-party funder and the borrower/applicant entity to provide funds.] Commitments that include the terms such as 'may' or 'intend' will not be acceptable for scoring purposes. The maximum points awarded for this criterion is 25 points. These points will be awarded in the following manner:

(a) Evidence of a commitment of at least $3,000 to $5,000 per unit per project from other sources—15 points, or

(b) Evidence of a commitment greater than $5,000 per unit per project from other sources—25 points.

2. *Owner contribution.* Points will be awarded if the owner agrees to make a contribution of at least $10,000 per project to pay transaction costs. (These funds cannot be from the project's reserve, operating funds, tax credit equity or be in the form of donated services provided by the applicant.) Transaction costs are defined as those Agency-approved costs required to complete the transaction under this Notice and include, but are not limited to the CNA, legal and closing costs, appraisal costs and filing/recording fees. This contribution must be deposited into the respective project reserve account prior to closing the MPR transaction from the owner's non-project resources. 20 points

3. *Owner contribution for the hard costs of construction.* (These funds cannot be from the project's reserve account or project's general operating account or in the form of a loan.) Hard costs of construction are defined as those costs for materials equipment, property or machinery required to complete the proposal under this Notice. Hard costs must be itemized on Form RD 1924–13, ''*Estimate and Certificate of Actual Cost*''. Form RD 1924–13 can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

The minimum contribution required to receive these points is $1,000 per unit per project, which will be required to be deposited in the project reserve account or supervised/construction account, as directed by Rural Development, prior to closing. An increased RTO may be allowed for funds committed in accordance with 7 CFR 3560.406(d)(14)(ii). 10 points

4. *Maturing Mortgages.* Points will be awarded to properties where all existing RD loans will mature *(make their final loan payment) on or before December 31, 2018. 10 Points.*

5. *Persistent poverty counties.* Points will be awarded to projects located in persistent poverty counties. A persistent poverty county is a classification for counties in the United States that have had a relatively high rate of poverty over a long period. The USDA's Economic Research Service (ERS) (*http://ers.usda.gov/*) is the main source of economic information and research for USDA and a principal agency of the U.S. Federal Statistical System located in Washington, DC. ERS has defined counties as being persistently poor if 20 percent or more of their populations were living in poverty over the last 30 years (measured by the 1980, 1990, and 2000 decennial censuses and 2006–2010 American Community Survey 5-year estimates). 10 points

6. Points may be awarded to projects that have been adversely impacted by an event that, as determined by the Agency, directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution over the previous 24 months, or other unavoidable accident causing physical property damage or failure that is not reimbursable by property, casualty or liability insurance any other form of third-party compensation, such as disaster loans and grants from other agencies. 25 points

7. *Age of project.* For a project consolidation (including portfolio transactions) proposal, the project with the earliest operational date (operational date is the date the project initially placed in service and documented in MFIS) will be used in determining the age of the project. Since the age of the project and the date the project placed in service are generally directly related to physical needs, a maximum of 30 points will be awarded based on the following criteria:

(a) Projects with initial operational dates prior to December 21, 1979—30 points.

(b) Projects with initial operational dates on or after December 21, 1979, but before December 15, 1989—20 points.

(c) Projects with initial operational dates on or after December 15, 1989, but before October 1, 1991—10 points.

(d) Projects with initial operational dates on or after October 1, 1991—0 points;

8. Projects with Open Physical Findings. An ''Open Physical Finding'' is a condition at the property, identified by the Agency that is not in compliance with the Agency standards published in 7 CFR 3560.103. Projects with Open Physical Findings classified ''B'', ''C,'' or ''D'', as defined below, will be awarded points in the following manner:

Class ''D'' Projects

Class ''D'' projects are those projects that are in default and may be taken into inventory, be lost to the program, or cause the displacement of tenants. Defaults can be monetary or non-monetary. Projects in default are those where the Agency has notified the borrower of a violation using the Agency's servicing letter process, and the borrower has not addressed the violation to the Agency's satisfaction.

Class ''C'' Projects

Class ''C'' projects are projects with Open Physical or Financial findings or violations, which are not associated to an approved workout and/or transition plan. This can *include* projects with violations where a servicing letter has been issued but 60 calendar days have

not passed since the issuance of the first servicing letter.

Class ''B'' Projects

Class ''B'' projects indicate the Agency has taken servicing steps and the borrower is cooperating to resolve identified findings or violations by associating an approved workout plan and/or transition plan.

For transfer proposals:

(a) For projects classified a ''C'' or ''D'' for 24 months or more. 20 points

(b) For projects classified as a ''C'' or ''D'' for less than 24 months. 15 points

Stay-in owner proposals:

(a) For projects classified as a ''B'' as a result of a workout and/or transition plan approved by the Agency prior to April 1, 2015. 25 points.

(b) Projects with an Agency ''C'' classification *for 24 months* or longer with Open Findings at the time the MPR pre- application is filed, will not be eligible to participate in the MPR demonstration program.

1. Closed Sale of Section 515 projects to non-profit/Public Housing Authority. The Agency will award 20 points for projects that have been sold to non-profit organizations under the prepayment process as explained in 7 CFR part 3560, subpart N. To receive points, the borrower/applicant must provide a copy of *the filed deed with their pre-application.* 20 points.

2. Prior approved Capital Needs Assessments (CNAs). In the interest of ensuring timely application processing and underwriting, the Agency will award up to 20 points for projects with CNAs already approved by the Agency. ''Approved'' means the date the CNA or an updated CNA was approved by the Agency. CNAs or updates before October 1, 2013, may not be used for MPR underwriting without an update approved by the Agency. Points will be awarded for:

(a) CNAs approved on or after October 1, 2014, but prior to the publication of this Notice 20 points

(b) CNAs approved on or after October 1, 2013, but prior to October 1, 2014, 10 points

2. Tenant service provision. The Agency will award 5 points for applications that include new services provided by either a for-profit or a non-profit organization, which may include a faith-based organization, or by another Government agency. Such services shall be provided at no cost to the project and shall be made available to all tenants. Examples of such services may include transportation for the elderly, after-school day care services or after-school tutoring. 5 points.

3. For portfolio sales and project consolidations, the Agency will award the following points:

(a) Proposal does not involve a consolidation of properties 0 points;

(b) Proposal involves a consolidation of 2–4 properties 5 points;

(c) Proposal involves a consolidation of 5 or more properties 10 points.

4. Energy Conservation, Energy Generation, and Green Property Management. Under the MPR Energy Initiatives, projects may receive a maximum of 42 points under three categories: Energy Conservation, Energy Generation, and Green Property Management.

(a) Energy Conservation 30 Points

Pre-applications for rehabilitation and preservation of projects may be eligible to receive a maximum of 30 points for the following energy conservation measures.

(1) Participation in the Green Communities program by the Enterprise Community Partners, *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities,* will be awarded 30 points for any project that qualifies for the program. At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of the Green Communities program. Green Communities has an initial checklist indicating prerequisites for participation. Each applicant must provide a checklist establishing that the prerequisites for each program's participation will be met. Additional points will be awarded for checklists that achieve higher levels of energy efficiency certification as set forth in paragraph 2 below. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable.

(2) If you are not enrolling in the Green Communities program, then points can be accumulated for each of the following items up to a total of 20 points. Provide documentation to substantiate your answers below: Documentation may include a signed statement agreeing to replace the items, when needed, with Energy Star rated items.

(i) This proposal includes the replacement of heating, ventilation and air conditioning (HVAC) equipment with Energy Star qualified heating, ventilation, and air conditioning equipment. 3 points

(ii) This proposal includes the replacement of windows and doors with Energy Star qualified windows and doors. 3 points

(iii) This proposal includes additional attic and wall insulation that exceeds the required R-Value of these building elements for your areas as per the International Energy Conservation Code 2012. Two points will be awarded if all exterior walls exceed insulation code, and 1 point will be awarded if attic insulation exceeds code for a maximum of 3 points.

(iv) This proposal includes the reduction in building shell air leakage by at least 15 percent as determined by pre- and post-rehab blower door testing on a sample of units. Building shell air leakage may be reduced through materials such as caulk, spray foam, gaskets and house-wrap. Sealing of duct work with mastic, foil-backed tape, or aerosolized duct sealants can also help reduce air leakage. 3 points

(v) This proposal includes 100 percent of installed appliances and exhaust fans that are Energy Star qualified. 2 points

(vi) This proposal includes 100 percent of installed water heaters that are Energy Star qualified. 2 points

(vii) This proposal included replacement of 100 percent of toilets with flush capacity of more than 1.6 gallon flush capacity with new toilets having 1.6 gallon flush capacity or less, and with Environment Protection Agency (EPA) Water Sense label. 1 point

(viii) This proposal includes 100 percent of new showerheads with EPA Water Sense label. 1 point

(ix) This proposal included 100 percent of new faucets with EPA Water Sense label. 1 point

(x) This proposal included 100 percent energy-efficient lighting including, but not limited to, Energy Star qualified fixtures, compact fluorescent replacement bulbs in standard incandescent fixtures and Energy Star ceiling fans. 1 point

AND

(3) Participation in local green/energy efficient building standards. Applicants who participate in a city, county, or municipality program will receive an additional 2 points. The applicant should be aware and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. 2 points

5. Energy Generation (Maximum 5 Points)

Pre-applications which participate in the Green Communities program by the Enterprise Community Partners, or receive at least 20 points for Energy Conservation measures, are eligible to earn additional points for installation of on-site renewable energy sources. Renewable, on-site energy generation

will complement a weather-tight, well-insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include, but are not limited to: Wind turbines and micro-turbines, micro-hydro power, photovoltaic (capable of producing a voltage when exposed to radiant energy, especially light), solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily.

Points under this paragraph will be awarded as follows. Projects with preliminary or rehabilitation building plans and energy analysis that propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) may be awarded points corresponding to their percent of commitment as follows:

(a) 0 to 9 percent commitment to energy generation receives 0 points;

(b) 10 to 20 percent commitment to energy generation receives 1 point;

(c) 21 to 40 percent commitment to energy generation receives 2 points;

(d) 41 to 60 percent commitment to energy generation receives 3 points;

(e) 61 to 80 percent commitment to energy generation receives 4 points;

(f) 81 to 100 percent or more commitment to energy generation receives 5 points.

In order to receive more than 1 point for this energy generation paragraph, an accurate energy analysis prepared by an engineer will need to be submitted with the pre-application. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the building's Home Energy Rating System (HERS) score.

6. Green Property Management Credentials 5 Points

Pre-applications may be awarded an additional 5 points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, the Institute for Real Estate Management, or the U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM). Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

The Agency will total the points awarded to each pre-application and rank each pre-application according to total score. If point totals are equal, the earliest time and date the pre-application was received by the Agency will determine the ranking. In the event pre-applications are still tied, they will be further ranked by giving priority to those projects with the earliest Rural Development operational date as defined under section V A 7.

B. Confirmation of Eligibility

For pre-applications submitted under Round 1 of this Notice requesting debt deferral only of the eligible Section 515 or Section 514 loans, the Agency will conduct eligibility determinations on an ongoing basis, and eligible applicants will be authorized to proceed, subject to the availability of appropriated funds under the MPR program.

For pre-applications submitted under Round 2 of this Notice, Eligibility will be confirmed after ranking is completed on the highest-scoring pre-applications in each State. If one or more of the highest-scoring pre-applications is determined ineligible, (*i.e.* the applicant is a borrower that is not in good standing with the Agency or has been debarred or suspended by the Agency, etc.), then the next highest-scoring pre-application will be confirmed for eligibility.

If one or more of the highest ranking pre-applications is a portfolio transaction, eligibility determinations will be conducted on each pre-application associated with the portfolio. Should any of the pre-applications associated with the portfolio be determined ineligible, those ineligible pre-application(s) will be rejected, but the overall eligibility of the portfolio will not be affected as long as the requirements in Section I and other provisions of this Notice are met, as determined by the Agency.

If one or more of the highest-ranking pre-applications in a State is a project consolidation, and one of the projects involved in the consolidation does not meet the occupancy standards cited in Section III (ii), that project(s) will be determined ineligible and eliminated from the proposed consolidation transaction.

VI. Award Administration Information

A. Selection of Pre-Applications for Further Processing

For pre-applications submitted under this Notice and requesting debt deferral only, the Agency will complete the eligibility confirmations on an ongoing basis and authorize those applicants determined eligible to proceed, subject to the availability of appropriated funds under the MPR program

For pre-applications submitted under this Notice, the Agency will conduct a four-step process, described below, to select eligible pre-applications for submission of formal applications. This process will allow the Agency to develop a representative sampling of revitalization transaction types, assure geographic distribution, and assure an adequate pipeline of transactions to use all available funding. No State will be authorized to accept more than ten (10) pre-applications for submission of formal applications. If an insufficient number of pre-applications is received to use available funds, the Agency, at its sole discretion, may exceed the maximum pre-application cap per State.

All MPR funding tools are available to be used on both Sections 514/516 and Section 515 projects.

STEP ONE: The Agency will review the eligible pre-applications, categorize each pre-application as either Simple, Complex, or Portfolio (see section I), and sort by State.

STEP TWO: Portfolio transactions will be limited to 3 per State (either RRH or FLH) and will count as 3 MPR transactions. A portfolio transaction, as defined in section I, will be limited to a maximum of 15 projects.

STEP THREE: The highest ranked complex transactions (RRH or FLH) will be selected for further processing, not to exceed 2 per State.

STEP FOUR: Additional projects will be selected from the highest ranked eligible pre-applications involving simple transactions in each State until a total of 10 (RRH or FLH) pre-applications for MPR transactions is reached.

If there are insufficient funds for all projects selected under any step, the Agency may suspend further selections.

This demonstration project is subject to the availability of funds. Any selected eligible applications from this Notice or prior NOFAs will be carried over to the next fiscal year for consideration. Any such unfunded pre-applications not approved by the Agency prior to December 31, 2017, will automatically be considered withdrawn by the Agency. Applicants, however, may

reapply for funding under future Notices.

B. Pre-Application Selection

Those eligible pre-applications that are ranked and then selected for further processing will be invited to submit a formal application on SF 424, ''Application for Federal Assistance.'' Applications (SF 424s) can be obtained and completed online. An electronic version of this form may be found at: *http://www.epa.gov/ogd/AppKit/index.htm.* A hard copy may be obtained by contacting the State Office in the State where the project is located and can be submitted either electronically or in hard copy. Refer to Section VIII of this Notice, below, for a link to all Rural Development State Offices.

Those eligible pre-applications that are not selected for further processing will be retained by the Agency unless they are withdrawn according to this Notice. Applicants rejected will be notified that their pre-applications were not selected and advised of their appeal rights under 7 CFR part 11. In the event a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application of the same transaction type in that State will be selected provided there is no change in the preliminary eligibility of the pre-applicant. If there are no other pre-applications of the same transaction type, then the next highest-ranked pre-application, regardless of transaction type, will be selected.

Awards made under this Notice are subject to the provisions contained in the Agriculture, Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, Division E, Title 1, sections 744 and 745, regarding corporate felony convictions and corporate federal tax delinquencies. In accordance with those provisions, only selected applicants that are or propose to be corporations need submit the following form as part of their MPR application; such applicants must submit an executed form AD–3030, which can be found online at: *http://www.ocio.usda.gov/document/ad3030.*

If a pre-application is accepted for further processing, the applicant must submit additional information needed to demonstrate eligibility and feasibility (such as a CNA), consistent with this Notice and 7 CFR part 3560, prior to the issuance of any restructuring offer. The Agency will provide additional guidance to the applicant and request information and documents necessary to complete the underwriting and review process. Since the character of each application may vary substantially depending on the type of transaction proposed, information requirements will be provided as appropriate. Complete project information must be submitted as soon as possible, but in no case later than 45 calendar days from the date of Agency notification of the applicant's selection for further processing. Failure to submit the required information in a timely manner may result in the Agency discontinuing the processing of the request.

The Agency will work with the applicants selected for further processing in accordance with the following:

(a) Based on the feasibility of the type of transaction that will best suit the project and the availability of funds, further eligibility confirmation determinations will be conducted by the Agency.

(b) If an Agency-approved CNA has not already been submitted to the Agency, an Agency-approved CNA will be required (see 7 CFR 3560.103(c) and the Agency's published ''Guidance on the Capital Needs Assessment Process'' available at *http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants* and the CNA Statement of Work together with any non-conflicting amendments). Agency-approved CNAs must be prepared by a qualified independent contractor, and are obtained to determine needed repairs and any necessary adjustments to the reserve account for long-term project viability.

(c) Underwriting will be conducted by the Agency. The feasibility and structure of each revitalization proposal will be based on the Agency's underwriting and determination of the MPR funding tools that will minimize the cost to the Government consistent with the purposes of this Notice.

C. MPR Offers

Approved MPR offers will be presented to successful applicants who will then have up to 15 calendar days to accept or reject the offer in writing. If no offer is made, the application will be rejected and appeal rights will be given. Closing of MPR offers will occur within six months of the obligation of MPR tools unless extended in writing by the Agency.

VII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) is an equal opportunity provider, employer, and lender. All borrowers and applicants will comply with the provisions of 7 CFR 3560.2. All housing must meet the accessibility requirements found at 7 CFR 3560.60(d). All MPR participants must submit or have on file a valid Form RD 400–1, ''*Equal Opportunity Agreement*'' and Form RD 400–4, ''*Assurance Agreement.*''

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file an employment complaint, you must contact your Agency's EEO Counselor within 45 days of the date of the alleged discriminatory act, event, or in the case of a personnel action. Additional information can be found online at: *http://www.ascr.usda.gov/complaint_filing_file.html.*

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html,* 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) 720–7442 or email at: *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

VIII. Award Agency Contacts

USDA Rural Development MFH State Office contacts can be found at *http://teamrd.usda.gov/rd/emp_services/*

directory/states/Combined.doc. (**Note:** Telephone numbers listed are not toll-free.)

Appropriation Act funding will be posted on the Rural Development Web site.

All adverse determinations are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Dated: July 28, 2015.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2015–18990 Filed 7–31–15; 8:45 am]

BILLING CODE 3410–XV–P

ARCTIC RESEARCH COMMISSION

104th Commission Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 104th meeting in Anchorage and Nome, Alaska, on August 24–26, 2015. The business sessions, open to the public, will convene at 9 a.m. in Anchorage and 8:30 a.m. in Nome.

The Agenda items include:

(1) Call to order and approval of the agenda

(2) Approval of the minutes from the 103rd meeting

(3) Commissioners and staff reports

(4) Discussion and presentations concerning Arctic research activities

The focus of the meeting will include reports and updates on programs and research projects affecting Alaska and the greater Arctic.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Kathy Farrow,

Communications Specialist.

[FR Doc. 2015–18897 Filed 7–31–15; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

First Responder Network Authority Board Meeting

AGENCY: First Responder Network Authority (FirstNet), National Telecommunications and Information Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will hold a Special Meeting via telephone conference (teleconference) on August 17, 2015.

DATES: The Special Meeting of the FirstNet Board will be held on August 17, 2015, from 10 a.m. to 12 p.m. Eastern Daylight Time.

ADDRESSES: The Special Meeting of the Board will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll-free 1–888–997–9859 and using passcode 3572169. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (703) 648–4165; email: *uzoma.onyeije@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (703) 648–4114.

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to ensure the establishment of a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. As provided in section 4.08 of the FirstNet Bylaws, the Board through this Notice provides at least two days notice of a Special Meeting of the Board to be held August 17, 2015, from 10 a.m. to 12 p.m. Eastern Daylight Time. The Board may, by a majority vote, close a portion of the Special Meeting as necessary to preserve the confidentiality of commercial or financial information that is proprietary or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. *See* 47 U.S.C. 1424(e)(2).

Matters to be Considered: FirstNet will post a detailed agenda for the Special Meeting on its Web site, *http://www.firstnet.gov,* prior to the meeting. The agenda topics are subject to change.

Time and Date of Meeting: The open public meeting of the full FirstNet Board will be held via teleconference on August 17, 2015, between 10 a.m. and 12 p.m. Eastern Daylight Time. The times and dates are subject to change. Please refer to FirstNet's Web site at *www.firstnet.gov* for the most up-to-date information.

Other Information: The teleconference for the Special Meeting is open to the public. On the date and time of the Special Meeting, members of the public may call toll-free 1–888–997–9859 and use passcode 3572169 to listen to the meeting. To view the slide presentation, the public may visit *https://www.mymeetings.com/nc/join* and enter Conference number: 276507910 and audience passcode: Board. As an alternative, members of the public may view the slide presentations by visiting: *http://www.mymeetings.com/nc/join.php?sigKey=mymeetings&i=276507910&p=Board&t=c.* If you experience technical difficulty, please contact Eli Veenendaal by telephone at (703) 648–4167 or via email at *elijah.veenendaal@firstnet.gov.* Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Mr. Onyeije, by telephone at (703) 648–4165 or email at *uzoma.onyeije@firstnet.gov,* at least two (2) business days before the meeting.

Records: FirstNet maintains records of all Board proceedings. Minutes of the meetings will be available at *www.firstnet.gov.*

Dated: July 29, 2015.

Eli Veenendaal,

Attorney Advisor, First Responder Network Authority.

[FR Doc. 2015–19006 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

First Responder Network Authority Board Special Meeting

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: The First Responder Network Authority (FirstNet) Finance Committee will hold a Special Meeting via telephone conference (teleconference) on August 5, 2015.

DATES: The Special Meeting of FirstNet Finance Committee will be held on August 5, 2015, from 3:00 p.m. to 4:30 p.m. Eastern Daylight Time.

ADDRESSES: The Special Meeting of the Finance Committee will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll-free 1–888–997–9859 and using passcode 3572169. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Secretary, FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (703) 648–4165; email: *uzoma.onyeije@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (703) 648–4114.

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to ensure the building, operation and maintenance of a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. As provided in section 4.08 of the FirstNet Bylaws, the Board through this Notice provides at least two days notice of a Special Meeting of the Finance Committee to be held August 5, 2015, from 3:00 p.m. to 4:30 p.m. Eastern Daylight Time. The Committee may, by a majority vote, close a portion of the Special Meeting as necessary to preserve the confidentiality of commercial or financial information that is proprietary or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. See 47 U.S.C. 1424(e)(2).

Matters to Be Considered: FirstNet will post an agenda for the Special Meeting on its Web site at *www.firstnet.gov* prior to the meeting. The agenda topics are subject to change.

Time and Date: The Special Meeting will be held on August 5, 2015, from 3:00 p.m. to 4:30 p.m. Eastern Daylight Time. The times and dates are subject to change. Please refer to FirstNet's Web site at *www.firstnet.gov* for the most up-to-date information.

Other Information: The teleconference for the Special Meeting is open to the public. On the date and time of the Special Meeting, members of the public may call toll-free 1–888–997–9859 and use passcode 3572169 to listen to the meeting. To view the slide presentation, the public may visit *https://www.mymeetings.com/nc/join* and enter Conference number: 276507910 and audience passcode: Board. As an alternative, members of the public may view the slide presentations by visiting: *http://www.mymeetings.com/nc/join.php?sigKey=mymeetings&i=276507910&p=Board&t=c.* If you experience technical difficulty, please contact Eli Veenendaal by telephone at (703) 648–4167 or via email at *elijah.veenendaal@firstnet.gov.* Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Mr. Onyeije, by telephone at (703) 648–4165 or email at *uzoma.onyeije@firstnet.gov,* at least two (2) business days before the meeting.

Records: FirstNet maintains records of all Board proceedings. Minutes of the meetings will be available at *www.firstnet.gov.*

Dated: July 27, 2015.

Eli Veenendaal,

Attorney Advisor, First Responder Network Authority.

[FR Doc. 2015–18999 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–113–2015]

Foreign-Trade Zone 262—Southaven, Mississippi; Application for Subzone; Haier America Trading, LLC; Olive Branch, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northern Mississippi FTZ, Inc., grantee of FTZ 262, requesting subzone status for the facility of Haier America Trading, LLC, located in Olive Branch, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on July 29, 2015.

The proposed subzone (21.194 acres) is located at 12386 Crossroad Drive in Olive Branch. The proposed subzone would be subject to the existing activation limit of FTZ 262. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 14, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 28, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 29, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–18992 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2015]

Foreign-Trade Zone 87—Lake Charles, Louisiana; Application for Subzone; Sasol Chemicals (USA), LLC; Calcasieu Parish, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lake Charles Harbor & Terminal District, grantee of FTZ 87, requesting subzone status for the facilities of Sasol Chemicals (USA), LLC, located in Calcasieu Parish, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 28, 2015.

The proposed subzone would consist of the following sites: *Site 1* (36.5 acres)—1130 Miller Avenue in Westlake; *Site 2* (1,478.5 acres)—2201 Old Spanish Trail in Westlake; and, *Site 3* (10 acres)—two parcels located near the eastern end of Louis Alleman Parkway in Sulphur. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 14, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 28, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 28, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–18989 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has received requests from Shandong Bolong Bearing Co., Ltd. (Bolong) and Zhejiang Changxing CTL Auto Parts Manufacturing Co., Ltd. (Changxing) for new shipper reviews (NSRs) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). We have determined that these requests meet the statutory and regulatory requirements for initiation. The period of review (POR) for these NSRs is June 1, 2014, through May 31, 2015.

DATES: *Effective date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Shannon Morrison or Blaine Wiltse, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6274 or (202) 482–6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), the Department received two properly-filed requests for NSRs from Bolong and Changxing [2] during the anniversary month of the antidumping duty order.

In their requests, Bolong and Changxing certified that they both are producers and exporters of TRBs from the PRC. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), these companies also certified that they did not export TRBs to the United States during the period of investigation (POI).[3] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Bolong and Changxing certified that, since the initiation of the investigation, they have never been affiliated with any PRC exporter or producer who exported TRBs to the United States during the POI, including those respondents not individually examined during the investigation.[4] As required by 19 CFR 351.214(b)(2)(iii)(B), Bolong and Changxing certified that their export activities were not controlled by the government of the PRC.[5]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), each company submitted documentation establishing the following: (1) The date on which it first shipped TRBs for export to the United States and the date on which the TRBs were first entered; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[6]

The Department conducted U.S. Customs and Border Protection (CBP) database queries to confirm that Bolong's and Changxing's shipments of subject merchandise had entered the United States for consumption and that liquidation of these entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that these entries were made during the POR. The information the Department examined was consistent with that provided by Bolong and Changxing. After the initiation of the NSRs, the Department intends to place additional CBP data on the record and, if necessary, request additional information from Bolong and/or Changxing.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR is June 1, 2014, through May 31, 2015. Based on the information provided by Bolong and Changxing, the sales and entries into the United States of subject merchandise produced and exported by these companies occurred during this twelve-month POR.

[1] *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987).

[2] *See* Bolong's June 18, 2015, submission (Bolong NSR Request); and Changxing's June 23, 2015, submission (Changxing NSR Request).

[3] *See* Changxing NSR Request, at Exhibit 1; and Bolong NSR Request, at Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *See* Changxing NSR Request, at Exhibit 2; and Bolong NSR Request, at Exhibit 2.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), 19 CFR 351.214(d)(1), and after reviewing the information on the record, the Department finds that the requests from Bolong and Changxing meet the threshold requirements for initiation of NSRs for shipments of TRBs from the PRC produced and exported by each company.[7] If the information supplied by Bolong or Changxing cannot be verified using CBP import data, or is otherwise found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review for that company or apply facts available pursuant to section 776 of the Act, depending on the facts on record.

The Department intends to issue the preliminary results of these NSRs no later than 180 days from the date of initiation, and the final results within 90 days after the date on which the preliminary results are issued, pursuant to section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Bolong and Changxing, which will include a section requesting information concerning their eligibility for separate rates. The reviews will proceed if the responses provide sufficient indication that Bolong and Changxing are not subject to either *de jure* or *de facto* government control with respect to their exports of subject merchandise.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of these reviews, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Bolong or Changxing in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because each of these companies certified that it both produced and exported the subject merchandise, the sale of which is the basis of the NSR request, we will instruct CBP to permit the use of a bond only for subject merchandise which each new shipper applicant both produced and exported.

To assist in its analysis of the *bona fides* of Bolong's and Changxing's sales, upon initiation of these NSRs, the Department will require each company to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in these NSRs should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: July 28, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18979 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective date:* (August 1, 2015).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–201–837	731–TA–1168	Mexico	Magnesia Carbon Bricks (1st Review)	Matthew Renkey (202) 482–2312.
A–570–954	731–TA–1167	PRC	Magnesia Carbon Bricks (1st Review)	Matthew Renkey (202) 482–2312.
C–570–955	701–TA–468	PRC	Magnesia Carbon Bricks (1st Review)	Jacqueline Arrowsmith (202) 482–5255.
A–570–952	731–TA–1164	PRC	Narrow Woven Ribbons with Woven Selvedge (1st Review).	Matthew Renkey (202) 482–2312.
C–570–953	701–TA–467	PRC	Narrow Woven Ribbons with Woven Selvedge (1st Review).	David Goldberger (202) 482–4136.
A–583–844	731–TA–1165	Taiwan	Narrow Woven Ribbons with Woven Selvedge (1st Review).	Matthew Renkey (202) 482–2312.

[7] *See* Memorandum to the File from Stephen A. Banea, International Trade Compliance Analyst, Office II, AD/CVD Operations, entitled ''Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Initiation of New Shipper Review of Changxing,'' dated concurrently with this notice; and Memorandum to the File from Shannon Morrison, International Trade Compliance Analyst, Office II, AD/CVD Operations, entitled ''Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Initiation of New Shipper Review of Bolong,'' dated concurrently with this notice.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

Revised Factual Information Requirements

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after August 16, 2013.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (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). The final rule 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. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation at 19 CFR 351.302(c) concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under part 351 of the Department's regulations expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which 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, the Department 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, the Department 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. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[4]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See* 19 CFR 351.218(d)(1)(iii).

regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18977 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2015

The following Sunset Reviews are scheduled for initiation in September 2015 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping duty proceedings	
Chlorinated Isocyanurates from China (A–570–898) (2nd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Potassium Permanganate from China (A–570–001) (4th Review)	Matthew Renkey, (202) 482–2312.
Chlorinated Isocyanuraters from Spain (A–469–814) (2nd Review)	Jacqueline Arrowsmith, (202) 482–5255.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in September 2015.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in September 2015.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18974 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1]

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures;*

Continued

Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review. Rebuttal comments will be due five days after submission of initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2016.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850 (Over 4½ Inches)	6/1/14–5/31/15
JFE Steel Corporation	
Nippon Steel & Sumitomo Metal Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Japan:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–851 (Under 4½ Inches)	6/1/14–5/31/15
JFE Steel Corporation	
Nippon Steel & Sumitomo Metal Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Kazakhstan:	
Silicomanganese,[4] A–834–807	5/1/14–4/30/15
Transnational Co. Kazchrome.	
Mexico:	
Prestressed Concrete Steel Rail Tie Wire, A–201–843	12/12/13–5/31/15
Aceros Camesa, S.A. de C.V.	
The People's Republic of China:	
Chlorinated Isocyanurates, A–570–898	6/1/14–5/31/15
Hebei Jiheng Chemical Co., Ltd.	
Heze Huayi Chemical Co. Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
The People's Republic of China:.	
Furfuryl Alcohol, A–570–835	6/1/14–5/31/15
Qingdao WenKem Co., Ltd.	
The People's Republic of China:	
High Pressure Steel Cylinders, A–570–977	6/1/14–5/31/15
Beijing Tianhai Industry Co., Ltd.	
The People's Republic of China:	
Polyester Staple Fiber, A–570–905	6/1/14–5/31/15
Hangzhou Best Chemical Fibre	
Jiangyin Hailun Chemical Fiber	
Jiangyin Huahong Chemical Fiber/Hua Hong Fiber USA	
Jiangyin Jinyin Chemical Fiber	
Zhejiang Huashun Poly-Fiber	
The People's Republic of China:	
Silicon Metal, A–570–806	6/1/14–5/31/15
Shanghai Jinneng International Trade Co. Ltd.	
Shanghai Jinfeng Hardware Plastics Co. Ltd.	
The People's Republic of China:	
Tapered Roller Bearings, A–570–601	6/1/14–5/31/15
Changshan Peer Bearing Co., Ltd.	
GGB Bearing Technology (Suzhou) Co., Ltd.	
Haining Nice Flourish Auto Parts Co., Ltd.	
Roci International (HK) Limited	
Yantai CMC Bearing Co. Ltd./CMC Bearing Co. Ltd.	
Turkey:	
Circular Welded Carbon Steel Pipes and Tubes,[5] A–489–501	5/1/14–4/30/15
Borusan Ihracat Ithalat ve Dagitim A.S.	
Cayirova Boru Sanayi ve Ticaret A.S.	

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Countervailing Duty Proceedings	
The People's Republic of China: High Pressure Steel Cylinders, C–570–978 ..... Beijing Tianhai Industry Co., Ltd.	1/1/14–12/31/14
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders 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). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (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). The final rule 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. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[6] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[7] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which 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. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a

[4] The company name listed above was misspelled in the initiation notice that published on July 1, 2015 (80 FR 37588). The correct spelling of the company is listed.

[5] The two company names listed were misspelled in the initiation notice that published on July 1, 2015 (80 FR 37588). The correct spellings of the companies are listed in this notice.

[6] *See* section 782(b) of the Act.

[7] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department 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, the Department 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. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18978 Filed 7–31–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–854]

Supercalendered Paper From Canada: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of supercalendered paper (SC paper) from Canada. The period of investigation is January 1, 2014, through December 31, 2014. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Shane Subler, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1391 and (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

On March 18, 2015, the Department initiated this countervailing duty (CVD) investigation.[1] On April 15, in response to a request from the petitioner, the Coalition for Fair Paper Imports,[2] the Department postponed the preliminary determination in the CVD investigation.[3]

Scope of the Investigation

The product covered by this investigation is SC paper. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[4] The list of topics discussed in the Preliminary Decision Memorandum is included as Appendix 2 to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

For this preliminary determination, we have relied partially on facts available for Resolute, because the company did not act to the best of its ability when responding to the Department's request for information. Further, we have drawn an adverse inference in selecting from among the facts otherwise available to calculate the *ad valorem* rate for Resolute.[5] For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a CVD rate for each individually investigated producer/exporter of the subject merchandise.

Preliminary Determination and Suspension of Liquidation

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Port Hawkesbury Paper LP (Port Hawkesbury)	20.33
Resolute FP Canada Inc. (Resolute)	2.04
All Others	11.19

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of SC paper from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each company respondent. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all others'' rate by weight averaging the rates of Port Hawkesbury and Resolute because doing so risks disclosure of proprietary

[1] *See Supercalendered Paper From Canada: Initiation of Countervailing Duty Investigation,* 80 FR 15981 (March 26, 2015).

[2] The individual member companies of the Coalition for Fair Paper Imports are Madison Paper Industries and Verso Corporation.

[3] *See Supercalendered Paper From Canada: Postponement of Preliminary Determinations in the Countervailing Duty Investigation,* 80 FR 22477 (April 22, 2015).

[4] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Supercalendered Paper From Canada,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[5] *See* sections 776(a) and (b) of the Act.

information. Therefore, we calculated a simple average of Port Hawkesbury's and Resolute's rates.[6]

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[7] Interested parties may submit case and rebuttal briefs,[8] and request a hearing.[9] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 27, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The merchandise covered by this investigation is supercalendered paper (SC paper). SC paper is uncoated paper that has undergone a calendering process in which the base sheet, made of pulp and filler (typically, but not limited to, clay, talc, or other mineral additive), is processed through a set of supercalenders, a supercalender, or a soft nip calender operation.[1]

The scope of this investigation covers all SC paper regardless of basis weight, brightness, opacity, smoothness, or grade, and whether in rolls or in sheets. Further, the scope covers all SC paper that meets the scope definition regardless of the type of pulp fiber or filler material used to produce the paper.

Specifically excluded from the scope are imports of paper printed with final content of printed text or graphics.

Subject merchandise primarily enters under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4802.61.3035, but may also enter under subheadings 4802.61.3010, 4802.62.3000, 4802.62.6020, and 4802.69.3000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2015–18980 Filed 7–31–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless

[6] We have calculated the simple average of the two responding firm's rates for the all-others rate using the following calculation: (20.33 (Port Hawkesbury's calculated rate) + 2.04 (Resolute's calculated rate))/2 = 11.19 (the all others rate).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c) and (d).

[9] *See* 19 CFR 351.510.

[1] Supercalendering and soft nip calendering processing, in conjunction with the mineral filler contained in the base paper, are performed to enhance the surface characteristics of the paper by imparting a smooth and glossy printing surface. Supercalendering and soft nip calendering also increase the density of the base paper.

there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2015, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of August 2015,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period of review
Antidumping duty proceedings	
Germany:	
Seamless Line and Pressure Pipe, A–428–820	8/1/14–7/31/15
Sodium Nitrite, A–428–841	8/1/14–7/31/15
Italy: Granular Polytetrafluorethylene Resin, A–475–703	8/1/14–7/31/15
Japan:	
Brass Sheet & Strip, A–588–704	8/1/14–7/31/15
Tin Mill Products, A–588–854	8/1/14–7/31/15
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	8/1/14–7/31/15
Mexico: Light-Walled Rectangular Pipe and Tube, A–201–836	8/1/14–7/31/15
Republic of Korea:	
Large Power Transformers, A–580–867	8/1/14–7/31/15
Light-Walled Rectangular Pipe and Tube, A–580–859	8/1/14–7/31/15
Romania: Carbon and Alloy Seamless Standard, Line and Pressure Pipe, (Under 4 ½ Inches), A–485–805	8/1/14–7/31/15
Socialist Republic of Vietnam: Frozen Fish Fillets, A–552–801	8/1/14–7/31/15
Thailand: Polyethylene Retail Carrier Bags, A–549–821	8/1/14–7/31/15
The People's Republic of China:	
Floor-Standing, Metal-Top Ironing Tables and Parts Thereof, A–570–888	8/1/14–7/31/15
Laminated Woven Sacks, A–570–916	8/1/14–7/31/15
Light-Walled Rectangular Pipe and Tube, A–570–914	8/1/14–7/31/15
Petroleum Wax Candles, A–570–504	8/1/14–7/31/15
Polyethylene Retail Carrier Bags, A–570–886	8/1/14–7/31/15
Sodium Nitrite, A–570–925	8/1/14–7/31/15
Steel Nails, A–570–909	8/1/14–7/31/15
Sulfanilic Acid, A–570–815	8/1/14–7/31/15
Tetrahydrofurfuryl Alcohol, A–570–887	8/1/14–7/31/15
Tow-Behind Lawn Groomers and Parts Thereof, A–570–939	8/1/14–7/31/15
Woven Electric Blankets, A–570–951	8/1/14–7/31/15
Ukraine: Silicomanganese, A–823–805	8/1/14–7/31/15
Countervailing Duty Proceedings	
Republic of Korea: Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/14–12/31/14
The People's Republic of China:	
Laminated Woven Sacks, C–570–917	1/1/14–12/31/14
Light-Walled Rectangular Pipe and Tube, C–570–915	1/1/14–12/31/14
Sodium Nitrite, C–570–926	1/1/14–12/31/14
Suspension Agreements	
None.	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov*.[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2015. If the Department does not receive, by the last day of August 2015, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 27, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–18976 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/*.

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE083

Mid-Atlantic Fishery Management Council (MAFMC); Fisheries of the Northeastern United States; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to review recent fishery performance and develop a Fishery Performance Report and/or other recommendations in preparation for the Council's setting of specifications at the October 2015 Council meeting.

DATES: The meeting will be Tuesday, August 18, 2015 at 1:30 p.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/dogfishap2015/.* Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on webinar access and any background materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a Fishery Performance Report by the Council's Spiny Dogfish Advisory Panel. The intent of the report is to facilitate structured input from the Advisory Panel members into the specifications process.

Special Accommodations

The meeting is 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.

Dated: July 29, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–18941 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE078

Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee) is seeking public input on draft principles for determining seafood species at risk of IUU fishing and seafood fraud (''at risk'') and a draft list of ''at risk'' species developed using the draft principles.

DATES: Comments must be received by September 2, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0090, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Danielle Rioux, 1315 East-West Highway; Silver Spring, Maryland 20910.
- *Webinar:* A webinar will be held on August 25th 3:30–5pm Eastern time. Please go to *http://www.nmfs.noaa.gov/ia/iuu/taskforce.html* for information on how to join.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Working Group. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Working Group will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Danielle Rioux, Office of Sustainable Fisheries, National Marine Fisheries Service (phone 301–427–8516, or email *Danielle.Rioux@noaa.gov*).

SUPPLEMENTARY INFORMATION: According to NOAA, in 2013, U.S. fishers landed 9.9 billion pounds of fish and shellfish worth $5.5 billion. Illegal, unreported, and unregulated (IUU) fishing and seafood fraud undermine the sustainability of U.S. and global seafood stocks and negatively impact general ecosystem health. At the same time, IUU fishing and fraudulent seafood products distort legal markets and unfairly compete with the products of law-abiding fishers and seafood industries. On March 15, 2015, the Presidential Task Force on Combating IUU Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, took an historic step to address these issues and published its Action Plan for Implementing Task Force Recommendations (Action Plan).

The Action Plan

(*http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf*) articulates the proactive steps that Federal agencies will take to implement the recommendations the Task Force made to the President in December 2014 on a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud. The Action Plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental organizations, and create a risk-based traceability program to track seafood from harvest to entry into U.S. commerce, including through the use of existing traceability mechanisms. The work the Task Force began continues under the oversight of the National Ocean Council's Committee on IUU Fishing and Seafood Fraud (NOC Committee), established this past April, 2015.

This notice is one of several steps in the plan to implement Task Force Recommendations 14 and 15, identifying ''species of fish or seafood that are presently of particular concern because they are currently subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing.'' To begin implementing these recommendations, the NOC Committee created a Working Group (Working Group), led by NOAA and composed of members from partner agencies: Department of State, Food and Drug Administration, Department of Homeland Security, Customs and Border Protection, and the Office of the U.S. Trade Representative.

As the first step, the NOC Committee, through the Working Group, solicited public input through a **Federal Register** notice (80 FR 24246, April 30, 2015) on what principles should be used to determine the seafood species ''at risk'' for IUU fishing or seafood fraud. Public input was received both in writing and through webinars. Taking into consideration comments received, the Working Group developed draft principles and a draft list of ''at risk'' species based on those principles. This notice seeks public comment on the draft principles and ''at risk'' species list. Following public comment, the Working Group will develop final principles and a final recommended list of at risk species. Once at risk species have been determined, the NOC Committee will transmit the list to agencies charged with implementing the Task Force recommendations for appropriate action. The list will be published by October 2015, in the

Federal Register. The list will not impose any legal requirements, but will inform the first phase of the risk-based seafood traceability program, as described in the Action Plan for Implementing Task Force Recommendations. The traceability program itself will be developed through notice-and-comment rulemaking, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and that rulemaking will address data requirements, the design of the program, and the species to which the first phase of the program will be applied.

Draft Principles for Determining Species at Risk of IUU Fishing and Seafood Fraud

To develop draft principles, the Working Group reviewed all public comments received and evaluated the strength and utility of various principles as indicators for potential risk of IUU fishing or seafood fraud as well as their measurability and the robustness of data available to assess them. The Working Group worked to minimize overlap of principles to ensure that alignment with several principles does not overstate associated risk, and also to distinguish between risk of IUU fishing and risk of seafood fraud. The Working Group then applied the draft principles to a base list of species to determine a draft list of species at risk for IUU fishing or seafood fraud.

Based on the Working Group's evaluation and synthesis of comments received, the draft principles for which public comment is sought are listed below. Species and species groups were evaluated using these principles:

- Enforcement Capability: The enforcement capability of the United States and other countries, which includes both the existing legal authority to enforce fisheries management laws and regulations and the capacity (*e.g.,* resources, infrastructure, etc.) to enforce those laws and regulations throughout the geographic range of fishing activity for a species.
- Catch Documentation Scheme: The existence of a catch documentation scheme throughout the geographic range of fishing activity for a species, and the effectiveness of that scheme if it exists, including whether a lack of proper documentation leads to discrepancies between total allowable catch and trade volume of a species.
- Complexity of the Chain of Custody and Processing: The transparency of chain-of-custody for a species, which includes the amount of transshipment (in this context, the transfer of fish from one vessel to another, either at sea or in port) for a species, as well as the complexity of the supply chain and extent of processing (*e.g.,* fish that is commonly exported for processing or that is sold as fillet block vs. whole fish) as it pertains to comingling of species or catch.
- Species Substitution: The history of known species substitution for a species, focused on mislabeling or other forms of misrepresentation of seafood products regarding the species contained therein.
- Mislabeling: The history of mislabeling other than mislabeling related to species substitution, *e.g.,* customs misclassification or misrepresentation related to country of origin, whether product is wild vs. aquaculture, or product weight.
- History of Violations: The history of fisheries violations in the United States and abroad for a species, particularly those related to IUU fishing.
- Human Health Risks: History of mislabeling, other forms of misrepresentation, or species substitution leading to human health concerns for consumers, including in particular, incidents when misrepresentation of product introduced human health concerns due to different production, harvest or handling standards, or when higher levels of harmful pathogens were introduced directly from the substituted species.

Application of Draft Principles

Given the large number of seafood species domestically landed and imported, it was not feasible to analyze all species that enter U.S. commerce under the principles listed above. Therefore, the Working Group created a base list of species for evaluation using several factors: (1) The value of domestic landings and imports (all seafood species with an imported or domestically landed value over $100 million USD in 2014 were included on the base list); (2) species identified by the Working Group due to a high cost of product per pound (which was considered to potentially increase the incentive for IUU fishing and fraud); and (3) species proposed based on the expertise of representatives from the Working Group agencies. In some cases, the Working Group combined related species (*e.g.,* shrimp), together in its analysis because the supporting data utilized nomenclature which made further analytical breakouts (*e.g.,* by scientific name) unworkable. The resulting list of species and groups analyzed is set forth below:

Abalone; Billfish (Marlins, Spearfishes, and Sailfishes); Catfish (Ictaluridae); Cod, Atlantic; Cod, Pacific; Crab, Blue; Crab, Dungeness; Crab, King; Crab, Snow; Dolphinfish (Mahi Mahi); Oyster; Grouper; Haddock; Halibut, Atlantic; Halibut, Pacific; Lake or Yellow Perch; Lobster; Mackerel; Menhaden; Opah; Orange Roughy; Red Drum; Red Snapper; Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallop; Sea bass; Sea cucumber; Shrimp; Sharks; Sole; Squid; Sturgeon caviar; Swordfish; Tilapia; Toothfish; Tunas (Albacore, Bigeye, Bluefin, Skipjack, Yellowfin); Wahoo; Walleye (Alaskan) Pollock; Pacific Whiting.

Both imported and domestically landed species were evaluated using the same data sources and methodology, as described below.

The Working Group identified appropriate data sources for analyzing the base list of species using the principles to determine species at risk of IUU fishing and seafood fraud. The Working Group used verifiable data, including information from Customs and Border Protection (CBP), Food and Drug Administration (FDA), and NOAA databases, published reports, or data gathered by Regional Fisheries Management Organizations to which the United States is a member and whose scientific data is developed and reviewed with active U.S. government participation, and the knowledge of subject matter experts, including members of the Working Group and other personnel from represented agencies. The Working Group decided to analyze data from the past five years as the appropriate timeframe for decision-making because a longer timeframe might not reflect improvements that have been made in some fisheries over time and a shorter timeframe might not include sufficient data to identify risks to certain species.

Sub-working groups based on subject matter expertise were created to complete the analyses under each individual principle. The Working Group then used the analyses done by the sub-working groups to determine which species were most at risk of IUU fishing and seafood fraud.

The Working Group then had in-depth discussions regarding the application of the draft principles to the base list of species, and noted that the suite of risks posed to species varied not only in terms of what risks affected which species, but also in terms of the scale of the risks. For example, a single documented case of species substitution for a species that is sold in high volumes was considered differently than one case for a species rarely found in U.S. markets.

Additionally, as the Working Group discussed the suite of risks associated

with the principles, a relationship became evident between the enforcement capability associated with a species and the history of violations. In many cases a history of violations was indicative of a strong enforcement capability for a species. Conversely, for some species, a lack of violations history may have been due to a lack of ability to detect or prosecute violations.

Draft Species at Risk of IUU Fishing and Seafood Fraud

The Working Group recognizes that all species of fish can be susceptible to some risk of IUU fishing or seafood fraud due to the inherent complexities in the fishing industry and supply chain. However, the draft species list was developed to identify species for which the current risks for IUU fishing or seafood fraud warrant prioritization for the first phase of the traceability program. Pursuant to the Action Plan, implementation of the first phase of the traceability program will be regularly evaluated, beginning with a report to be issued by December 2016, in order to determine ''whether it is meeting the intended objectives and how it can be expanded to provide more information to prevent seafood fraud and combat IUU fishing.''

Based on its evaluation, the Working Group identified the following draft list of species or species groups at risk for IUU fishing and seafood fraud, in alphabetical order:

Abalone: Abalone is considered to be at risk due to enforcement concerns. The fishery has a history of poaching, and there is a known black market for this expensive seafood. The fishery is primarily conducted by small vessels close to shore, and does not require specialized gear, which makes it difficult to detect illegal harvest, despite some enforcement capability. In addition to the IUU fishing risks for abalone, there is a history of species substitution where topshell is marketed as abalone.

Atlantic Cod: Atlantic cod have been targets of global IUU fishing operators. Despite a moderate amount of enforcement capability, there has been concern that adequate resources have not been dedicated to law enforcement for this species globally. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. In addition, there is a history of species substitution with other white fish, as well as concerns over mislabeling related to over-glazing (ice coating), and short-weighting.

Blue Crab: Blue crab is sold in a number of different forms from live animals to significantly processed crab meat. In the highly processed form, species identification is only possible through DNA testing. There is a strong history of both species substitution and mislabeling. Blue crab has been substituted with swimming crab, which is native to Southeast Asia. The mislabeling history is largely associated with misidentification of product origin, with crab from other locations sold as ''Maryland crab,'' although there have also been incidents of short-weighting in the sale of crab meat.

Dolphinfish: Dolphinfish (also known as Mahi Mahi) is associated with a lack of enforcement capability and a lack of a catch documentation scheme throughout the geographic range of fishing activity, which makes it vulnerable to the risk of IUU fishing. Some dolphinfish is transshipped prior to entry into the U.S, and there is concern over mislabeling associated with product origin. In addition, there is a history of species substitution, in which yellowtail flounder has been sold as dolphinfish.

Grouper: Grouper refers to a group of species legally fished and sold under the names grouper and spotted grouper. Grouper, as a species group, has history of fisheries violations, and a lack of a catch documentation scheme throughout the geographic range of fishing activity for the species group. Additionally, this global species is transshipped, and processed both at the local level and at regionally located or third country processing plants. Grouper has a strong history of species substitution, including substitution using seafood that is of human health concern, such as escolar (which has a Gemplytoxin hazard).

King Crab: King crab has a significant history of fisheries violations, despite insufficient enforcement capability in some parts of the world. Additional IUU fishing risk is tied to the lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. Further, King crab is often transshipped before entering the United States, which increases the IUU fishing and seafood fraud risks. King crab is at risk for seafood fraud, mostly due to mislabeling of product origin, as well as some species substitution.

Pacific cod: Pacific cod is proposed as a species at risk despite significant enforcement capability associated with this fishery. Pacific cod is a target of global IUU fishing operators and has a clear a history of fishing violations. It is also subject to highly globalized processing and transshipment. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. In addition, as with Atlantic cod, there is a history of species substitution using other white fish and concerns over mislabeling associated with over-glazing (ice coating) and short-weighting.

Red Snapper: Red Snapper is at risk for IUU fishing, based upon the history of fisheries violations, as well as the lack of a catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. There are also enforcement capability concerns for red snapper throughout the full geographic range of fishing activity for the species. Additionally, there is a strong history of species substitution with some of the substituted species (*e.g.* rockfish, porgy, other snappers) presenting a risk to human health due to parasites and natural toxins.

Sea Cucumber: Sea cucumber is an IUU fishing concern, due to the lack of enforcement capability and known illegal harvesting and smuggling associated with this species. There is also a lack of a catch documentation scheme throughout the geographic range of fishing activity and a significant amount of transshipment. Although sea cucumber is often sold live, it can also be processed into a dried product for preservation. There are mislabeling concerns for sea cucumber, often tied to falsification of shipping and export documentation to conceal illegally harvested product.

Sharks: ''Sharks,'' as included on the draft at risk species list, refers to a group of species that are often sold as fins with some species also sold as steaks or filets. Depending upon the product form, differentiating between species in this broad group is a challenge without identification guides or DNA testing. This led the Working Group to group all shark species together to assess risks. Sharks as a species group have a history fishing violations because they are processed and transshipped and there is a lack of enforcement capability throughout the geographic range of fishing activity. There is a global trade in shark fins that is a known enforcement concern. In addition to the IUU fishing risks associated with sharks, there are fraud concerns tied to the sale

of imitation shark fin, which has been labeled as wild caught product.

We are seeking additional public comment on whether this broader grouping is appropriate, potential ways to refine how sharks are addressed on the list, and any exclusions from the group that should be considered. Any refinements would need to be enforceable without the need for DNA testing, and should not unintentionally shift the risk of IUU fishing or seafood fraud to other species or introduce new IUU fishing or seafood fraud risks.

Shrimp: Shrimp is produced through both aquaculture and wild harvest. The Working Group found that shrimp is at risk for IUU fishing activity due to the history of fishery violations, as well as the level of processing often associated with shrimp products. Shrimp is also at risk for seafood fraud. There is a significant amount of mislabeling and/or misrepresentation of shrimp, tied largely to misrepresentation of weight, including where product has been treated with Sodium Tripolyphosphate to increase water retention. Mislabeling is also a concern regarding wild versus aquacultured labeling and product origin. Additionally, there is a history of substitution of one species of shrimp for another when imports cross the border into the United States.

We are seeking additional public comment on possible ways to refine the scope of this species group, *e.g.,* by limiting the scope based on product type, species, processing type, or other approaches. Shrimp is the largest seafood import into the United States, with the value of shrimp imports representing more than twice the value of any other seafood species group. Wild capture fisheries exist both in the United States and foreign nations. Due to the sheer volume of shrimp that enters U.S. markets, traceability for all shrimp may exceed the capacity of implementing agencies.

Swordfish: Swordfish are at risk in terms of both IUU fishing and seafood fraud. Swordfish are a highly migratory species and their range crosses numerous jurisdictions, including into the high seas. There has been a history of fisheries violations in certain swordfish fisheries and regions, in addition to a lack of enforcement capability. The United States does, however, implement a statistical document program for swordfish pursuant to the International Commission for the Conservation of Atlantic Tunas (ICCAT) to help mitigate IUU fishing and seafood fraud risk. This document is required for all swordfish product entering the United States, regardless of the product form or ocean area where it was harvested, although it does not provide the full range of information that would be expected in a traceability program, particularly for fish harvested outside the Atlantic. Swordfish is commonly transshipped and is also at risk in terms of species substitution with mako shark.

Tunas: Tunas are a high volume and high visibility species group that includes five main species: albacore, bigeye, bluefin, skipjack, and yellowfin. There has been a history of fisheries violations in certain tuna fisheries and in certain regions. Further, harvesting, transshipment, and trade patterns for tunas can be complex, in particular for certain value-added products. While there are multilateral management and reporting measures in place for many stocks within the tuna species group, these management and reporting mechanisms vary in terms of information standards and requirements and do not all provide a complete catch documentation scheme. Tunas are also subject to complicated processing that includes comingling of species and transshipments. Further, there has been a history of some species substitutions, with most instances involving substitution of one tuna species for another. However, there have also been instances of escolar, which can contain a toxin, being substituted for albacore tuna.

The Working Group is asking for public comment on possible ways to refine the scope of this species group possibly by limiting to certain product types, species, processing types, or other approaches.

Programs To Mitigate Risk

Through the application of the draft principles, the Working Group identified two species—toothfish and catfish—that had a number of risk factors for IUU fishing or seafood fraud, but due to mechanisms to address those risks are not being proposed as at risk species in this Notice.

Toothfish has been known, historically, as a species with IUU fishing concerns, which led to the development, by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of a number of monitoring tools including a comprehensive catch documentation scheme. Without the existing level of reporting, documentation, and enforcement capability, including through measures adopted by CCAMLR, for this species, the Working Group would have found it to be at risk.

The Working Group found that while existing measures do not eliminate risk for toothfish, they mitigate the IUU fishing and seafood fraud risks to such a level that the Working Group does not propose toothfish as an at risk species for the first phase of the traceability program.

In the United States, seafood sold as catfish must be from the family *Ictaluridae* (per section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term ''Catfish''). As such, there is a strong history of species substitution, in which non-*Ictaluridae* species are sold as catfish. Some of this species substitution has been tied to Silurformes species, which could have a drug hazard associated with them, as well as other species that have been found contaminated with prohibited chemicals and pharmaceuticals. In addition to species substitution, there is a history of other mislabeling issues, including product origin and failure to accurately label product that has been treated with carbon monoxide.

These risks were discussed and are fully recognized by the Working Group. However, there is a rulemaking on catfish inspection (*http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=0583-AD36*) under development, separate from the NOC Committee and Working Group actions. Once in effect, this pending rulemaking may mitigate risks identified by the Working Group. Taking into consideration the underlying principle of the Task Force to maximize existing resources and expertise from across the federal government through increased federal agency collaboration, the Working Group did not include catfish on the draft list of at risk species. In the absence of this pending rulemaking, or if the pending rulemaking has not progressed when a final list of at risk species is determined, the decision to exclude catfish from the list of at risk species can be revisited.

Summary of Comments in Response to 80 FR 24246 (April 30, 2015)

In response to the April 30, 2015, notice (described above), U.S. fishing industry groups, non-governmental organizations, foreign nations, and interested citizens submitted comments on a wide breadth of topics related to the development of the draft principles and the draft at risk species list. A total of 155 written comments, and 26 oral comments received via webinars, were provided. The comments included 66 unique comments and 115 comments that were substantially the same and therefore are treated as one unified comment supporting implementation of a seafood traceability program for

imported Dolphinfish (noted as ''Dorado'' in public comments, also known as Mahi Mahi, *Coryphaena hippurus*) from Mexico. The Working Group considered all public comments, and has provided responses to all relevant issues raised by comments below. We have not responded to comments that are outside the scope of this request and that may be more relevant to future steps in the process, *i.e.,* the pending rulemaking on the design of the traceability system.

1. Enforcement Capability

Comment: Many public comments noted that a species will be at risk when there is a lack of enforcement capability for managing the species. Comments addressed two different aspects of enforcement capability: enforcement authority for a species (*i.e.,* if there is an existing legal framework that gives authority to enforce fisheries management regulations), and enforcement capacity (*i.e.,* if the resources and infrastructure necessary for effective enforcement, such as patrol vessels and personnel, exists).

Response: The Working Group agrees that this is an important factor to consider in determining whether a species is at risk for IUU fishing and used enforcement capability (*i.e.,* both enforcement authority and enforcement capacity) as one of the draft principles for its analysis.

2. Catch Documentation Scheme

Comment: We received multiple comments regarding the importance of a catch documentation scheme to reduce a species' risk for IUU fishing and seafood fraud. Example comments: ''A lack of effective catch documentation systems: Thorough, up-to-date catch documentation and consistent cross-checks of those records helps to reduce opportunities to funnel illegally-caught fish into legal market streams, especially for complicated trade routes,'' and ''the presence of relevant and reliable catch records in an easily stored and shared format (such as electronic) would be considered an indicator for degree of risk.''

Response: The Working Group agrees and has made the existence of a catch documentation scheme for a species, and the effectiveness of the scheme if one exists, one of the draft principles for determining at risk species. An effective catch documentation scheme is a tool that enhances seafood traceability and helps decrease the opportunity for IUU fishing and seafood fraud.

3. Complexity of the Chain of Custody and Processing

Comment: A number of comments were received that were related to the complexity and transparency of the chain of custody for seafood. In the more complex chains of custody there are more opportunities for mixing illegally caught fish with legally caught fish, or for mislabeling. Multiple comments noted that transshipments make tracking the chain of custody harder and present an opportunity to commingle legally and illegally caught fish. Similarly, the complexity of the processing a species undergoes is also important. It is much more difficult to mislabel whole fish, because the identification of the species is easier. Conversely, highly processed seafood (such as fillet block or surimi) could have a number of species mixed into it, either legally, or fraudulently, and without DNA testing it is impossible to identify the constituent parts. Example comments include: ''Prioritize mixed products that are composed of more than one species . . . numerous species in a single product can increase IUU risk.'' ''Seafood products that have been co-mingled, processed, transshipped, or transported throughout multiple jurisdictions.'' ''Monitoring and control of transshipments; Does the supply chain actor (*i.e.* retailer, importer, etc.) request/have a list of vessels involved in transshipments including carrier vessel (basic level information, flag State, registration number, license, unique vessel identifier).''

Response: The Working Group agrees that the transparency in the supply chain is important to detecting and discouraging IUU fishing and seafood fraud. Accordingly, we have made the transparency of chain of custody for a species a draft principle. This draft principle includes an assessment of how common transshipment is for each species, the complexity of processing, and the resulting final product (*e.g.,* fillet block vs. whole fish).

4. Species Substitution

Comment: The Working Group received many comments highlighting the problems associated with mislabeling and other forms of misrepresentation of seafood. Due to the magnitude of comments concerned with the substitution of one species for another, the Working Group addressed species substitutions separately from other forms of mislabeling fraud (see next comment). Commenters highlighted some reasons species substitutions might occur: Avoiding tariffs, increasing value (*i.e.,* a less valuable species sold as a higher value species), and masking illegal fishing. Example comments include: ''operators intentionally mislabel species to avoid tariffs or regulations or to pass off lower value fish as higher value product.'' ''Low value species whose products 'resemble' those from higher value species. Even if the species itself is plentiful, economic incentive then exists for seafood fraud and substitution.''

Response: The Working Group agrees that substituting one species for another species can be harmful to the seafood industry and to the consumer, regardless of the reason for species substitution. Therefore, the Working Group has included a draft principle that takes into account the history of seafood substitutions for a species.

5. Seafood Mislabeling

Comment: In addition to species substitutions, there are many other types of seafood mislabeling that can be considered fraud, including, but not limited to: Improper weighting, unlabeled chemical additives, added water, mislabeled harvest location, misrepresentation of farmed vs. wild product, and misclassification of import codes. Example comments include: ''Net weight is the most widespread fraudulent activity and the hardest to fix. It is very tempting to sell and ice glaze for $10 to $25 a pound.'' ''Lower value farm raised species that are substituted for higher value wild species . . . [is] economically motivated adulteration or fraud.''

Response: The Working Group agrees. Seafood mislabeling and other forms of misrepresentation create an unfair market for law-abiding members of the seafood industry and directly impacts consumers. The motive for mislabeling and other forms of misrepresentation are more difficult to ascertain and in some instances mislabeling can be unintentional. Therefore, the Working Group chose to analyze instances of mislabeling unrelated to species substitution to determine species most at risk, and did not attempt to address intent.

6. History of Violations

Comment: A number of comments received highlighted fisheries with prior IUU fishing violations as being at risk fisheries. Without additional controls or management and monitoring systems, continued IUU fishing activity would be expected for species that have a history as a target for IUU fishing. Example comments: ''We encourage the Task Force to identify and review the cases for those companies and individuals,

both domestic and foreign, convicted for incidents of misreporting.''

Response: The Working Group agrees with public comments that a history of violations is a risk factor. The Working Group therefore included the history of violations for a species as a draft principle for identifying risk of IUU fishing for a species. It should be noted that the history of fisheries violations within a fishery is separate from the draft principles concerning mislabeling and species substitution.

7. Human Health Risks

Comment: The Working Group received comments that species at risk of seafood fraud should also be reviewed and prioritized according to potential human health impacts. When species are substituted or mislabeled, in addition to defrauding the customer, there can be an introduced or increased human health risk. An example comment includes: ''Farmed fish from developing countries with little or no health standards are increasingly being found to contain toxins that pose health threats to consumers. These fish are often substituted for fish with local names, and passed off to the American consumer as domestic wild caught [sic.].''

Response: The Working Group agrees that human health risk should be considered. As such, the Working Group has made history of mislabeling impacting human health a draft principle for determining at risk species.

8. Species Health and Vulnerability

Comment: The Working Group received numerous comments regarding the importance of sustainable seafood, and requesting that the biological health of the species, or associated bycatch levels, gear impacts and other environmental impacts be considered. Example comments include: ''[Species] [k]nown or projected to be biologically vulnerable, including low intrinsic rates of population increase or highly migratory (subject to fishing from multiple jurisdictions).'' ''Unfortunately, as a species' numbers decline the market value of the species often rises. This could boost the incentive for illegal fishers to chase those species.''

Response: The Working Group acknowledges that the sustainability of fishing resources is an important goal and is a priority for NOAA under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Some vulnerable species identified in the comments such as sharks, sturgeon, and abalone were added to the base list and analyzed by the Working Group. However, the main focus of this process is to identify species at risk for IUU fishing or seafood fraud and a species' vulnerability is not, in and of itself, indicative of such risk, and thus is beyond the scope of this process.

9. Economic Importance of a Species (Volume and Value)

Comment: Multiple comments encouraged the Working Group to include information about the volume and value of the species traded or landed when determining risk. The comments note that high volume and high value species are more likely at risk for IUU fishing and seafood fraud. Example comments include: '' IUU fishing is often associated with highly valuable species that are prized in the global marketplace, including large apex predators, such as tunas or sharks and specialty products such as eel'', and ''Value and volume of species: initial focus on species of significant value and volume, both aspects that increase motivation for IUU and seafood fraud.''

Response: To ensure that the economic importance of a species was taken into account, the Working Group ensured that all species or groups of species, either domestically landed or imported, with an annual value of $100 million USD or more for 2014 were included in the base list of species evaluated to determine whether they are at risk for IUU fishing or seafood fraud. This encompassed both the demand for a product, as well as the value, and, in most cases, also the volume (most high volume species also have an annual value of over $100 million). Recognizing, however, that value or volume is only one measurement, the Working Group also identified species that are known to have high prices per pound, but do not meet the threshold of annual landings or import value of over $100 million, and added them for evaluation (*e.g.,* sturgeon caviar, sea cucumber), as well as species identified by subject matter experts from the Working Group agencies.

10. Bycatch Concern

Comment: In addition to comments about target species' sustainability, comments were received regarding the level of bycatch associated with the harvest of a species. These comments generally were in agreement that a high level of bycatch would make the target species more likely to be at risk.'' Example comments: ''It must adequately address bycatch.'' ''Harvested from fisheries with a high frequency of destructive fishing methods . . . and fishing methods that result in significant bycatch are more likely to be threatened by IUU fishing.''

Response: The Working Group acknowledges the importance of reducing incidental bycatch of marine species to the sustainability of global fisheries. The selection of species to which the principles were applied as described in this notice includes species harvested both as targeted catch and bycatch. Despite the importance of minimizing bycatch in sustainable fisheries management, the level of bycatch associated with harvest of a target species is not, in and of itself, determinative of the level of risk for IUU fishing or seafood fraud for the target species. Thus, the Working Group did not include this consideration as a draft principle.

11. Marine Mammal Protection Act Ties to Risk

Comment: One commenter stated: ''in addition to concerns about the seafood products themselves, the Marine Mammal Protection Act (MMPA) at 16 U.S.C. 1371(a)(2) requires the government to insure that seafood products imported into the United States must be caught in a manner that does not result in the killing or serious injury of ocean mammals in excess of U.S. standards.''

Response: MMPA section 101(a)(2) (16 U.S.C. 1371(a)(2)) concerns the level of marine mammal bycatch in the course of commercial fishing operations. As stated above, the level of bycatch associated with harvest of a target species is not, in and of itself, determinative of the level of risk for IUU fishing or seafood fraud for the target species. In a separate rulemaking, NOAA intends to publish a proposed rule to implement MMPA section 101(a)(2).

12. Country-Specific Risk

Comment: A large number of public comments requested that we look at the country of origin as a critical principle for determining a species' risk of IUU fishing or seafood fraud. For example, comments received include: ''The Task Force should start with the existing report NOAA provides to Congress every two years that identifies nations that have vessels engaging in IUU fishing. Imported seafood from nations identified in this report should be categorized as high risk'' and ''[k]nown or established history of illegal fishing or fisheries product coming from a nation identified as having documented IUU fishing.''

Response: The Working Group has already identified as draft principles enforcement capability and history of

fisheries violations. These principles will allow the Working Group to take into account fisheries identified in NOAA's biennial report to Congress as engaging in IUU fishing (*see* 16 U.S.C. 1826(h)). The Working Group does not believe it is useful or appropriate to establish a principle based on country of origin.

13. European Union (EU) IUU Seafood Certification

Comment: A number of comments included discussion of the EU approach to combatting IUU fishing, which is country-of-origin based, rather than species-based. Example comments: ''Ideally the United States could also use the well-researched 'red and yellow card' system of the European Union to assess the likelihood of IUU products coming out of a country's fishery or processing operations'' and ''[p]rioritize products imported from countries already issued IUU yellow or red cards by the EU.''

Response: The Working Group is implementing the recommendations of the Presidential Task Force on Combatting IUU fishing and Seafood Fraud, which outlines a species specific approach as the basis for a risk-based traceability scheme. As noted above, the Working Group does not believe it is appropriate to establish a principle based on country of origin. In addition, the U.S. government does not have active involvement with the EU country-based IUU fishing risk identification system. Therefore, the Working Group did not include a principle that would identify species at risk based on whether they are associated with nations that have been issued a yellow and red card under the EU system. However, to the extent available, information generated or collected pursuant to the EU system that could be relevant to other principles used by the Working Group, such as enforcement capability and history of fisheries violations for specific species.

14. Vessel-Specific Risk and Flags of Convenience

Comment: A comment was received that a principle for determining risk should be: ''Presence of flags of convenience in a fishery: Flags of convenience (FOCs) are a well-known challenge to effective fisheries management . . . Therefore, the Working Group should pay special attention to species caught in fisheries with large numbers of vessels registered to known FOCs).''

Response: The Working Group used history of fisheries violations as a principle, which covers incidents from all vessels. Although the Working Group recognizes the challenges associated with FOCs, the Working Group decided to use a metric of documented offenses rather than a flag- or vessel-specific approach.

15. Wildlife Trafficking Connections

Comment: There is an existing President's Advisory Council on Wildlife Trafficking that is working to implement the National Strategy for Combatting Wildlife Trafficking, released by the White House on February 11, 2014. Public comments encouraged the Working Group to connect with the Wildlife Trafficking Advisory Council to ensure we do not duplicate efforts, and to work to synergize activity where appropriate. Additionally, comments requested: ''In continuing to fulfill its mission, we encourage the Working Group to continue reaching out to the Presidential Task Force on Wildlife Trafficking, especially on illegal trade in marine species, particularly sharks, rays, and marine turtles.'' ''Seafood products that are known to be involved in wildlife trafficking. Illegally harvested seafood products, many of which are depleted or highly depleted, are sometimes involved with underground wildlife trade.''

Response: The Working Group is coordinating with the President's Advisory Council on Wildlife Trafficking as some members participate in both groups. The Working Group has not used wildlife trafficking as a principle for any determination of a species' risk of IUU fishing or seafood fraud, but did consider the history of fisheries violations, species substitution and mislabeling violations associated with a species.

16. Sport vs. Commercial IUU fishing

Comment: One comment stated: ''The Task Force should differentiate between sport and commercial fishing when determining IUU fishing activities.''

Response: While the Working Group acknowledges that illegal sport fishing can have adverse impacts on fishery resources, the traceability program will only include products that enter into U.S. commerce. Landings from sport fishing trips, for the most part, do not enter the United States in commercially significant quantities and thus, the Working Group used data based on commercial fisheries for all at risk determinations.

17. Market Price Versus Catch Price

Comment: A comment was received noting: ''Another indicator of whether IUU products are present in the market are [sic] if there are price discrepancies such that the catch price is significantly lower than the average price on the market. Where the market price is significantly higher than the catch price this may be an indication that the product was derived from IUU fishing.''

Response: The Working Group did not review price discrepancies in its at risk analysis. Data on price in the market versus off the boat is not robust or consistently collected. In addition, the connection between market price and risk of IUU fishing and seafood fraud has not been clearly established, and there are many variables that could cause a discrepancy in price other than IUU fishing.

18. Risk From World Customs Organization Harmonized Schedule (New HS Codes)

Comment: One comment was received regarding the increased risks associated with species for which there are new import codes that will go into effect in 2017: ''imports of species that originate in countries that have failed to implement the seafood-related amendments to the 2012 [World Customs Organization Harmonized Schedule (HS)] HS Codes should be considered 'at risk.' As of March 20, 2015 only 115 out of 151 Contracting parties to the World Customs Organization had implemented the current HS Code Schedule. As the new HS Codes for seafood products come into force in January of 2017, we believe that there will be a heightened risk of fraud and mislabeling (whether inadvertent, as people adjust to the new codes, or intentional so as to avoid tariffs). Consequently, we believe that those species for which new codes have been added should be 'at risk.' ''

Response: There is another working group addressing the Action Plan for Implementing Task Force Recommendation 10 (Enforcement: Species Name and Code) that is currently assessing ways to enhance the identification of products through the use of the HS and the Harmonized Tariff Schedule of the United States (HTSUS). Though the outcomes of this assessment may not influence other countries' actions with regards to adopting the 2012 or 2017 HS changes, the Working Group may propose changes to the HTSUS and make other recommendations relative to naming and identification that could impact certain seafood imports into the United States, as well as changing the potential associated risks highlighted.

19. Highly Migratory Species (HMS)

Comment: Highly migratory species were noted in public comments as being more susceptible to IUU fishing and seafood fraud. Because of the transient and pelagic nature of these species, they are fished outside of or across multiple Exclusive Economic Zones (EEZs), as well as on the high seas, making regulatory development and enforcement more difficult. Example comments: ''Highly migratory stocks, particularly those that travel through and between national boundaries, may be more susceptible to IUU fishing activities'' and ''The life history of certain species can lead to IUU vulnerability. For instance, fisheries for highly migratory species are difficult to monitor and enforce, which can make illegal behavior harder to detect and deter (*e.g.* tuna).''

Response: The Working Group concluded that a separate principle for HMS was not necessary. HMS at a high risk for IUU fishing should be identified through a combination of other principles such as enforcement capability and the absence of a catch documentation scheme or an ineffective scheme. In addition, to alleviate potential risk associated with the migratory nature of these species, many HMS are managed internationally through Regional Fishery Management Organizations that adopt harvest limits, data collection requirements, and enforcement measures. The Working Group applied the drafted principles to HMS along with non-HMS, and those determined to be at risk are on the draft list of species (*e.g.,* sharks and tunas).

20. Species-Based Approach

Comment: Many comments requested that the Working Group not take a species-based approach, and rather employ a larger scaled approach and begin the traceability program with all seafood products. Example comments: ''any legitimate approach to identifying IUU risk in seafood will inevitably produce a much broader and larger set of products than could be achieved through the selection of a limited set of ''species at risk'' and ''[w]hile we understand the need to prioritize resources on high risk problems, we do not believe that a species-by-species approach is an effective long-term solution to the challenges of IUU fishing and seafood fraud, which are global in nature, occur at all levels, from harvest through final sale, and are influence by changing market demands and other factors.''

Response: The Action Plan for Implementing Task Force Recommendations specifies that the traceability program will be implemented by first targeting high risk species, while preserving the opportunity to leverage the value and effectiveness of other traceability efforts. By December 2016, the NOC will issue a report, taking into careful consideration input from stakeholders, evaluating implementation of the first phase of the traceability program and recommending how and under what timeframe it should be expanded.

21. Data for Analyzing Principles Identified

Comment: There were multiple public comments expressing concerns with the data that would be used to analyze the base list of species using the draft principles to identify species at risk. One commenter noted that species at risk shift over time as changes in management occur, and therefore, the Working Group should use current information when identifying at risk species. Conflicting comments were submitted regarding the appropriate data to use: Some comments suggested use of government data only, while others supported use of non-governmental information submitted through public comment.

Response: To develop the draft list the Working Group used verifiable data, including information from Customs and Border Protection (CBP), Food and Drug Administration (FDA), and NOAA databases, published reports, or data gathered by Regional Fisheries Management Organizations to which the United States is a member and whose scientific data is developed and reviewed with active U.S. government participation, and the knowledge of subject matter experts, including members of the Working Group and other personnel from represented agencies. The Working Group determined that including data from the past five years was appropriate, as a longer timeframe may not recognize improvements that have been made in some fisheries over time, and a shorter timeframe may not include enough data to identify the species at risk.

22. Convention on International Trade in Endangered Species (CITES) and International Union for Conservation of Nature (IUCN) Lists as Basis for Determining Risk

Comment: A number of public comments requested that species listed with CITES or that are on IUCN red lists be determined as species at risk. Example comments: ''A species listed on one of the CITES appendices: A number of commercially exploited species, including shark and ray species, are included in the appendices of CITES'' and ''Of the more than 1200 described species, one quarter have been designated as threatened under the IUCN Red List, and 500 species are so data deficient that their conservation status cannot be determined, putting them at even greater risk.''

Response: CITES is an international agreement between governments that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The IUCN red list of threatened species is an approach for evaluating the conservation status of plant and animal species on a global scale. As mentioned in response to a prior comment, the Working Group affirms that sustainability of fishing resources is an important goal. However, the main focus here is to identify species at risk for IUU fishing and seafood fraud. Thus, the draft principles do not include consideration of the conservation status of species.

23. Science-Based Fishery Management

Comment: Public comments requested that species not managed using science-based fisheries management be considered at risk. This commentary was often tied to a country, rather than a species, but the premise of science-based fishery management was consistent in both approaches. For example, a comment stated that at risk species should include species ''[t]aken in managed fisheries but without science-based or precautionary (where population assessments are not available) catch limits; where limits exceed scientific advice; or where catch limits are routinely exceeded.''

Response: The Working Group agrees that fishery management must be science-based to be effective. Under the Magnuson-Stevens Fishery Conservation and Management Act, conservation and management measures for federal fisheries managed in the U.S. EEZ ''shall be based upon the best scientific information available'' (16 U.S.C. 1851(a)(2)). As noted earlier, the Working Group considered in its analysis scientific information from Regional Fisheries Management Organizations to which the United States is a member. Beyond this, the Working Group does not, as a general matter, have sufficient information or the ability to evaluate the science used by foreign nations in the management of their fishing resources. Thus, whether or not a species is subject to a management regime using best available scientific information was not included as a draft principle for determining at risk species.

Rather, the NOC will seek to address this concern through other approaches aimed at international stewardship (*e.g.,* capacity building, diplomatic outreach, etc.)

24. Magnitude of the Violations

Comment: One public comment requested: ''The Task Force should weigh the magnitude of labeling violations and impact on U.S. consumer prior to deeming a species at risk. The following are examples of mislabeling that should represent lower concern and should NOT be the sole basis from an at risk determination: Species that are mislabeled within the same genus or within the same acceptable market name grouping.''

Response: The Working Group took known violations from the past five years into account in evaluating species for at risk'' determination. Adding a value judgment on the magnitude of the violations was beyond the capacity of the Working Group.

25. Poor Species Identification in the Catch and/or Trade Data

Comment: One public comment noted that the lack of species identification in catch and trade data can increase a species' vulnerability to IUU fishing.

Response: This issue will be captured under the draft principles concerning any history of species mislabeling and the existence of a catch documentation scheme. In addition, the Working Group recognizes the concern regarding import codes. This issue will be discussed through the work on Task Force Recommendation 10 ''to standardize and clarify rules on identifying the species, common name, and origin of seafood.''

26. Existing Traceability System

Comment: Multiple comments recommended that the Working Group review and take into account whether there is already a certification system or traceability system for a species. Example comment: ''Some private industry sectors have initiated traceability requirements.''

Response: The Working Group commends organizations and fishing groups that have initiated traceability programs on their own and recognizes the investment by the private sector in developing improved traceability. For species with a recently implemented traceability program, the number of enforcement violations over the past five years can be used as a measure of the effectiveness of the program and will allow us to either remove these species from our list of at risk species or, where appropriate, include existing catch documentation provisions into a traceability program to further address risk of IUU fishing and seafood fraud.

Dated: July 28, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–18945 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE032

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 153rd meeting.

DATES: The meeting will be held on August 19–20, 2015. The Council will convene on Wednesday, August 19, 2015, from 9 a.m. to 6 p.m., and will reconvene on Thursday, August 20, 2015, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn & Tropical Casino Mayaguez, 2701 Hostos Avenue, Puerto Rico 00680.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 153rd regular Council Meeting to discuss the items contained in the following agenda:

August 19, 2015

- Call to Order
- Adoption of Agenda
- Consideration of 152nd Council Meeting Verbatim Transcriptions
- Executive Director's Report
- SSC National Workshop Report—Dr. Richard Appeldoorn
- Island-Based Fishery Management: Choosing Species to be Included for Federal Management Within Each Island Group
  - Outcomes from the Panel of Experts and District Advisory Panel Meetings
  - Participation
  - Presentations
  - Review Draft List of Species Selected for Management
    - Puerto Rico
    - St. Croix
    - St. Thomas/St. John
  - Next Steps in Developing Island Based
    - Action 2—Species Complexes
    - Action 3—Reference Points
    - Other Needed Actions
- Comprehensive Amendment: Application of Accountability Measures in the Council Fishery Management Plans
  - Review Draft Comprehensive Amendment/Select Preferred Alternative
  - Final Action/Revisit Codified Text, Including:
    - Clarifying Queen Conch Minimum Size Limits
    - Addition of Accountability Measures-Based Closure Language

—Public Comment Period—
(5-minutes presentations)

5:15 p.m.–6 p.m.

- Administrative Matters

—Budget Update FY 2015/16
—Other Administrative Business
—Closed Session

August 20, 2015

9 a.m.–10:30 a.m.

- ABT Public Hearing

10:45 a.m.–5 p.m.

- Abrir/Bajo/Tourmaline: Revision of Management Regulations in Federal Portion of Each Area
  - Review Draft Amendment
  - HMS input on requests from CFMC
  - Discuss Outcomes of Public Hearing
  - Final Action
  - Review Codified Text, Including:
    - Coordinate-Based Definition of State/Federal Closure Boundaries
- Timing of Accountability Measures-Based Closures Amendment
  - Review Public Hearing Draft Document/Select Preferred Alternatives
  - Schedule Public Hearings; Discuss Next Steps
- Saltonstall-Kennedy Funding Program: Caribbean Projects—Dr. Bonnie Ponwith
- Outreach and Education Report—Dr. Alida Ortíz
- Enforcement Issues:

—Puerto Rico-DNER
—U.S. Virgin Islands-DPNR
—U.S. Coast Guard
—NMFS/NOAA

- Meetings Attended by Council Members and Staff

Public Comment Period (5-minute presentations)

- Other Business

○ Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 29, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–18940 Filed 7–31–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice Inviting Postsecondary Educational Institutions To Participate in Experiments Under the Experimental Sites Initiative; Federal Student Financial Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary invites postsecondary educational institutions (institutions) that participate in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (the HEA), to apply to participate in a new institution-based experiment under the Experimental Sites Initiative (ESI). Under the ESI, the Secretary has authority to grant waivers from certain title IV HEA statutory or regulatory requirements to allow a limited number of institutions to participate in experiments to test alternative methods for administering the title IV HEA programs. The alternative methods of title IV HEA administration that the Secretary is permitting under the ESI are designed to facilitate efforts by institutions to test certain innovative practices aimed at improving student outcomes and the delivery of services.

Under this experiment, participating institutions will provide Federal Pell Grant funding to otherwise eligible students who are incarcerated in Federal or State penal institutions. Details of the experiment are provided below in the ''The Experiment'' section of this notice.

DATES: Letters of application to participate in the proposed experiment described in this notice must be received by the Department of Education (the Department) no later than October 2, 2015 in order for an institution to receive priority to be considered for participation in the experiment. Institutions submitting letters that are received after October 2, 2015 may still, at the discretion of the Secretary, be considered for participation.

ADDRESSES: Letters of application must be submitted by electronic mail to the following email address: *experimentalsites@ed.gov*. For formats and other required information, see ''Instructions for Submitting Letters of Application'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Warren Farr, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Washington, DC 20002. Telephone: (202) 377–4380 or by email at: *Warren.Farr@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Instructions for Submitting Letters of Application

Letters of application should take the form of an Adobe Portable Document Format (PDF) attachment to an email message sent to the email address provided in the **ADDRESSES** section of this notice. The subject line of the email should read ''ESI 2015—Pell for Students who are Incarcerated.'' The text of the email should include the name and address of the institution. The letter of application should be on institutional letterhead and be signed by the institution's financial aid administrator. The letter of application must include the institution's official name and the Department's Office of Postsecondary Education Identification (OPEID), as well as the name of a contact person at the institution, a mailing address, email address, FAX number, and telephone number. Please include in the letter a listing of the academic programs that the institution is considering for inclusion in this experiment and, for each of those programs, an estimate of the number of participating students. We understand that institutions' academic program listings and the actual number of students who participate may vary from the information submitted in the letter.

Background

Section 401(b)(6) of the HEA provides that students who are incarcerated in a Federal or State penal institution are not eligible to receive Federal Pell Grant funds. This prohibition is included in the Department's regulations at 34 CFR 668.32(c)(2)(ii).

The experiment outlined below will allow participating institutions to provide Federal Pell Grant funding to otherwise eligible students who are incarcerated in Federal or State penal institutions and who are eligible for release into the community, particularly those who are likely to be released within five years of enrollment in the program.

The prison population is significantly less educated than the general population. For nearly half of all incarcerated individuals in Federal or State facilities, a high school diploma or General Educational Development (GED) certificate is their highest level of education. Only 11 percent of incarcerated individuals in State correctional facilities and 24 percent of individuals incarcerated in Federal prisons have completed at least some postsecondary education.[1] In addition, educational offerings at Federal and State penal institutions are limited in that they generally focus on adult basic education and secondary education that

[1] Caroline Wolf Harlow. ''Education and Correctional Populations.'' U.S. Department of Justice, Office of Justice Programs. January 2003. Accessed on June 12, 2015 at: *www.bjs.gov/content/pub/pdf/ecp.pdf.*

aim to improve foundational reading, writing, numeracy, and English language skills. Surveys of Federal and State prisons have found that only about 40 percent offer postsecondary education programs.[2] Given the statutory prohibition on incarcerated students accessing Federal student aid, roughly 1,574,700 persons in Federal or State penal institutions in 2013 were unable to be considered for higher education courses financed through the Pell Grant Program.[3]

While fewer than half of all prisons offer postsecondary education, research suggests that postsecondary education and training for incarcerated individuals is correlated with several positive post-release outcomes, including increased educational attainment levels, reduced recidivism rates, and improved post-release employment opportunities and earnings.[4] According to the Department of Justice, postsecondary correctional education is a promising and cost-effective practice that supports the successful reentry of justice-involved individuals.[5] Providing greater postsecondary education and training opportunities to incarcerated individuals, particularly the approximately 630,000 individuals expected to be released from Federal and State prisons each year,[6] some of whom will be eligible to receive Pell grants, may help to facilitate their successful transition back into society. Consistent with the President's ''My Brother's Keeper Task Force'' recommendations to enforce the rights of incarcerated youth to a quality education and eliminate unnecessary barriers to reentry, on December, 8, 2014, the Department of Education and the Department of Justice jointly released a Correctional Education Guidance Package.[7] The guidance package included a Dear Colleague Letter *on Access to Pell Grants for Students in Juvenile Justice Facilities* (DCL GEN–14–21) from the Department of Education clarifying that students who are confined or incarcerated in locations that are not penal institutions, such as juvenile justice facilities and local or county jails, and who otherwise meet applicable eligibility criteria, are eligible for Federal Pell Grants.[8] The experiment, which is described in more detail in the ''The Experiment'' section of this notice, is intended to test whether participation in high-quality educational opportunities increases after access to financial aid for incarcerated adults is expanded.

This notice is in response to a notice that was published in the **Federal Register** on December 6, 2013 (78 FR 73518), through which the Secretary solicited suggestions from postsecondary institutions for new experiments under the ESI. In response, the Department received submissions from a diverse range of institutions and other interested parties. The experiment included in this notice was informed by suggestions submitted that were related to the title IV HEA eligibility of incarcerated students.

Reporting and Evaluation

The Department is interested in obtaining information that will allow for an evaluation of the experiment. Institutions that are selected for participation in the experiment will be required to provide the Department information about the participating students, which may include identifying information for students who submit a Free Application for Federal Student Aid (FAFSA) for enrollment in one of the programs included in the experiment offered by the participating postsecondary educational institution.

In addition, participating institutions will be required to submit an annual report about the experiment, its implementation, and its results. Through this survey, institutions will provide the Department information on (1) courses and programs offered, (2) numbers and types of degrees and certificates awarded, (3) partnerships with the correctional facilities, (4) challenges in providing programs and courses in the prison settings, (5) how these challenges were addressed, and (6) other relevant data.

In addition to complying with these reporting and evaluation requirements, participating institutions will be required to participate, if requested, in an outcome evaluation of the experiment.

The specific evaluation and reporting requirements will be finalized prior to the start of each experiment.

Application and Selection

From the institutions that submit letters of interest, the Secretary will select a limited number of institutions to participate in the experiment, carefully considering institutional diversity by, among other characteristics, institutional type and control, geographic location, enrollment size, and title IV HEA participation levels.

When determining which institutions will be selected for participation in this experiment, the Secretary will consider evidence that demonstrates a strong record on student outcomes and in the administration of the title IV HEA programs, such as evidence of programmatic compliance, cohort default rates, financial responsibility ratios, completion rates, and, for for-profit institutions, ''90/10'' funding levels.

Before institutions are selected for this experiment, the Secretary will consult with the institutions on the final experimental design through webinars or other outreach activities.

Institutions selected for participation in the experiment will have their Program Participation Agreements (PPAs) with the Secretary amended to reflect the specific statutory or regulatory provisions that the Secretary waives or modifies for the experiment. The amended PPA will document the agreement between the Secretary and the institution for the administration of the experiment.

The Experiment

Background

Section 401(b)(6) of the HEA provides that students who are incarcerated in a Federal or State penal institution are not eligible to receive Federal Pell Grant funds. This restriction prevents many otherwise eligible incarcerated individuals from accessing financial aid and benefiting from postsecondary education and training.

In accordance with the waiver authority granted to the Secretary under section 487A(b) of the HEA, this experiment will examine how waiving

[2] Wendy Erisman and Jeanne Bayer Contardo. ''Learning to Reduce Recidivism: A 50-state Analysis of Postsecondary Correctional Education Policy.'' Institute for Higher Education Policy. November 2005. Accessed on June 12, 2015 at: *www.ihep.org/sites/default/files/uploads/docs/pubs/learningreducerecidivism.pdf.*

[3] Lauren E. Glaze and Danielle Kaeble. ''Correctional Populations in the United States, 2013.'' U.S. Department of Justice, Bureau of Justice Statistics. December 2014. Accessed on May 1, 2015 at: *www.bjs.gov/content/pub/pdf/cpus13.pdf.*

[4] Lois M. David, Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. ''Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults.'' RAND Corporation. 2013. Accessed on June 12, 2015 at: *www.rand.org/pubs/research_reports/RR266.*

[5] ''Practice Profile: Postsecondary Correctional Education.'' National Institute of Justice. Accessed on May 1, 2015 at: *www.crimesolutions.gov/PracticeDetails.aspx?ID=23.*

[6] ''Prisoners in 2013.'' U.S. Department of Justice, Bureau of Justice Statistics. September 2014. Accessed on June 12, 2015 at: *www.bjs.gov/content/pub/pdf/p13.pdf.*

[7] Department of Education. Correctional Education in Juvenile Justice Facilities. Available at: *www2.ed.gov/policy/gen/guid/correctional-education/index.html.*

[8] Department of Education. *Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions.* Dear Colleague Letter GEN–14–21. Available at: *http://ifap.ed.gov/dpcletters/GEN1421.html.*

the restriction on providing Pell Grants to individuals incarcerated in Federal or State penal institutions influences participation in education opportunities as well as academic and life outcomes. The experiment will also examine whether the waiver creates any challenges or obstacles to an institution's administration of the title IV HEA programs.

Description

This experiment will provide a waiver of the statutory provision that a student who is incarcerated in a Federal or State penal institution may not receive a Pell Grant. The experiment will allow some otherwise eligible students who are incarcerated in Federal or State penal institutions to receive a Pell Grant to help cover some of the costs of their participation in a postsecondary education and training program developed and offered by the participating postsecondary educational institution. This experiment only waives specific requirements of the title IV HEA programs. Additional restrictions or requirements associated with postsecondary study imposed by postsecondary institutions or correctional institutions may still apply. Students' eligibility to receive Federal Pell Grants aid under this experiment would remain subject to those requirements.

The education and training programs offered by the postsecondary institution must meet all title IV HEA program eligibility requirements. While the program must be credit-bearing and result in a certificate or degree, up to one full year of remedial coursework is allowed for students in need of academic support.

The experiment will require that participating institutions:

- Partner with one or more Federal or State correctional facilities to offer one or more title IV HEA eligible academic programs to incarcerated students;
- Work with the partnering correctional facilities to encourage interested students to submit a FAFSA;
- Only disburse Pell Grant funding to otherwise eligible students who will eventually be eligible for release from the correctional facility, while giving priority to those who are likely to be released within five years of enrollment in the educational program;
- Only enroll students in postsecondary education and training programs that prepare them for high-demand occupations from which they are not legally barred from entering due to restrictions on formerly incarcerated individuals obtaining any necessary licenses or certifications for those occupations;
- Disclose to interested students and to the Department information about any portions of a program of study that, by design, cannot be completed while students are incarcerated, as well as the options available for incarcerated students to complete any remaining program requirements post-release;
- As appropriate, offer students the opportunity to continue their enrollment in the academic program if the student is released from prison prior to program completion; and
- Inform students of the academic and financial options available if they are not able to complete the academic program while incarcerated. This includes whether the students can continue in the program after release, transfer credits earned in the program to another program offered by the institution, or transfer credits earned in the program to another postsecondary institution.

Participating institutions, in partnership with Federal or State correctional facilities, will also submit their plans for providing academic and career guidance, as well as transition services to their incarcerated students to support successful reentry.

The Pell Grant funds made available to eligible students through this experiment are intended to supplement, not supplant, existing investments in postsecondary prison-based education programs by either the postsecondary institution, the correctional facility, or outside sources.

Waivers

Institutions selected for this experiment will be exempt from, or will be granted waivers from, section401(b)(6) of the HEA; and 34 CFR 668.32(c)(2)(ii), which provides that students who are incarcerated in any Federal or State penal institution are not eligible to receive Pell Grant funding.

The waiver described in this notice does not apply to individuals subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense.

All other provisions and regulations of the title IV HEA student assistance programs will remain in effect.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Program Authority: HEA, section 487A(b); 20 U.S.C. 1094a(b).

Dated: July 29, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–18994 Filed 7–31–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2016–17 Award Year—Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, Iraq and Afghanistan Service Grant and TEACH Grant Programs; Correction

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice; correction.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063; 84.038; 84.033; 84.007; 84.268; 84.408; 84.379.

SUMMARY: On May 27, 2015, we published in the **Federal Register** a notice announcing the annual updates to the tables used in the statutory Federal Need Analysis Methodology that determines a student's expected family contribution for award year 2016–17. Section 478 of the Higher Education Act of 1965, as amended, requires the Secretary to annually update four tables for price inflation. This notice corrects the Education Savings and Asset Protection Allowance tables.

FOR FURTHER INFORMATION CONTACT: Marya Dennis, U.S. Department of Education, Room 63G2, Union Center Plaza, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of May 27, 2015 (80 FR 30217), we replace the tables included in section ''3. Education Savings and Asset Protection Allowance'' on pages 30218 through 30221 with the following tables. This allowance protects a portion of Net Worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables: One for parents of dependent students, one for independent students with dependents other than a spouse, and one for independent students without dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If the age of the older parent is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	1,000	500
27	2,100	1,100
28	3,100	1,600
29	4,100	2,100
30	5,200	2,600
31	6,200	3,200
32	7,200	3,700
33	8,300	4,200
34	9,300	4,700
35	10,300	5,300
36	11,400	5,800
37	12,400	6,300
38	13,400	6,800
39	14,500	7,400
40	15,500	7,900
41	15,900	8,100
42	16,300	8,300
43	16,600	8,500
44	17,000	8,600
45	17,400	8,800
46	17,800	9,000
47	18,300	9,200
48	18,700	9,400
49	19,200	9,700
50	19,700	9,900
51	20,200	10,100
52	20,700	10,400
53	21,300	10,600
54	21,800	10,900
55	22,400	11,100
56	23,000	11,400
57	23,700	11,700
58	24,300	12,000
59	25,000	12,300
60	25,700	12,600
61	26,400	12,900
62	27,200	13,200
63	27,900	13,600
64	28,800	13,900
65 or older	29,600	14,300

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	1,000	500
27	2,100	1,100
28	3,100	1,600

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
29	4,100	2,100
30	5,200	2,600
31	6,200	3,200
32	7,200	3,700
33	8,300	4,200
34	9,300	4,700
35	10,300	5,300
36	11,400	5,800
37	12,400	6,300
38	13,400	6,800
39	14,500	7,400
40	15,500	7,900
41	15,900	8,100
42	16,300	8,300
43	16,600	8,500
44	17,000	8,600
45	17,400	8,800
46	17,800	9,000
47	18,300	9,200
48	18,700	9,400
49	19,200	9,700
50	19,700	9,900
51	20,200	10,100
52	20,700	10,400
53	21,300	10,600
54	21,800	10,900
55	22,400	11,100
56	23,000	11,400
57	23,700	11,700
58	24,300	12,000
59	25,000	12,300
60	25,700	12,600
61	26,400	12,900
62	27,200	13,200
63	27,900	13,600
64	28,800	13,900
65 or older	29,600	14,300

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is—	
25 or less	0	0
26	1,000	500
27	2,100	1,100
28	3,100	1,600
29	4,100	2,100
30	5,200	2,600
31	6,200	3,200
32	7,200	3,700
33	8,300	4,200
34	9,300	4,700
35	10,300	5,300
36	11,400	5,800
37	12,400	6,300
38	13,400	6,800
39	14,500	7,400
40	15,500	7,900
41	15,900	8,100
42	16,300	8,300
43	16,600	8,500
44	17,000	8,600
45	17,400	8,800
46	17,800	9,000
47	18,300	9,200

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
48	18,700	9,400
49	19,200	9,700
50	19,700	9,900
51	20,200	10,100
52	20,700	10,400
53	21,300	10,600
54	21,800	10,900
55	22,400	11,100
56	23,000	11,400
57	23,700	11,700
58	24,300	12,000
59	25,000	12,300
60	25,700	12,600
61	26,400	12,900
62	27,200	13,200
63	27,900	13,600
64	28,800	13,900
65 or older	29,600	14,300

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087rr.

Dated: July 28, 2015.

James W. Runcie,

Chief Operating Officer Federal Student Aid.

[FR Doc. 2015–18991 Filed 7–31–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–7–000]

Western Area Power Administration; Notice of Filing

Take notice that on July 22, 2015, the Western Area Power Administration submitted tariff filing per 300.10: DSW_BCP_WAPA 171–20150721 to be effective 10/1/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 21, 2015.

Dated: July 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18966 Filed 7–31–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–623–006.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Second Compliance Filing per July 22, 2015 Order in Docket No. ER15–623 to be effective 7/22/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5167.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2282–001.

Applicants: Sierra Pacific Power Company.

Description: Tariff Amendment: Volume No. 7 Market Based Rate Tariff Amendment to be effective 9/26/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5116.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2288–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA Service Agreement No. 4233; Queue No. AB1–005 to be effective 7/22/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5133.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2289–000.

Applicants: ISO New England Inc., Green Mountain Power Corporation.

Description: § 205(d) Rate Filing: ISO–NE and Green Mountain Power Corp. Small Gen. Interconnection Agreement to be effective 6/22/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5135.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2290–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 2nd Quarter 2015 Update to OA/RAA Membership Lists to be effective 6/30/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5141.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2291–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Harlan Municipal Utilities Formula Rate to be effective 10/1/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5147.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2292–000.

Applicants: Idaho Power Company.

Description: Application regarding transmission formula rate of Idaho Power Company.

Filed Date: 7/28/15.

Accession Number: 20150728–5152.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2293–000.

Applicants: Fair Wind Power Partners, L.L.C.

Description: Baseline eTariff Filing: Fair Wind Power Partners LLC MBR Tariff Filing to be effective 9/27/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5179.

Comments Due: 5 p.m. ET 8/18/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–2–000.

Applicants: AV Solar Ranch 1, LLC, Baltimore Gas and Electric Company, Beebe 1B Renewable Energy, LLC, Beebe Renewable Energy, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Cassia Gulch Wind Park LLC, CER Generation, LLC, Commonwealth Edison Company, Constellation Energy Commodities Group Maine, LLC, Constellation Energy Services of New York, Inc., Constellation Energy Services, Inc., Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, LLC, Cow Branch Wind Power, L.L.C, Criterion Power Parnters, LLC, Exelon Framingham, LLC, Exelon Generation Company, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wind 4, LLC, Exelon Wyman, LLC, Fourmile Wind Energy, LLC, Handsome Lake Energy, LLC, Harvest WindFarm, LLC, Harvest II Windfarm, LLC, High Mesa Energy, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, Nine Mile Point Nuclear Station, LLC, PECO Energy Company, R.E. Ginna Nuclear Power Plant, LLC, Shooting Star Wind Project, LLC, Tuana Springs Energy, LLC, Wind Capital Holdings, LLC, Wildcat Wind, LLC, 2014 ESA Project Company, LLC

Description: Quarterly Land Acquisition Report of the Exelon MBR Entities, 2014 ESA Project Company, LLC, and 2015 ESA Project Company, LLC.

Filed Date: 7/28/15.

Accession Number: 20150728–5076.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: LA15–2–000.

Applicants: Astoria Generating Company, L.P., Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, CSOLAR IV South, LLC, CSOLAR IV West, LLC, High Desert Power Project LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC, Alabama Electric Marketing, LLC

Description: Quarterly Land Acquisition Report of Alabama Electric Marketing, LLC, L.P., *et al.*

Filed Date: 7/28/15.

Accession Number: 20150728–5150.

Comments Due: 5 p.m. ET 8/18/15.

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: July 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18964 Filed 7–31–15; 8:45 am]

BILLING CODE 6717–01–P

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: PR15–12–001.

Applicants: NET Mexico Pipeline Partners, LLC.

Description: Tariff filing per 284.123/.224: Revised Statement of Operating Conditions to be effective 12/31/2014; Filing Type: 790.

Filed Date: 7/27/15.

Accession Number: 20150727–5070.

Comments/Protests Due: 5 p.m. ET 8/17/15.

Docket Numbers: RP15–1132–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Chevron Aug2015 TEAM2014 Release to be effective 8/1/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5034.

Comments Due: 5 p.m. ET 8/10/15.

Docket Numbers: RP15–1133–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate eff 11–1–2015 for BP Energy K# 510771 to be effective 11/1/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5036.

Comments Due: 5 p.m. ET 8/10/15.

Docket Numbers: RP15–1134–000.

Applicants: Central New York Oil And Gas, L.L.C.

Description: § 4(d) Rate Filing: Central New York Oil And Gas Company, L.L.C.—Proposed Revisions to Tariff to be effective 9/1/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5141.

Comments Due: 5 p.m. ET 8/10/15.

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: July 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18965 Filed 7–31–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–8–000]

Western Area Power Administration; Notice of Filing

Take notice that on July 23, 2015, the Western Area Power Administration submitted tariff filing per 300.10: UGP_PSMBPED_WAPA170_-20150704 to be effective 10/1/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 24, 2015.

Dated: July 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18967 Filed 7–31–15; 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: ER10–3246–005.

Applicants: PacifiCorp.

Description: Notice of Change in Status of PacifiCorp.

Filed Date: 7/27/15.

Accession Number: 20150727–5229.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER12–2068–008; ER15–1471–001; ER10–2460–008; ER10–2461–008; ER12–682–009; ER10–2463–008; ER15–1672–001; ER11–2201–012; ER10–2464–005; ER13–1139–011; ER13–1585–005; ER10–2465–004; ER11–2657–005; ER13–17–006; ER14–2630–004; ER12–1311–008; ER10–2466–009; ER11–4029–008; ER12–2205–005; ER12–2159–004; ER10–1821–009; ER12–919–003.

Applicants: Blue Sky East, LLC, Blue Sky West, LLC, Canandaigua Power Partners, LLC, Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power II, LLC, Evergreen Wind Power III, LLC, First Wind Energy Marketing, LLC, Imperial Valley Solar 1, LLC Longfellow Wind, LLC, Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC, Niagara Wind Power, LLC, Regulus Solar, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC, Meadow Creek Project Company LLC, Canadian Hills Wind, LLC, Goshen Phase II LLC, Rockland Wind Farm LLC.

Description: Notice of Change in Status of Blue Sky East, LLC, *et. al.* under ER12–2068, *et. al.*

Filed Date: 7/27/15.

Accession Number: 20150727–5227.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–1939–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3050 Substitute Sunwind Energy Group GIA to be effective 6/3/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5073.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: ER15–2260–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Compliance Filing per 3/20/14 Order in Docket No. EL14–24–000 and Order 809 to be effective 4/1/2016.

Filed Date: 7/23/15.

Accession Number: 20150723–5137.

Comments Due: 5 p.m. ET 8/13/15.

Docket Numbers: ER15–2283–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Amendment to Market-Based Rate Tariff—EIM to be effective 9/26/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5167.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2284–000.

Applicants: PacifiCorp.

Description: Tariff Cancellation: Termination of Exelon EIM Participation Construction Agreement to be effective 9/10/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5169.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2285–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205 filing of SGIA among NYISO, NMPC and Monroe County to be effective 7/13/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5170.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2286–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised Service Agreement No. 4030; Queue No. AA1–102 to be effective 6/26/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5172.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2287–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2015–07–28_SA 2753 NSP-Red Pine Wind 1st Rev GIA (H081) to be effective 7/29/2015.

Filed Date: 7/28/15.

Accession Number: 20150728–5055.

Comments Due: 5 p.m. ET 8/18/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–2–000.

Applicants: Northern States Power Company, a Minnesota corporation, Xcel Energy Inc.

Description: Quarterly Land Acquisition Report of Northern States Power Company, a Minnesota corporation, *et. al.*

Filed Date: 7/28/15.

Accession Number: 20150728–5034.

Comments Due: 5 p.m. ET 8/18/15.

Docket Numbers: LA15–2–000.

Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Headwaters Wind Farm LLC, High Prairie Wind Farm II, LLC, High Trail Wind Farm, LLC, Lone Valley Solar Park I LLC, Lone Valley Solar Park II LLC, Lost Lakes Wind Farm LLC, Marble River, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Old Trail Wind Farm, LLC, Paulding Wind Farm II LLC, Pioneer Prairie Wind Farm I LLC, Rail Splitter Wind Farm, LLC, Rising Tree Wind Farm LLC, Rising Tree Wind Farm II LLC, Rising Tree Wind Farm III LLC, Sustaining Power Solutions LLC.

Description: Quarterly Land Acquisition Report of Blackstone Wind Farm, LLC, *et. al.*

Filed Date: 7/28/15.

Accession Number: 20150728–5035.

Comments Due: 5 p.m. ET 8/18/15.

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: July 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18963 Filed 7–31–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP15–17–000	7–20–15	Willie Kirkland Jr.
2. CP15–17–000	7–20–15	Thomas J. Lewis.
3. CP15–17–000	7–21–15	Ruby Hager.
4. CP15–17–000	7–22–15	Joanne B. Jasper.
5. CP15–17–000	7–22–15	Luther W. Jewell.
6. CP15–17–000	7–22–15	Henry Hamlett.
7. CP15–17–00	7–22–15	Christopher W. Jewell.
8. CP15–17–000	7–23–15	C. Tom Bowling.
9. CP15–500–000	7–23–15	Luc Novovitch.
10. CP15–17–000	7–23–15	Ethel R. Vickers.
Exempt:		

Docket No.	File date	Presenter or requester
1. CP13–483–000	7–9–15	FERC Staff.[1]
CP13–492–000		
2. CP15–500–000	7–14–15	Texas State Senator Jose Rodriguez.
CP15–503–000		
3. CP13–483–000	7–21–15	FERC Staff.[2]
CP13–492–000		
4. CP13–483–000	7–21–15	FERC Staff.[3]
CP13–492–000		

Dated: July 27, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18962 Filed 7–31–15; 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: EC15–176–000.

Applicants: Beethoven Wind, LLC, NorthWestern Corporation.

Description: Joint Application of NorthWestern Corporation and Beethoven Wind, LLC for Authorization under Section 203 of the Federal Power Act and Request for Expedited Approval.

Filed Date: 7/24/15.

Accession Number: 20150724–5167.

Comments Due: 5 p.m. ET 8/14/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1257–005; ER10–1258–005.

Applicants: Wabash Valley Power Association, Inc., Wabash Valley Energy Marketing, Inc.

Description: Notice of Change of Status of Wabash Valley Power Association, Inc.

Filed Date: 7/24/15.

Accession Number: 20150724–5171.

Comments Due: 5 p.m. ET 8/14/15.

Docket Numbers: ER15–1218–001.

Applicants: Solar Star California XIII, LLC.

Description: Notice of Non-Material Change in Status of Solar Star California XIII, LLC.

Filed Date: 7/24/15.

Accession Number: 20150724–5161.

Comments Due: 5 p.m. ET 8/14/15.

Docket Numbers: ER15–1902–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3043 Substitute Prairie Breeze Wind Energy II LLC GIA to be effective 5/26/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5037.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–1909–001.

Applicants: Kingfisher Wind, LLC.

Description: Tariff Amendment: Amended Certificate of Concurrence to be effective 6/30/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5074.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2270–000.

Applicants: Thunder Spirit Wind, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 7/25/2015.

Filed Date: 7/24/15.

Accession Number: 20150724–5135.

Comments Due: 5 p.m. ET 8/14/15.

Docket Numbers: ER15–2271–000.

Applicants: Arizona Public Service Company.

Description: Tariff Cancellation: Rate Schedule Nos. 264 and 268 Cancellation to be effective 9/23/2015.

Filed Date: 7/24/15.

Accession Number: 20150724–5144.

Comments Due: 5 p.m. ET 8/14/15.

Docket Numbers: ER15–2272–000.

Applicants: California Independent System Operator Corporation.

Description: Petition of the California Independent System Operator Corporation for Market Power Mitigation Authority.

Filed Date: 7/24/15.

Accession Number: 20150724–5168.

Comments Due: 5 p.m. ET 8/14/15.

Docket Numbers: ER15–2273–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement Nos. 4213, 4216; Queue Nos. AA1–134, AA1–139 to be effective 6/25/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5083.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2274–000.

Applicants: NorthWestern Corporation.

Description: Initial rate filing: SA 745—Engineering & Procurement Agreement with Express Pipeline LLC to be effective 7/28/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5104.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2275–000.

Applicants: Turner Energy, LLC.

Description: Tariff Cancellation: Cancel Tariff to be effective 9/26/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5109.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2276–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Southern Power (Pawpaw Solar) LGIA Filing to be effective 7/13/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5121.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2277–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Southern Power (Taylor County Solar Facility I—143MW) LGIA Filing to be effective 7/13/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5125.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2278–000.

Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated, West Penn Power Company, Trans-Allegheny Interstate Line Company.

Description: § 205(d) Rate Filing: ATSI submits Original SA Nos 4228, 4229, 4230 & Revised SA No. 2852 to be effective 8/31/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5135.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2279–000.

Applicants: Alcoa Power Generating Inc.

[1] Notes from 7–8–15 telephone conference call with federal cooperating agencies regarding production of the final environmental impact statement.

[2] Letter dated 7–9–15 from Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

[3] Stay Agreement dated 7–13–15 from Oregon Department of Land and Conservation and Development.

Description: § 205(d) Rate Filing: Request for Authorization to Make MBR Sales of Operating Reserves to be effective 9/28/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5137.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2280–000.

Applicants: Alcoa Power Marketing LLC.

Description: § 205(d) Rate Filing: Request for Authorization to Make MBR Sales of Operating Reserves to be effective 9/28/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5140.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2281–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Volume No. 11 Market Based Rate Tariff Amendments to be effective 9/26/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5158.

Comments Due: 5 p.m. ET 8/17/15.

Docket Numbers: ER15–2282–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Volume 7 Market Based Rate Tariff Amendments to be effective 7/27/2015.

Filed Date: 7/27/15.

Accession Number: 20150727–5162.

Comments Due: 5 p.m. ET 8/17/15.

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: July 27, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–18961 Filed 7–31–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0171; FRL 9925–37–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Tier 2 Data Collection for Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): ''Tier 2 Data Collection for Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP)'' and identified by EPA ICR No. 2479.01 and OMB Control No. 2070–New. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. EPA has addressed the comments received in response to the previously provided public review opportunity issued in the **Federal Register** on June 24, 2013, 78 FR 37803. With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before September 2, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0171, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jane Robbins, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6625; email address: *robbins.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This ICR is for a new information collection activity.

Under PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the information collection activities associated with Tier 2 data collection activities for certain chemicals under EPA's EDSP. The EDSP is established under section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(p)), which requires EPA to develop a chemical screening program using appropriate validated test systems and other scientifically relevant information to determine whether certain substances may have hormonal effects. The EDSP consists of a two-tiered approach to screen chemicals for potential endocrine disrupting effects. The purpose of Tier 1 screening is to identify substances that have potential bioactivity in the estrogen, androgen, or thyroid hormone systems using a battery of assays. Substances that have potential bioactivity with estrogen, androgen or thyroid hormone systems may proceed to Tier 2, which is designed to identify any adverse endocrine-related effects caused by the substance, and establish a quantitative relationship between the dose and that endocrine effect. Additional information about the EDSP is available through the Agency's Web site at *http://www.epa.gov/endo.*

This ICR addresses the information collection activities for those chemicals that were screened under Tier 1 of the EDSP and are now proceeding to testing under Tier 2 of the EDSP. The ICR covers the information collection activities associated with Tier 2 of the EDSP. As such, this ICR addresses the paperwork activities associated with generating the data requested, and submitting the data to EPA pursuant to the order.

Respondents/Affected Entities: Those individuals and companies that receive an EDSP Tier 2 order issued by the Agency. Under FFDCA section 408(p)(5)(A), EPA ''shall issue'' EDSP test orders ''to a registrant of a substance for which testing is required . . . or to a person who manufactures or imports a substance for which testing is required.''

Respondent's obligation to respond: FFDCA section 408(p)(5) obligates test order recipients to respond.

Estimated total number of potential respondents: 100.

Frequency of response: On occasion.

Estimated total burden: 83,116 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $5,861,023 (per year). This primarily represents estimated labor cost, with related administrative costs of $104. Given the nature of the activities, there are no costs estimated for capital investment or maintenance and operational costs.

Changes in the estimates: This is a request for a new approval from OMB.

Authority: 44 U.S.C. 3501 *et seq.*

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–18849 Filed 7–31–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0233]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 2, 2015. 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 No: 3060–0233.

Title: Part 54, High-Cost Loop Support Reporting to National Exchange Carrier Association (NECA).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,095 respondents; 1,515 responses.

Estimated Time Per Response: 22 hours.

Frequency of Response: On occasion reporting requirement, annual reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for information collection is contained in *47 U.S.C. 151, 154(i)*, and *(j), 221(c)* and *410(c).*

Total Annual Burden: 33,330 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information.

Need and Uses: In order to determine which carriers are entitled to high-cost loop support, rate-of-return incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by 47 CFR 54.1305 of the Commission's rules for each of its study areas and, if applicable, for each wire center (that term is defined in 47 CFR part 54). The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission by October 1 of each year. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in *47 CFR 51.5* of the Commission's rules.

The reporting requirements are necessary to implement the congressional mandate for universal service. The requirements are necessary to verify that rate-of-return LECs are eligible to receive universal service support. Information filed with NECA pursuant to section 54.1305 is used to calculate universal service support payments to eligible carriers. Without this information, NECA and USAC

(Universal Service Administration Company) would not be able to calculate such payments to eligible carriers.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

[FR Doc. 2015–18902 Filed 7–31–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10069, Neighborhood Community Bank Newnan, GA

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Neighborhood Community Bank, Newnan, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Neighborhood Community Bank on June 26, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 29, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–18971 Filed 7–31–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Community Banking.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Community Banking (''the Committee'') is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas. The Committee will continue to review various issues that may include, but not be limited to, the latest examination policies and procedures, credit and lending practices, deposit insurance assessments, insurance coverage issues, and regulatory compliance matters, as well as any obstacles to the continued growth and ability of community banks to extend financial services in their local markets in the current market environment. The structure and responsibilities of the Committee are unchanged from when it was originally established in July 2009. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: July 28, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2015–18933 Filed 7–31–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10489, The Community's Bank Bridgeport, Connecticut

Notice Is Hereby Given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for The Community's Bank, Bridgeport, Connecticut (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of The Community's Bank on September 09, 2013. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 29, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–18970 Filed 7–31–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Farmers National Banc Corp.,* Canfield, Ohio; to acquire 100 percent of the voting shares of Tri-State 1st Banc, Inc., and thereby indirectly acquire voting shares of 1st National Community Bank, both in East Liverpool, Ohio.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *BancFirst Corporation,* Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of CSB Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Commerce, Yukon, Oklahoma.

2. *Banner County Ban Corporation Employee Stock Ownership Plan and Trust and Banner County Ban Corporation,* both in Harrisburg, Nebraska; to acquire 100 percent of the voting shares Oregon Trail Bank, Guernsey, Wyoming.

Board of Governors of the Federal Reserve System, July 29, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–18949 Filed 7–31–15; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Medicaid and CHIP Payment and Access Commission Nominations

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) established the Medicaid and CHIP Payment and Access Commission (MACPAC) to review Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. CHIPRA gave the Comptroller General of the United States responsibility for appointing MACPAC's members. For appointments to MACPAC that will be effective January 1, 2016, I am announcing the following: Letters of nomination and resumes will be accepted through September 16, 2015 to ensure adequate opportunity for review and consideration of nominees prior to appointment of new members. Nominations should be sent to the email or mailing address listed below. Acknowledgement of submissions will be provided within a week of submission. Please contact Mary Giffin at (202) 512–3710 if you do not receive an acknowledgement.

ADDRESSES:

Email: MACPACappointments@gao.gov.

Mail: U.S. GAO, Attn: MACPAC Appointments, 441 G Street NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: *GAO:* Office of Public Affairs, (202) 512–4800.

Authority: Public Law 111–3, Section 506; 42 U.S.C. 1396.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2015–18888 Filed 7–31–15; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–1005]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Older Adult Safe Mobility Assessment Tool (OMB Control No. 0920–1005, Discontinued 10/31/2014)—Reinstatement—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC seeks to reinstate, with change, a previously approved information collection entitled ''Older Adult Safe Mobility Assessment Tool'' (OMB Control No. 0920–1005).

Within the NCIPC, preventing falls and ensuring safe transportation for older adults are strategic priorities. The purpose of this information collection is to evaluate whether the Mobility Planning Tool is effective for promoting readiness to adopt mobility-protective behaviors in older adults and 2) assess

potential strategies for dissemination of the MPT.

Information will be collected by surveying older adults, aged 60–74 years, who are living in the community (non-institutionalized), and have good mobility. An initial survey will be administered to 1000 adults, half (500) will be sent the MPT, and then 900 adults will be surveyed again.

Effectiveness of the tool will be assessed using two different comparisons: (1) A comparison between individuals' attitudes and behaviors related to protecting their mobility as they age before and after receiving the MPT in the group that received the MPT, and (2) a comparison of both mobility-related attitudes and behaviors and changes between the group that received the MPT and the group that did not receive the MPT.

Study findings will be used to identify areas of the MPT that may need revision before it is disseminated publicly.

The previous data collection gathered older adults' impressions, and based on their feedback, MPT tool has now been redesigned and oriented toward mobility planning rather than mobility assessment. This reinstatement request is to conduct a randomized controlled trial on the revised tool to determine if the tool promotes readiness in older adults to adopt mobility-protective behaviors, and appropriate ways to disseminate the tool.

There are no costs to respondents other than their time. The total estimated annual burden hours are 734.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals Responding to Initial Phone Call Who Refuse to be Screened.	Screening Interview Guide	2,500	1	1/60
Individuals Responding to Initial Phone Call Responding to Screening Questions.	Screening Interview Guide	1,500	1	5/60
Study Participants	Baseline Interview Guide	1,000	1	10/60
Study Participants	MPT	500	1	30/60
Study Participants	Follow-up Interview Guide	900	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–18947 Filed 7–31–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–668B]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 2, 2015.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Post Clinical Laboratory Survey Questionnaire and Supporting Regulations; *Use:* Form CMS–668B is used by a Clinical

Laboratory Improvement Amendments (CLIA) laboratory to express its satisfaction with the survey process and to make recommendations for improvement. Surveyors furnish this form to all laboratories that receive either an onsite survey or the Alternate Quality Assessment Survey (*i.e.,* paper survey of quality indicators). We perform an overview evaluation of the completed forms. Each calendar year, a summary of the information collected is sent to the State and CMS Regional Offices. *Form Number:* CMS–668B (OMB Control Number 0938–0653); *Frequency:* Biennially; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions), State, Local, or Tribal Government; *Number of Respondents:* 19,051; *Total Annual Responses:* 9,526; *Total Annual Hours:* 2,382. (For policy questions regarding this collection contact Kathleen Todd at 410–786–3385.)

Dated: July 28, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–18857 Filed 7–31–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10433]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *October 2, 2015:*

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10433 Initial Plan Data Collection To Support QHP Certification and Other Financial Management and Exchange Operations

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Initial Plan Data Collection to Support Qualified Health Plan (QHP) Certification and Other Financial Management and Exchange Operations; *Use:* As required by the CMS–9989–F, Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310) (Exchange Establishment Rule), published on March 27, 2012, each Exchange must assume responsibilities related to the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange.

A QHP must meet certain minimum certification standards, such as those pertaining to essential community providers, essential health benefits, and actuarial value. In order to meet those standards, the Exchange is responsible for collecting data and validating that QHPs meet these minimum requirements as described in the Exchange rule under 45 CFR parts 155 and 156, based on the Affordable Care Act, as well as other requirements determined by the Exchange. In addition to data collection for the certification of QHPs, the reinsurance and risk adjustment programs outlined by the Affordable Care Act, detailed in 45 CFR part 153, as established by CMS–9975–F, Patient Protection and Affordable Care Act; Standards for Reinsurance, Risk Corridors, and Risk Adjustment (77 FR 17220), published in March 23, 2012, have general information reporting requirements that apply to issuers, group health plans, third party administrators, and plan offerings outside of the Exchanges.

Subsequent regulations for these programs including the final HHS Notice of Benefit and Payment Parameters for 2014 and the Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 provide further reporting requirements. Based on experience with the first three years of data collection, we request the continuation of data collection and propose revisions to data elements being collected and the burden estimates for years four, five, and six. *Form Number:* CMS–10433 (OMB Control Number: 0938–1187); *Frequency:* Annually; *Affected Public:* Private sector (Business or other For-profits and Not-for-profit institutions); *Number of Respondents:* 26,951; *Total Annual Responses:* 26,951; *Total Annual Hours:* 235,153. (For policy questions regarding this collection contact Leigha Basini at 301–492–4380.)

Dated: July 28, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–18848 Filed 7–31–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9092–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April through June 2015, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	Mitch Bryman	(410) 786–5258
VII Medicare-Approved Carotid Stent Facilities	Lori Ashby	(410) 786–6322
VIII American College of Cardiology—National Cardiovascular Data Registry Sites	Marie Casey, BSN, MPH	(410) 786–7861
IX Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin	(410) 786–7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786–8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	Marie Casey, BSN, MPH	(410) 786–7861
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Marie Casey, BSN, MPH	(410) 786–7861
XIV Medicare-Approved Bariatric Surgery Facilities	Jamie Hermansen	(410) 786–2064
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786–8564
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest.

We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Dated July 27, 2015.

Kathleen Cantwell

Director, Office of Strategic Operations and Regulatory Affairs.

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: July 25, 2014 (79 FR 43475), November 14, 2014 (79 FR 68253), February 2, 2015 (80 FR 5537) and April 24, 2015 (80 FR 23013). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (April through June 2015)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Microvolt T-wave Alternans (MTWA), use Medicare National Coverage Determination (CMS-Pub. 100-03) Transmittal No. 182.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
91	Manual Updates to Clarify Requirements for Physician Certification and Recertification of Patient Eligibility for Home Health Services Recertifications for IIome IIealth Services Content of the Physician's Certification Method and Disposition of Certifications for Home Health Services Certification and Recertification by Physicians for Home Health Services
92	Manual Updates to Clarify Requirements for Physician Certification and Recertification of Patient Eligibility for Home Health Services Recertifications for Home Health Services Content of the Physician's Certification Method and Disposition of Certifications for Home Health Services Certification and Recertification by Physicians for Home Health Services

Medicare Benefit Policy (CMS-Pub. 100-02)	
205	Updates on Hospice Election Form, Revocation, and Attending Physician Attending Physician Services Hospice Election Hospice Notice of Election Hospice Revocation Hospice Discharge Hospice Notice of Termination or Revocation Election, Revocation and Discharge
206	Private Contracting: Definition of Emergency Care Services and Appeals of Opt Out Determinations Appeals Definition of Emergency and Urgent Care Situations
207	Manual Updates to Clarify Requirements for Physician Certification and Recertification of Patient Eligibility for Home Health Services Home Health Prospective Payment System (HH PPS) National 60-Day Episode Rate Adjustments to the 60-Day Episode Rates Counting 60-Day Episodes Split Percentage Payment Approach to the 60-Day Episode Low Utilization Payment Adjustment (LUPA) Partial Episode Payment (PEP) Adjustment Discharge Issues Consolidated Billing Determination of Coverage Impact of Other Available Caregivers and Other Available Coverage on Medicare Coverage of Home Health Services Patient Confined to the Home Patient's Place of Residence Physician Certification for Medical and Other Health Services Furnished by Home Health Agency (HHA) Use of Oral (Verbal) Orders Under the Care of a Physician Physician Certification and Recertification of Patient Eligibility for Medicare Home Health Services Physician Certification Face-to-Face Encounter Supporting Documentation Requirements Physician Recertification Who May Sign the Certification or Recertification Physician Billing for Certification and Recertification Psychiatric Evaluation, Therapy, and Teaching Intermittent Skilled Nursing Care General Principles Governing Reasonable and Necessary Physical Therapy, Speech-Language Pathology Services, and Occupational Therapy Impact on Care Provided in Excess of "Intermittent" or "Part-Time" Care Counting Visits Under the Hospital and Medical Plans Services Covered Under the End Stage Renal Disease (ESRD) Program Medical and Other Health Services Furnished by Home Health Agencies Content of the Plan of Care
208	Manual Updates to Clarify Requirements for Physician Certification and Recertification of Patient Eligibility for Home Health Services
209	Updates on Hospice Election Form, Revocation, and Attending Physician Attending Physician Services Hospice Election Election, Revocation and Discharge Hospice Revocation Hospice Discharge Hospice Notice of Termination or Revocation Hospice Notice of Election
Medicare National Coverage Determination (CMS-Pub. 100-03)	
182	Microvolt T-wave Alternans (MTWA)
Medicare Claims Processing (CMS-Pub. 100-04)	
3231	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3232	Preventive and Screening Services — Update - Intensive Behavioral Therapy for Obesity, Screening Digital Tomosynthesis Mammography, and Anesthesia Associated with Screening Colonoscopy
3233	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
3234	April 2015 Update of the Ambulatory Surgical Center (ASC) Payment System
3235	April 2015 Update of the Hospital Outpatient Prospective Payment System (OPPS) Inpatient-only Services Use of HCPCS Modifier - PO Payment Window for Outpatient Services Treated as Inpatient Services
3236	Remittance Advice Remark and Claims Adjustment Reason Code and Medicare Remit Easy Print and PC Print Update
3237	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3238	April 2015 Update of the Hospital Outpatient Prospective Payment System (OPPS) Inpatient-only Services Use of HCPCS Modifier - PO Payment Window for Outpatient Services Treated as Inpatient Services
3239	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3240	Medicare Claims Processing Manual - Chapter 15, Section 40, Ambulance - Medical Conditions List Medical Conditions List and Instructions
3241	Transcatheter Mitral Valve Repair (TMVR)-National Coverage Determination (NCD) Claims Processing Requirements for TMVR for MR Services for Medicare Advantage (MA) Plan Participants Coding Requirements for TMVR for MR Claims Furnished on or After August 7, 2014 Claims Processing Requirements for TMVR for MR Services on Professional Claims Claims Processing Requirements for TMVR for MR Services on Inpatient

	Hospital Claims Transcatheter Mitral Valve Repair (TMVR)
3242	Remittance Advice Remark and Claims Adjustment Reason Code and Medicare Remit Easy Print and PC Print Update
3243	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3244	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3245	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3246	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
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3249	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3250	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3251	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3252	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3253	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3254	Quarterly Healthcare Common Procedure Coding System (HCPCS) Drug/Biological Code Changes - July 2015 Update Average Sales Price (ASP) Payment Methodology
3255	Correction to the Multi-Carrier System (MCS) Editing on the Service Location National Provider Identifier (NPI) Reported for Anti-Markup and Reference Laboratory Claims Diagnostic Tests Subject to the Anti-Markup Payment Limitation Payment to Physician or Other Supplier for Diagnostic Tests Subject to the Anti-Markup Payment Limitation - Claims Submitted to A/B MACs (B) Billing for Diagnostic Tests (Other Than Clinical Diagnostic Laboratory Tests) Subject to the Anti-Markup Payment Limitation/Claims Submitted A/B MACs (B) Conditional Data Element Requirements for A/B MACs (B) and DMEMACs A/B MAC (B) Specific Requirements for Certain Specialties/Services Paper Claim Submission To A/B MACs (B) Electronic Claim Submission to A/B MACs (B) Items 14-33 - Provider of Service or Supplier Information Payment Jurisdiction for Services Subject to the Anti-Markup Payment Limitation
3256	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - July 2015
3257	July Quarterly Update for 2015 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
3258	July Quarterly Update for 2015 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
3259	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - July CY 2015 Update
3260	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction Collection of Specimens
3261	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3262	Manual Update to Pub. 100-04, Chapter 1, to include Claims Submitted by Multiple DMEPOS Suppliers Exact Duplicates
3263	Inpatient Prospective Payment System (IPPS) Hospital Extensions per the Medicare Access and CHIP Reauthorization Act of 2015
3264	July 2015 Integrated Outpatient Code Editor (I/OCE) Specifications Version 16.2
3265	NCD20.30 Microvolt T-wave Alternans (MTWA) Messaging for MTWA Coding and Claims Processing for MTWA Microvolt T-wave Alternans (MTWA)
3266	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3267	New Waived Tests
3268	Corrections to the 2015 Home Health (HH) Pricer Program Decision Logic Used by the Pricer on Claims
3269	Quarterly Update of HCPCS Codes Used for Home Health Consolidated Billing Enforcement
3270	Implement Operating Rules - Phase III ERA EFT: CORE 360 Uniform Use of Claim Adjustment Reason Codes (CARC) and Remittance Advice Remark Codes (RARC) Rule - Update from CAQH CORE
3271	Common Edits and Enhancements Modules (CEM) Code Set Update
3272	Claim Status Category and Claim Status Codes Update
3273	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3274	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
3275	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 21.3, Effective October 1, 2015
3276	Instructions for Downloading the Medicare ZIP Code File for October 2015
3277	July Quarterly Update for 2015 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
3278	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3279	July 2015 Update of the Ambulatory Surgical Center (ASC) Payment System
3280	July 2015 Update of the Hospital Outpatient Prospective Payment System (OPPS)
3281	Inpatient Prospective Payment System (IPPS) Hospital Extensions per the Medicare Access and CHIP Reauthorization Act of 2015
3282	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

3283	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April CY 2015 Update
3284	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
3285	Screening for Hepatitis C Virus (HCV) in Adults – Implementation of Additional Common Working File (CWF) and Shared System Maintainer (SSMs) Edits Common Working File (CWF) Edits Claim Adjustment Reason Codes (CARCs), Remittance Advice Remark Codes (RARCs), Group Codes, and Medicare Summary Notice (MSN) Messages Institutional Billing Requirements
3286	Medicare Part A Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Pricer Update FY 2016
3287	Revisions to Medicare Claims Processing Manual for Foreign, Emergency and Shipboard Claims Emergency and Foreign Hospital Services Services Rendered By Nonparticipating Providers Establishing an Emergency Coverage Requirements for Emergency Hospital Services in Foreign Countries Qualifications of an Emergency Services Hospital Services Furnished in a Foreign Hospital Nearest to Beneficiary's U.S. Residence Coverage of Physician and Ambulance Services Furnished Outside U.S. Claims for Services Furnished in Canada to Qualified Railroad Retirement Beneficiaries Claims from Hospital-Leased Laboratories Not Meeting Conditions of Participation Nonemergency Part B Medical and Other Health Services Elections to Bill for Services Rendered By Nonparticipating Hospitals Processing Claims Contractors Designated to Process Foreign Claims Contractor Processing Guidelines Medicare Approved Charges for Services Rendered in Canada or Mexico Accessibility Criteria Medical Necessity Time Limitation on Emergency and Foreign Claims Payment Denial for Medicare Services Furnished to Alien Beneficiaries Who Are Not Lawfully Present in the United States Appeals on Claims for Emergency and Foreign Services Payment for Services Received By Nonparticipating Providers Payment for Services from Foreign Hospitals Attending Physician's Statement and Documentation of Medicare Emergency Designated Contractors Model Letters, Nonparticipating Hospital and Emergency Claims Letter to Nonparticipating Hospital That Elected to Bill For Current Year Model Letter to Nonparticipating Hospital That Requests to Bill the Program Model Letter to Nonparticipating Hospital That Did Not Elect to Bill for Current Year Full Denial - Hospital-Filed or Beneficiary-Filed Emergency Claim Full Denial - Foreign Claim - Beneficiary Filed Denial - Military Personnel/Eligible Dependents Full Denial - Shipboard Claim - Beneficiary filed Partial Denial - Hospital-Filed or Beneficiary-Filed Emergency Claim
Medicare Secondary Payer (CMS-Pub. 100-05)	
111	None Issued to a specific audience, not posted to Internet /Intranet due to Sensitivity of Instruction
112	Inpatient Hospital Claims and Medicare Secondary Payer (MSP) Claims with Medicare Coinsurance Days and/or Medicare Lifetime Reserve Days Occurring in the Seventh to Fifteenth Years Payment Calculation for Inpatient Bills (MSPPAYAI Module) Return Codes
Medicare Financial Management (CMS-Pub. 100-06)	
250	Notice of New Interest Rate for Medicare Overpayments and Underpayments - 3rd Qtr. Notification for FY 2015
Medicare State Operations Manual (CMS-Pub. 100-07)	
137	Revisions to State Operations Manual (SOM) Appendices A, G, L and T related to Hospitals, Rural Health Clinics, Ambulatory Surgical Centers and Swing Bed
138	Revisions to State Operations Manual (SOM), Appendix W for Critical Access Hospitals
139	Revisions to the Medicare State Operations Manual (SOM), Chapter 2, Rural Health Clinic Certification
140	Revisions to Appendix C-Survey Procedures and Interpretive Guidelines for Laboratories and Laboratory Services
Medicare Program Integrity (CMS-Pub. 100-08)	
589	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
590	Update of CMS-855A, Physician-Owned Hospital Reporting Via the CMS-855POH and Indirect Payment Procedure Registration Via the CMS-855C in Chapter 15 of Pub. 100-08 Registration Letters Submission of Registration Applications Processing of Registration Applications Disposition of Registration Applications Changes of Information and Other Registration Transactions Hospitals and Hospital Units
591	Revisions to Surety Bond Collection Policies Model Letters for Claims against Surety Bonds Claims against Surety Bonds
592	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
593	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
594	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
595	Comprehensive Error Rate Testing (CERT) Program Treatment of Power Mobility Device (PMD) and Repetitive Scheduled Non-Emergent Ambulance

	Transport Claims in the Prior Authorization Model CERT Program Treatment of Power Mobility Device (PMD) and Repetitive Scheduled Non-Emergent Ambulance Transport Claims in the Prior Authorization Model
596	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
597	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
598	Proof and Date of Delivery Supplier Documentation
599	Annual Improper Payment Reduction Strategy (IPRS)
600	Workload Reporting Prepay Complex Service Specific Review Prepay Complex Provider Specific Review
601	Review of Home Health Claims Home Health
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
	None
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Demonstrations (CMS-Pub. 100-19)	
117	Affordable Care Act Bundled Payments for Care Improvement Initiative - Recurring File Updates Models 2 and 4 July 2015 Updates
118	Updates to the Model 4 Bundled Payments for Care Improvement (BPCI) Initiative to Clarify the Payment Calculation to Include New Technology Add-On Payments, Validate Only Claims with Medicare as Primary Payer, Allowing Medical Necessity Denial Claims to Process Effectively, and Correct Processing of Claims Submitted as Model 4 for Beneficiaries Determined to be Ineligible
119	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
One Time Notification (CMS-Pub. 100-20)	
1485	Continuation of Systematic Validation of Payment Group Codes for Prospective Payment Systems (PPS) Based on Patient Assessments
1486	Increasing Tax Withholding to 30% for IRS Federal Payment Levy Program (FPLP)
1487	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1488	The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year 2012 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long Term Care Hospitals (LTCH)
1489	Analysis and Design for Part B Detail Line Expansion
1490	Identification of Obsolete Shared System Maintainer (SSM) Reports - FISS and VMS
1491	Identification of Obsolete Shared System Maintainer (SSM) On-Request Jobs – FISS and VMS
1492	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for July 2015
1493	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1494	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1495	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1496	Modification to the Telehealth Originating Site Facility Fee Billing Requirements for Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs)
1497	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for October 2015
1498	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process
1499	Section 504: Implement National Medicare Summary Notices (MSNs) in Alternate Formats
1500	IDR Shared Systems Daily Claims Feeds Expansion to Accommodate Medical Review Data Elements
1501	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1502	Analysis - Procedures for Undeliverable Medicare Summary Notices (MSNs)
1503	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for July 2015
1504	ICD-10 Conversion/Coding Infrastructure Revisions/ICD-9 Updates to National Coverage Determinations (NCDs)--2nd Maintenance CR
1505	Analysis for Inserting a Pre-printed Sheet of Paper in Medicare Summary Notice (MSN)
1506	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
1507	HIGLAS Release 12 (R12) Upgrade and Organizational Transitions for A/B MACs - R12 Upgrade
1508	The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year 2013 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long Term Care Hospitals (LTCH)
1509	Analysis - Procedures for Undeliverable Medicare Summary Notices (MSNs)
1510	Award of Medicare Administrative Contractor (MAC) Contract for Jurisdiction M
1511	Issued to a specific, audience not to Internet/ Intranet due to a Sensitivity of Instruction
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
41	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

42	Payments to Long Term Care Hospitals that Do Not Submit Required Quality Data
43	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
44	Payments to Inpatient Rehabilitation Facilities That Do Not Submit Required Quality Data Payments to IRFs That Do Not Submit Required Quality Data
45	Payments to Hospice Agencies That Do Not Submit Required Quality Data
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (April through June 2015)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-2Q15QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (April through June 2015)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
NCD20.30 Microvolt T-wave Alternans (MTWA)	NCD 20.30	R182	05/22/2015	01/13/2015
Screening for Hepatitis C Virus (HCV) in Adults – Implementation of Additional Common Working File (CWF) and Shared System Maintainer (SSMs) Edits	NCD 210.3 CPM 210.1	R3285	06/09/2015	06/02/2014

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2015)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered

by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
G150041	Tricuspid Transcatheter Repair System Model 9900	04/01/2015
G150042	PIR System (Pyrocarbon Implant Replacement System)	04/01/2015
G150046	Transcatheter Mitral Valve Implantation System (TMVI)	04/09/2015
G150047	StimGuard Sacral Nerve Stimulator System	04/09/2015
G150051	PD-L1 IHC MSB0010718C PHARMDX KIT	04/16/2015
G150052	NUSURFACE Meniscus Implant Model 50035 To 50090 Lefts and Rights	04/16/2015
G150055	Oocyte Handling Medium (OHM) pre-maturation (OHMpremat) and maturation (OHMmat) media system	04/17/2015
G150016	AMPHORA Overactive Bladder System 3.0 MM (OAB Device)	04/22/2015
G150057	Gore Excluder Conformable AAA Endoprosthesis	04/23/2015
G150060	Vysis MET CDx FISH Kit	04/23/2015
G150054	Checkpoint Surgical Nerve Stimulator/Locator	04/24/2015
G150059	MED-EL Maestro	04/24/2015
G140133	Kona Medical Surround Sound System	04/24/2015
G140142	TransPyloric Shuttle System	05/01/2015
G150065	Normothermic Human Liver Perfusion Machine	05/01/2015
G150066	Cardiac Implantable Electronic Device Magnetic Resonance Imaging Registry (CIED-MRI Registry)	05/04/2015
G140216	Aries Device	05/06/2015
G150067	Lutonix A V Drug Coated Balloon Catheter Model 9010	05/06/2015
G150068	iTIND System	05/06/2015
G150070	NOVOTTF-100A Device	05/07/2015
G150072	Precision Spinal Cord Stimulator	05/08/2015
G150034	MECTA Spectrum 5000Q FEAST Device	05/08/2015
G150071	GORE Excluder Thoracoabdominal Brance Endoprosthesis	05/13/2015
G150073	Millar Mikro-Tip Pressure Catheter (Mikro-Cath)	05/14/2015
G150076	NovoCure/NovoTTF-100A System (Optune)	05/15/2015
G150079	Heartmate PHP (Percutaneous Heart Pump) System	05/20/2015
G140182	BioMimics 3D Stent System	05/21/2015
G150080	Medtronic ACTIV Primary Cell and Sensing (PC+S) Implantable Deep Brain Stimulation System	05/22/2015
G150021	Embozene Microspheres	05/27/2015
G150082	ReDS Wearable System	05/29/2015
G150086	Freedom Spinal Cord Stimulator System Model FR8A-RCV-A1, FR8A-RCV-B1; FR4A-RCV-A1; FR4A-RCV-B1; LBRD-915-2A-HF	05/29/2015
G1500087	Endovascular Repair of Descending Thoraco Abdominal Aortic Pathologies Using Physician Modified Endovascular Prosthesis	05/29/2015
G150089	Aquabeam Console Model REF 210101; Aquabeam Motorpack Model REF 210401; Aquabeam Foot Pedal Model REF 210701	05/29/2015
G150100	Fibroblast Growth Factor Receptor Inhibitor (FGRFI) Clinical Trial Assay	06/02/2015
G150092	SmartPatch PNS System For The Treatment of Back Pain	06/03/2015
G150093	Espiner EMP 400 GYN	06/03/2015
G150096	SIR-Spheres microspheres (Yttrium-90 Microspheres)	06/05/2015
G150107	LARIAT+ Suture Delivery System	06/18/2015
G150106	SITESEAL TM	06/19/2015
G150050	RESCUE-VT	06/19/2015
G150113	STAR S4 IR Excimer Laser System and iDesign Advanced WaveScan Studio for Wavefront-Guided PRK Treatment of Myopic Astigmatism	06/25/2015
G150117	Sinai Vein Stent Registry	06/25/2015
G140101	Raleve	06/25/2015
G150118	Activa PC Implantable Neurostimulation System, Activa SC Implantable Neurostimulation System, Activa RC Implantable Neurostimulation System	06/26/2015

Addendum VI: Approval Numbers for Collections of Information (April through June 2015)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (April through June 2015)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for

facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Lori Ashby (410-786-6322).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Southside Hospital – North Shore LIJ Health System 301 East Main Street Bayshore, NY 11706	1043650625	04/14/2015	NY
Bristol Regional Medical Center – Wellmont CVA Heart Institute 1 Medical Park Boulevard Bristol, TN 37620	1124058615	04/21/2015	TN
Sanford Aberdeen Medical Center 2905 3rd Avenue Southeast Aberdeen, SD 57401	1235406455	09/03/2013	SD
Kendall Regional Medical Center 11750 Bird Road Miami, FL 33175	1710931522	05/18/2015	FL
Mercy Fitzgerald Hospital 1500 Landsdowne Avenue Darby, PA	390156	05/29/2015	PA
Beaumont Health System – Royal Oak 3601 W. 13th Mile Road Royal Oak, MI 48072	1689653305	05/29/2015	MI
Medical Center of Trinity 9330 State Road 54 Trinity, FL 34655	100191	06/15/2015	FL
San Juan Regional Medical Center 801 West Maple Street Farmington, NM 87401	1427058510	06/15/2015	NM
Editorial changes (in bold) for this quarter.			
FROM: University of Kansas Medical Center **TO: University of Kansas Hospital** 3901 Rainbow Boulevard Kansas City, KS 66160-7200	170040	05/02/2006	KS
FROM: Exempla St. Joseph Hospital **TO: St. Joseph Hospital** **FROM: 1835 Franklin Street** **Denver, CO 80218-1191** **TO: 1375 E 19th Avenue Denver, CO 80218**	060028	05/10/2005	CO
FROM: Southwest Florida Regional Medical Center **TO: Gulf Coast Medical Center** **13681 Doctors Way Fort Myers, FL 33912**	100220	02/17/2006	FL
FROM: Southern Maryland Hospital Center TO: MedStar Southern Maryland Hospital Center 7503 Surratts Road Clinton, MD 20735	**210062**	05/26/2005	MD
FROM: Sanford Medical Center	430027	04/19/2005	SD
TO: Sanford Medical Center - Sioux Falls 1305 W. 18th Street Sioux Falls, SD 57117-5039			
FROM: St. Lukes Episcopal Hospital **TO: Baylor St Luke's Medical Center** 6720 Bertner Avenue Houston, TX 77030	450193	03/30/2005	TX
FROM: Alegent Creighton Health Creighton University Medical Center **TO: CHI – Creighton University Medical Center** 601 North 30th Street Omaha, NE 68131-2197	280030	06/27/2005	NE
WellStar Cobb **3950 Austell Road Austell, GA 30106**	110143	06/27/2005	GA
WellStar Kennestone **677 Church Street Marietta, GA 30060**	110035	06/27/2005	GA

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2015)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS website at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the

ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available by accessing our website and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Facility	City	State
The following facilities are new listings for this quarter.		
Interfaith Medical Center	Brooklyn	NY
Auxilio Mutuo Hospital	San Juan	PR
University Medical Center Brackenridge	Austin	TX
MemorialCare Surgical Center Saddleback Memorial	Laguna Hills	CA
HIMA San Pablo Bayamon	Bayamon	PR
Seminole Medical Center	Seminole	OK
St. Anthony Regional Hospital & Nursing Home	Carroll	IA
Taylor Station Surgical Center	Columbus	OH
Cleveland Clinic Abu Dhabi	Abu Dhabi	
Samaritan Hospital	Troy	NY
Via Christi Hospital St. Teresa	Wichita	KS
Florida Hospital East Orlando	Orlando	FL
Florida Hospital Celebration	Orlando	FL
CHI Health St. Francis	Grand Island	NE
John D Archbold Memorial Hospital	Thomasville	GA
Guthrie Corning Hospital	Corning	NY
Saint Luke's Memorial Hospital	Ponce	PR
Saint Louise Regional Hospital	Gilroy	CA
Medical Center Alliance (HCA)	Fort Worth	TX
Waco Cardiology Cath Lab and Surgery Center	Waco	TX
Tyler Cardiac & Endovascular Surgery Center	Tyler	TX
The Heart and Vascular Surgery Center	Bryan	TX
Rockdale Medical Center	Conyers	GA
Westerly Hospital	Westerly	RI
Westlake Hospital	Melrose Park	IL

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2015)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the April through June 2015 quarter. For questions or additional information, contact JoAnna Baldwin (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2015)

There were no special one-time notices regarding national coverage provisions published in the April through June 2015 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (April through June 2015)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the April through June 2015 quarter. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (April through June 2015)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Community Heart and Vascular Hospital 8075 N Shadeland Avenue Indianapolis, IN 46250	150074	10/01/2014	IN
Editorial changes (in bold) for this quarter.			
South Broward Hospital District DBA Memorial Regional Hospital 3501 Johnson Street Hollywood, FL 33021	10-0038	08/20/2014	FL

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (April through June 2015)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the April through June 2015 quarter. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (April through June 2015)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the April through June 2015 period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For

questions or additional information, contact Jamie Hermansen (410-786-2064).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2015)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the April through June 2015 quarter.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

[FR Doc. 2015–18904 Filed 7–31–15; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Supplemental Nutrition Assistance Program (SNAP) State Agency Performance Reporting Tool.

OMB No.: New Collection.

Description: State agencies administering a Supplemental Nutrition Assistance Program (SNAP) are mandated to participate in a computer matching program with the federal Office of Child Support Enforcement (OCSE). The outcomes of the computerized comparisons with information maintained in the National Directory of New Hires (NDNH) provide the state SNAP agencies with information to help administer their programs and determine an individual's eligibility. State agencies must enter into a computer matching agreement and adhere to its terms and conditions, including providing OCSE with annual performance outcomes attributable to the use of NDNH information.

The Office of Management and Budget (OMB) requires OCSE to periodically report performance measurements demonstrating how NDNH information supports OCSE's strategic mission, goals, and objectives. OCSE will provide the annual SNAP performance outcomes to OMB.

The information collection activities for the SNAP performance reports are authorized by: (1) Subsection 453 (j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)), which allows the Secretary of the U.S. Department of Health and Human Services to disclose information maintained in the NDNH to state agencies administering SNAP under the Nutrition Act of 2008, as amended by the Agriculture Act of 2014; (2) the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), which sets for the terms and conditions of a computer matching program; and (3) the Government Performance and Results Modernization Act of 2010 (Pub. L. 111–352), which requires agencies to report program performance outcomes to OMB and for the reports to be available to the public.

Respondents: State SNAP Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (SNAP agencies)	Number of responses per respondent	Average burden hours per response	Total burden hours
SNAP Agency Matching Program Performance Reporting Tool	52	1	1.625	84

Estimated Total Annual Burden Hours: 84.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–18952 Filed 7–31–15; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2016 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Drug User Fee Amendments of 2013 (ADUFA III), authorizes FDA to collect user fees for certain animal drug applications and supplements, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2016.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6888. For general questions, you may also email the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12) establishes four different types of user fees: (1) Fees for certain types of animal drug applications and supplements; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts established for years after FY 2014 are subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)). Fees for applications, establishments, products, and sponsors are to be established each year by FDA

so that the percentages of the total revenue that are derived from each type of user fee will be as follows: Revenue from application fees shall be 20 percent of total fee revenue; revenue from product fees shall be 27 percent of total fee revenue; revenue from establishment fees shall be 26 percent of total fee revenue; and revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)).

For FY 2016, the animal drug user fee rates are: $351,100 for an animal drug application; $175,550 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $7,790 for an annual product fee; $105,950 for an annual establishment fee; and $101,000 for an annual sponsor fee. FDA will issue invoices for FY 2016 product, establishment, and sponsor fees by December 31, 2015, and payment will be due by January 31, 2016. The application fee rates are effective for applications submitted on or after October 1, 2015, and will remain in effect through September 30, 2016. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under ADUFA.

II. Revenue Amount for FY 2016

A. Statutory Fee Revenue Amounts

ADUFA III (Title I of Pub. L. 113–14) specifies that the aggregate fee revenue amount for FY 2016 for all animal drug user fee categories is $21,600,000. (21 U.S.C. 379j–12(b)(1)(B).)

B. Inflation Adjustment to Fee Revenue Amount

The fee revenue amount established in ADUFA III for FY 2015 and subsequent fiscal years are subject to an inflation adjustment (21 U.S.C. 379j–12(c)(2)).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first three of the four preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs for the first three of the four preceding fiscal years (see 21 U.S.C. 379j–12(c)(2)(A) and (B)). The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2016. The 3-year average is 2.2328 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total FTE	13,382	13,974	14,555	
PC&B per FTE	$136,355	$137,949	$141,184	
Percent Change from Previous Year	3.1843%	1.169%	2.3451%	2.2328%

The statute specifies that this 2.2328 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total Costs	$3,550,496,000	$4,151,343,000	$4,298,476,000	
PC&B Percent	51.3929%	46.4356%	47.8062%	48.5449%

The payroll adjustment is 2.2328 percent multiplied by 48.5449 percent (or 1.0839 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs for FY 2016 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington–Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total FDA costs (see 21 U.S.C. 379j–12(c)(2)(C)). Table 3 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data from the Bureau of Labor Statistics is shown in table 3.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI LESS FOOD AND ENERGY

Year	2012	2013	2014	3-Year average
Annual CPI	144.413	146.953	149.581	
Annual Percent Change	2.4475%	1.7588%	1.7883%	1.9982%

To calculate the inflation adjustment for non-pay costs, we multiply the 1.9982 percent by the proportion of all costs other than PC&B to total FDA costs. Since 48.5449 percent was obligated for PC&B as shown in table 2, 51.4551 percent is the portion of costs other than PC&B (100 percent minus 48.5449 percent equals 51.4551

percent). The non-payroll adjustment is 1.9982 percent times 51.4551 percent, or 1.0282 percent.

Next, we add the payroll component (1.0839 percent) to the non-pay component (1.0282 percent), for a total inflation adjustment of 2.1121 percent for FY 2016.

ADUFA III provides for the inflation adjustment to be compounded each fiscal year after FY 2014 (see 21 U.S.C. 379j–12(c)(2)). The factor for FY 2016 (2.1121 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2015 (2.0201 percent), as published in the **Federal Register** of August 1, 2014 (79 FR 44787 to 44792), which equals 1.041749 (rounded) (1.021121 times 1.020201) for FY 2016. We then multiply the base revenue amount for FY 2016 ($21,600,000) by 1.041749, yielding an inflation adjusted amount of $22,501,778.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

A workload adjustment will be calculated to the inflation adjusted fee revenue amount established in ADUFA III for FY 2015 and subsequent fiscal years (21 U.S.C. 379j–12(c)(3)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2013 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended June 30, 2015.

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 4 the sum of the values in column 5 is added, reflecting a total change in workload of 1.4066 percent for FY 2016. This is the workload adjuster for FY 2016.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

[numbers may not add due to rounding]

Application type	Column 1 5-year average (base years)	Column 2 latest 5-year average	Column 3 percent change	Column 4 weighting factor	Column 5 weighted % change
New Animal Drug Applications (NADAs)	9.80	11.6	18.4%	0.0215	0.3945%
Supplemental NADAs with Safety or Efficacy Data	9.6	12.8	33.3%	0.0352	1.1749%
Manufacturing Supplements	361.0	345.8	−4.2%	0.1437	−0.6049%
Investigational Study Submissions	216.4	210.8	−2.6%	0.6254	−1.6184%
Investigational Protocol Submissions	133.6	149.4	11.8%	0.1742	2.0605%
FY 2016 Workload Adjuster					1.4066%

Over the last several years FDA has seen an increase in the number of animal drug sponsors requesting meetings to discuss new animal drug product development. These meeting requests come from both existing animal drug sponsors as well as sponsors new to the animal drug market. These factors have contributed to an increase in the number of protocol submissions and New Animal Drug Applications (NADAs) submitted for many novel drug classes and novel indications for both food-producing animals and companion animals. Additionally, FDA has seen an increase in the number of animal drug sponsors pursuing multiple changes to their existing NADAs (*e.g.,* new indications, new species, changes in dosage). For this reason we are seeing an increase in the number of supplemental NADAs with safety or effectiveness data. As a result, the statutory revenue amount after the inflation adjustment ($22,501,778) must now be increased by 1.4066 percent to reflect the changes in review workload (workload adjustment), for a total fee revenue target of $22,818,000 (rounded to the nearest thousand dollars).

D. FY 2016 Fee Revenue Amounts

ADUFA III specifies that the revenue amount of $22,818,000 for FY 2016 is to be divided as follows: 20 percent, or a total of $4,564,000 (rounded to the nearest thousand dollars), is to come from application fees; 27 percent, or a total of $6,161,000 (rounded to the nearest thousand dollars), is to come from product fees; 26 percent, or a total of $5,932,000 (rounded to the nearest thousand dollars), is to come from establishment fees; and 27 percent, or a total of $6,161,000 (rounded to the nearest thousand dollars), is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2016

The terms ''animal drug application'' and ''supplemental animal drug application'' are defined in section 739 of the FD&C Act (21 U.S.C. 379j–11(1) and (2)).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $4,564,000 in fee revenue for FY 2016, after workload adjustment ($4,500,000 times 1.014066, rounded to the nearest thousand dollars). The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $4,564,000 FDA must first make some assumptions about the number of fee-paying applications and supplements the Agency will receive in FY 2016.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2016, FDA is assuming that the number of applications that will pay fees in FY 2016 will equal the average number of submissions over the 5 most recent completed years of ADUFA (FY 2010 to FY 2014). FDA believes that this is a reasonable approach after 11 completed years of experience with this program.

Over the 5 most recent completed years, the average number of animal drug applications that would have been subject to the full fee was 6.8. Over this same period, the average number of supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 12.4.

B. Application Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 6.8 applications that pay the full fee and the estimated 12.4 supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that pay half of the full fee will generate a total of $4,564,000. To generate this amount, the fee for an animal drug application, rounded to the nearest $100, will have to be $351,100, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $175,550.

IV. Product Fee Calculations for FY 2016

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–12(a)(2).) The term ''animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $6,161,000 in fee revenue for FY 2016, after workload adjustment ($6,076,000 times 1.014066, rounded to the nearest thousand dollars).

To set animal drug product fees to realize $6,161,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2016. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2015, FDA estimates that there are a total of 815 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 815 products will be subject to this fee in FY 2016.

In estimating the fee revenue to be generated by animal drug product fees in FY 2016, FDA is assuming that 3 percent of the products invoiced, or 24, will not pay fees in FY 2016 due to fee waivers and reductions. FDA has reduced the estimate of the percentage of products that will not pay fees from 4 percent to 3 percent this year, based on historical data over the past 5 completed years of the ADUFA program. Based on experience over the first 11 completed years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2016.

Accordingly, the Agency estimates that a total of 791 (815 minus 24) products will be subject to product fees in FY 2016.

B. Product Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 791 products that pay fees will generate a total of $6,161,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest $5, to be $7,790.

V. Establishment Fee Calculations for FY 2016

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year. (See 21 U.S.C. 379j–12(a)(3).) An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. (See 21 U.S.C. 379j–12(a)(3).) The term ''animal drug establishment'' is defined in 21 U.S.C. 379j–11(4). The establishment fees are to be set so that they will generate $5,932,000 in fee revenue for FY 2016, after workload adjustment ($5,850,000 times 1.014066, rounded to the nearest thousand dollars).

To set animal drug establishment fees to realize $5,932,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2016. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2015, FDA estimates that there are a total of 64 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 64 establishments will be subject to this fee in FY 2016.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2016, FDA is assuming that 12 percent of the establishments invoiced, or 8, will not pay fees in FY 2016 due to fee waivers and reductions. FDA has kept this estimate at 12 percent this year, based on historical data over the past 5 completed years. Based on experience over the past 11 completed years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2016.

Accordingly, the Agency estimates that a total of 56 establishments (64 minus 8) will be subject to establishment fees in FY 2016.

B. Establishment Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 56 establishments that pay fees will generate a total of $5,932,000. To generate this amount will require the fee for an animal drug

establishment, rounded to the nearest $50, to be $105,950.

VI. Sponsor Fee Calculations for FY 2016

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–11(6) and 379j–12(a)(4).) An animal drug sponsor is subject to only one such fee each fiscal year. (See 21 U.S.C. 379j–12(a)(4).) The sponsor fees are to be set so that they will generate $6,161,000 in fee revenue for FY 2016, after workload adjustment ($6,076,000 times 1.014066, rounded to the nearest thousand dollars).

To set animal drug sponsor fees to realize $6,161,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2016. Based on the number of firms that would have met this definition in each of the past 11 completed years of ADUFA, FDA estimates that a total of 173 sponsors will meet this definition in FY 2016.

Careful review indicates that 33 percent of these sponsors will qualify for minor use/minor species waiver or reduction (21 U.S.C. 379j–12(d)(1)(D)). Based on the Agency's experience to date with sponsor fees, FDA's current best estimate is that an additional 32 percent will qualify for other waivers or reductions, for a total of 65 percent of the sponsors invoiced, or 112, who will not pay fees in FY 2016 due to fee waivers and reductions. FDA has kept this estimate at 65 percent this year, based on historical data over the past 5 completed years of ADUFA. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2016.

Accordingly, the Agency estimates that a total of 61 sponsors (173 minus 112) will be subject to and pay sponsor fees in FY 2016.

B. Sponsor Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 61 sponsors that pay fees will generate a total of $6,161,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $101,000.

VII. Fee Schedule for FY 2016

The fee rates for FY 2016 are summarized in table 5.

TABLE 5—FY 2016 FEE RATES

Animal drug user fee category	Fee rate for FY 2016
Animal Drug Application Fees:	
Animal Drug Application	$351,100
Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	175,550
Animal Drug Product Fee	7,790
Animal Drug Establishment Fee [1]	105,950
Animal Drug Sponsor Fee [2]	101,000

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Procedures for Paying the FY 2016 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted on or after October 1, 2015. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button.) On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 979033) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000.

If payment is made by wire transfer, send payment to: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA

within 1 working day, using the PIN described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* and, under Tools and Resources, click ''The Animal Drug User Fee Cover Sheet'' and then click ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section VIII.A.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2015, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2016 using this fee schedule. Payment will be due by January 31, 2016. FDA will issue invoices in November 2016 for any products, establishments, and sponsors subject to fees for FY 2016 that qualify for fees after the December 2015 billing.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18913 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Sixth Annual Coalition Against Major Diseases/Food and Drug Administration Scientific Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing the sixth annual scientific workshop co-sponsored by the Agency and the Coalition Against Major Diseases (CAMD) Consortium of the Critical Path Institute (C-Path). The purpose of this public workshop is to initiate constructive discussion among scientists from FDA, the CAMD Consortium, and other interested parties regarding ongoing efforts to develop tools and methods to facilitate drug development for Alzheimer's disease and Parkinson's disease.

DATES: The public scientific workshop will be held on October 15, 2015, from 8 a.m. to 5 p.m.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. Entrance for the public scientific workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

FOR FURTHER INFORMATION CONTACT: Jacqueline Brooks-Leighton, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 21, Rm. 4521, Silver Spring, MD 20993, 240–402–5292, FAX: 301–796–9907, *jacqueline.brooks-leighton@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA and C-Path seek to leverage their combined strengths to create new tools and methods to increase the efficiency of the drug development process and bring new treatments for Alzheimer's disease and Parkinson's disease. This annual public workshop brings together representatives from the pharmaceutical industry, the academic research community, patient advocacy groups, and governmental institutions; including, the National Institute of Aging, the National Institute of Neurological Disorders and Stroke, and the European Medicines Agency.

The objectives of the workshop include:

1. Understanding the accomplishments of CAMD scientific projects
2. Discussing how these tools are currently or will be applied in drug development
3. Obtaining commitment for sharing information/data to begin quantifying benefits of these tools
4. Facilitating robust and open discussion among all parties of drug development in Alzheimer's and Parkinson's diseases

II. Attendance and Registration

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Individuals who wish to participate in the scientific workshop (in person or via the Internet) must register on or before October 1, 2015, by visiting *https://www.SignUp4.net/public/ap.aspx?EID=SIXT10E*.

Early registration is recommended; registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Onsite registration on the day of the scientific workshop will be based on space availability. The registration deadline is October 14, 2015. An agenda will be provided approximately 2 weeks before the scientific workshop at the FDA Meeting Information page, which is available online at: *http://www.fda.gov/Drugs/NewsEvents/ucm410863.htm*.

If you need special accommodations because of a disability, please contact Jacqueline Brooks-Leighton (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the scientific workshop.

A live webcast of this scientific workshop will be viewable at Adobe Connect Link: *https://collaboration.fda.gov/camd101515/* on the day of the scientific workshop. A video record of the scientific workshop will be available at the same Web address for 1 year.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript

will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18969 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Surrogate Endpoints for Clinical Trials in Kidney Transplantation; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Surrogate Endpoints for Clinical Trials in Kidney Transplantation.'' The purpose of the public workshop is to discuss potential surrogate endpoints for clinical trials for drugs and therapeutic biologics used in kidney transplantation, with a focus on endpoints in conditions that represent unmet medical needs. This public workshop is intended to provide information and gain perspective from health care providers, academia, and industry on the role of various laboratory, histologic, and other endpoints used to evaluate patient and allograft outcome in clinical trials for kidney transplantation.

Date and Time: The public workshop will be held on September 28, 2015, from 8 a.m. to 6 p.m.

Location: The public workshop will be held at the Residence Inn Marriott, 2850 South Potomac Ave., Arlington, VA 22202. Web site: *http://www.marriott.com/hotels/travel/wasry-residence-inn-arlington-capital-view/.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**) Seating will be available on a first-come, first-served basis.

Contact Person: Ramou Pratt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6193, Silver Spring, MD 20993–0002, 301–796–3928 or 301–796–1600.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to Ramou Pratt (see *Contact Person*) by September 25, 2015. Registration is free for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space-available basis beginning at 8 a.m.

If you need special accommodations because of a disability, please contact Ramou Pratt (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop entitled ''Surrogate Endpoints for Clinical Trials in Kidney Transplantation.'' The purpose of the workshop is to discuss potential clinical or surrogate endpoints and biomarkers for clinical trials for drugs and therapeutic biologics in kidney transplantation. The input from this public workshop will help in developing topics for further discussion and may serve to inform recommendations on potential surrogate endpoints in clinical trials for kidney transplantation. The Agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

This workshop is part of the Agency's program to facilitate the development of surrogate endpoints, clinical endpoints, and other scientific methods for predicting clinical benefit, in accordance with section 901 of the Food and Drug Administration Safety and Innovation Act, titled ''Enhancement of Accelerated Patient Access to New Medical Treatments,'' which was signed into law on July 9, 2012. During the workshop, there will be a discussion on potential surrogate endpoints and their ability to predict clinical benefit.

This public workshop will include discussion of allograft histology and biomarkers, laboratory measures of outcome, and other endpoints that may serve as surrogates for patient morbidity, graft function, and patient and graft survival. Related topics for discussion will include clinically relevant risk factors and prognostic factors in the kidney transplant population. Patient selection and enrichment strategies (inclusion/exclusion criteria) will be considered. The public workshop will include scientific discussion on the following topics:

- Surrogate endpoints and accelerated approval
- Unmet medical need in kidney transplant patients
- Histology: Findings on kidney biopsy (including protocol biopsies)
- Laboratory measurements and outcomes, surrogates and biomarkers
- Patient selection criteria and enrichment strategies
- Risk factors and prognostic factors
- Medication adherence

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Send written requests to the Division of Freedom of Information, U.S. Food & Drug Administration, 5630 Fishers Lane, Rm. 1033, Rockville, MD 20857. Transcripts will also be available on the Internet at *http://wcms.fda.gov/FDAgov/Drugs/NewsEvents/ucm449248.htm* approximately 45 days after the workshop.

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18957 Filed 7–31–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2138]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 2, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910—NEW and title ''Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations,Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act OMB Control Number 0910—NEW

In the **Federal Register** of February 19, 2015 (80 FR 8872), FDA announced the availability of a draft guidance for industry entitled ''Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA) into law (Pub. L. 113–54). The DQSA added a new section 503B to the FD&C Act (21 U.S.C. 353b). Under section 503B(b), a compounder can register as an outsourcing facility with FDA. If the conditions outlined in section 503B(a) of the FD&C Act are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from certain sections of the FD&C Act, including section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs).

Under section 503B(b)(5), an outsourcing facility must submit adverse event reports to FDA in accordance with the content and format requirements established through guidance or regulation under 21 CFR 310.305 (or any successor regulations). This guidance explains electronic reporting of adverse events in accordance with § 310.305 with respect to outsourcing facilities.

Under § 310.305(c)(1), manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of an approved new drug or abbreviated new drug application, including, as set forth in the guidance, outsourcing facilities must submit to FDA adverse event reports within 15 calendar days of receiving the information and must submit followup reports within 15 calendar days of receipt of new information about the adverse event, or as requested by FDA. Outsourcing facilities must submit the adverse event report in an electronic format that FDA can process, review, and archive (collection of information is approved by OMB control number 0910–0291). A copy of the current labeling of the compounded drug product must be provided.

Under § 310.305(f), entities subject to the regulation must maintain for 10 years the records of all adverse events required to be reported under § 310.305. The outsourcing facility should also maintain records of its efforts to obtain the data elements described in the draft guidance for each adverse event report.

In the **Federal Register** of February 19, 2015 (80 FR 8872), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received seven comments on the draft guidance, several of which raised issues pertaining to the information collection provisions in the draft guidance. The issues raised are addressed below.

Issue One: Several individuals submitted comments related to the requirement described in the guidance that outsourcing facilities report adverse events that are both serious and unexpected and the recommendation in the guidance that outsourcing facilities report all serious adverse events, regardless of whether they are unexpected. Specifically:

- One commenter noted that the applicable regulation, § 310.305, defines an ''unexpected'' adverse drug experience as an adverse drug experience ''that is not listed in the current labeling for the drug product.'' The commenter indicated that this definition is not easily applied to unapproved drugs, as such products lack uniform FDA-reviewed language, meaning products with the same active ingredient may list different adverse events in the labeling, or no adverse events at all.
- One commenter indicated that instead of strongly recommending that outsourcing facilities report all serious adverse drug experiences to the FDA, the FDA should require such reporting.
- One commenter stated that reporting all serious adverse drug experiences (not just those that are both serious and unexpected) should be required, rather than ''strongly recommended,'' and because reporting all serious adverse events is not currently required under § 310.305, FDA should amend this regulation.
- Several commenters noted that § 310.305 only requires reporting of serious, unexpected adverse events, but the draft guidance suggests that outsourcing facilities should report all serious adverse events. They stated that FDA is reaching beyond what the regulations allow, and this suggestion will lead to confusion to what must be reported and what is suggested. FDA should narrow reporting to unexpected adverse events.

FDA Response to Issue One: FDA responds as follows:

- FDA has clarified the guidance with regard to reporting adverse events that are considered ''unexpected.'' Specifically, the guidance now includes the following language to clarify the meaning of the term ''unexpected'' in the context of adverse events associated with compounded drugs: ''For example, if current labeling for a compounded drug product does not list any adverse drug experiences, all adverse drug experiences associated with the compounded drug product would be considered 'unexpected.' ''
- With regard to the recommendation that outsourcing facilities be required to report all serious adverse events, rather than just those that are considered both serious and unexpected, § 310.305, the regulation applicable to reporting of adverse events by all manufacturers of unapproved drugs, does not require reporting of all serious adverse drug experiences to FDA. Therefore, requiring outsourcing facilities to report all serious adverse events would be inconsistent with § 310.305.
- Amending the regulation § 310.305 would require a separate rulemaking, which is beyond the scope of this guidance document.
- With regard to the concern about possible confusion caused by FDA's recommendation that outsourcing facilities report all serious adverse events, the draft guidance states the

regulations require reporting of all adverse events that are both serious and unexpected, and that FDA is recommending that outsourcing facilities report all serious adverse events. Specifically, the draft guidance states that ''FDA strongly recommends that outsourcing facilities submit all serious adverse drug experiences'' (lines 128–131) and that ''the regulations require reporting of each adverse drug experience received or otherwise obtained that is both serious and unexpected . . . .'' (lines 103–104). FDA will further clarify this by adding the following italicized language: ''In addition, *although they are not required to do so,* FDA strongly recommends that outsourcing facilities report all serious adverse events. . . .''

Issue Two: Several commenters noted that FDA encourages, as appropriate, the outsourcing facility to attach to the report: (1) Hospital discharge summaries, (2) autopsy reports/death certificates, (3) relevant laboratory data, and (4) other critical clinical data, and that in case of a death, an outsourcing facility should also provide any available information on the event(s) that led to the death. The commenters stated it is unlikely that an outsourcing facility will be given access to the elements voluntarily by the healthcare facility where the serious adverse event occurred without being legally compelled to do so. A commenter also asked how a manufacturer, distributor, and/or supplier can obtain this information under the Health Insurance Portability and Accountability Act (HIPAA).

FDA Response to Issue Two: With regard to HIPAA, 45 CFR 164.512 describes situations under which a covered entity, *e.g.,* a healthcare provider, may use or disclose protected health information without the written authorization of the individual or the opportunity for the individual to agree or object. One of these situations is ''to collect or report adverse events'' to FDA (45 CFR 164.512(b)(1)(iii)(A)). However, although information about adverse events can be obtained under HIPAA, the guidance does not state that an outsourcing facility must obtain this information. Rather, the guidance states that attaching this information is encouraged. It should be provided if the outsourcing facility has the information, but the outsourcing facility is not specifically required to obtain this information. FDA has clarified in the guidance that the information should be provided to FDA if it is available. Specifically, the guidance now reads: ''In addition, as part of the adverse event report, we encourage, as appropriate, attachment of the following, if available: (1) Hospital discharge summaries, (2) autopsy reports/death certificates, (3) relevant laboratory data, and (4) other critical clinical data. In the case of a death, outsourcing facilities should also provide any available information on the event(s) that led to the death.''

Issue Three: One commenter noted that the period of 15 calendar days to submit an initial report of an adverse event and the 15 calendar days to submit a followup report is too long; that during this period illnesses, injuries, or deaths can result. The commenter also stated that this would likely also delay initiation of recall procedures, and that the time period for reporting should be no more than 48 or 72 hours, followed by an equally prompt followup and investigation period, and an immediate decision on a recall.

FDA Response to Issue Three: The applicable regulation, § 310.305, provides a 15-day timeframe for reporting an adverse event and an additional 15-day timeframe to submit a followup report. This is the maximum amount of time permitted. The guidance states that the regulations require reporting ''as soon as possible, but in no case later than 15 calendar days . . . .'' The preamble to § 310.305 notes that the manufacturer must usually obtain additional information about the product (*e.g.,* followup with the reporting physician or patient), and that reducing the time for submitting these reports would increase the number of incomplete reports. (51 FR 24478).

Issue Four: FDA should immediately share all adverse events reported with the home State regulator, so the State agency is also aware of potential problems at one of its licensee's facilities.

FDA Response to Issue Four: FDA intends to continue to work closely with its State partners on oversight of compounding, including improving and streamlining information sharing as much as possible. However, this recommendation is not relevant to this guidance document, which focuses on how outsourcing facilities should submit adverse event reports to FDA.

Issue Five: Two commenters asked how the reporting requirements proposed by the draft guidance interplay with reporting requirements imposed by State boards of pharmacy. The commenters asked whether, in the event a State board of pharmacy has adverse event reporting requirements that apply to an outsourcing facility, satisfying the adverse event reporting requirements described by the draft guidance ''preempt'' the requirement to comply with a State reporting requirement. They asked whether an outsourcing facility must report to both Federal and State regulators and noted that this could result in duplicate reporting.

FDA Response to Issue Five: This guidance addresses requirements under the FD&C Act and FDA regulations. Outsourcing facilities may have independent responsibilities to report to State boards of pharmacy. FDA will clarify in the guidance that in addition to complying with federal adverse event reporting requirements, outsourcing facilities must comply with any applicable State adverse event reporting requirements. Specifically, FDA will add the following language: ''Certain state boards of pharmacy may also require outsourcing facilities licensed in their states to report adverse events. Outsourcing facilities must comply with any applicable state reporting requirements independent of and in addition to reporting adverse events as described in this guidance.''

Issue Six: One commenter proposed language clarifying that the regulations described in the guidance apply to products without an ANDA.

FDA Response to Issue Six: This additional language is unnecessary because the guidance cites the regulation § 310.305 and makes clear that it applies to manufacturers of prescription drug products that are not the subject of an approved drug application.

Issue Seven: With regard to the following statement in the draft guidance: ''Reports should be submitted as long as the outsourcing facility has information on at least the suspect drug and the adverse event'', one commenter recommended that FDA clarify that if a report lacks the four minimum data elements, the outsourcing facility should review the report for any potential safety issue.

FDA Response to Issue Seven: FDA believes that the draft guidance is clear that if the report lacks the four data elements, the outsourcing facility should continue investigating. The guidance states, ''If the outsourcing facility was not able to include all four of the data elements in its initial report, it should exercise due diligence to obtain information about any of the remaining elements.''

Issue Eight: One commenter suggested that FDA clarify that if an adverse event reporter does not identify a suspect drug, the outsourcing facility should submit a report that lists all drugs that the patient was taking as suspect.

FDA Response to Issue Eight: FDA does not agree with this suggestion. The guidance states that for an adverse event to be reportable to FDA, the outsourcing facility must have information on at least two data elements: An adverse event and a suspect drug. A suspect drug product is one that the initial reporter suspected was associated with the adverse event. If the reporter does not identify a suspect drug, the adverse event is not reportable. The outsourcing facility should not submit a report that lists each of the drugs the patient was taking as suspect drugs, as the comment suggests, if none of the drugs was identified as suspect by the reporter. In most cases, we believe that a reporter that contacts an outsourcing facility will be able to identify the suspect drug. It is unlikely that the reporter would have notified the outsourcing facility of the adverse event if it did not believe the compounded drug manufactured by the outsourcing facility caused the adverse event.

Issue Nine: Several commenters noted that under the draft guidance, when an adverse event cannot be directly determined to be associated with a specific drug, the outsourcing facility should identify and list all other medications to which the identified patient may have been exposed including information related to all compounded prescription preparations, brand and generic manufactured drug products, dietary supplements, and over-the counter medications that may have been taken by the patient. The commenters stated that requiring information on all drug products taken by a patient that may be ''suspect'' is unduly burdensome, especially when a compounded preparation is distributed to a medical center where multiple treatments and therapies are provided at any given time to an individual. An outsourcing facility may therefore have an incomplete picture of the circumstances under which the drug was administered. In addition, the outsourcing facility would also have no control over how a drug is administered, and improper administration may be material to the cause of the adverse event.

FDA Response to Issue Nine: FDA will clarify that the outsourcing facility should only include information on suspect drug products that the outsourcing facility is aware of from the reporter and the outsourcing facility's due diligence to obtain additional information. The outsourcing facility is not expected to report information that it does not have. Specifically, FDA will add the italicized language: ''In all cases, including those where not all of the drug products were made by the outsourcing facility, the report should include information on all suspect drug products *of which the outsourcing facility is aware.*''

FDA will also clarify that FDA will consider how the drug was administered, the patient's medical history, and any other relevant facts when investigating the adverse event. Specifically, FDA will add the following language: ''The outsourcing facility should include the information described in this guidance on suspect drug products and concomitant medications of which it is aware after exercising due diligence. For example, although an outsourcing facility should exercise due diligence to determine any concomitant medical products, FDA only expects that it report information about concomitant products that it is able to obtain from the reporter. Furthermore, as noted previously, the report or information submitted by an outsourcing facility issued in § 310.305 (and any release by FDA of that report or information) does not necessarily reflect a conclusion that the report or information constitutes an admission that the drug caused or contributed to an adverse effect.[1] When investigating the adverse event, FDA considers how the drug was administered, the patient's medical history, and any other relevant information.''

Issue 10: Two commenters asked how, given that a compounded product contains more than one component, could an outsourcing facility or the healthcare provider know which component of the compounded product, or which component of which product, is suspect. Compounded products have a number of components and active pharmaceutical ingredients (API), so it may be difficult for an outsourcing facility to tie a serious, unexpected adverse event to a specific component or API. A commenter also noted that FDA should require that an adverse event report identify all the APIs contained in a compounded drug and the APIs' manufacturer(s).

FDA Response to Issue 10: The guidance makes clear that the minimum data element for reporting is the suspect drug product, and not a suspect component. (See section III.B.3 of the draft guidance.) We agree with the suggestion that the outsourcing facility should identify in its adverse event report all of the APIs contained in a compounded drug and the APIs' manufacturer. The guidance states that all known components of a suspect drug product should be reported. It states that, ''[i]f the compounded drug product contains multiple components (*e.g.,* excipients, drug substances, finished dosage forms), the outsourcing facility should list each component and its manufacturer. . .''

Issue 11: One commenter noted that as indicated within the guidance document, FDA is not prepared nor has the necessary infrastructure in place to receive electronic reports of adverse events despite having such a system already available for other registered entities including manufacturers. The commenter asked that the FDA provide an implementation schedule to all currently registered outsourcing facilities outlining the anticipated date of an electronic adverse event reporting system as soon as possible.

FDA Response to Issue 11: This final guidance describes the process for outsourcing facilities to report adverse events to FDA electronically. The electronic reporting system is ready for outsourcing facilities to use, and, therefore, the issue raised by this comment is now moot.

Issue 12: Two commenters stated that this draft guidance imposes uneven reporting requirements on similarly-situated facilities (*i.e.,* outsourcing facilities operating under section 503B and pharmacies operating under section 503A of the FD&C Act) engaging in the same activities. Because outsourcing facilities can compound drugs issued in individual prescriptions, they are permitted to do the same kind of activities as facilities compounding under section 503A of the FD&C Act. Holding facilities that engage in the same conduct to different standards is ''illogical and arbitrary and capricious.'' If FDA determines that section 503A facilities should not be required to adhere to the same adverse event reporting requirements as outsourcing facilities, an outsourcing facility that compounds issued in individual prescriptions should not have to report adverse events associated with individual preparations.

FDA Response to Issue 12: FDA does not agree with this comment. The purpose of this guidance is to implement section 503B(b)(5) of the FD&C Act, which requires adverse event reporting for outsourcing facilities and does not address adverse reporting for compounding conducted under section 503A. Adverse event reporting for entities operating under section 503A of the FD&C Act is beyond the scope of this guidance. We also note that section 503B of the FD&C Act requires outsourcing facilities to report adverse events associated with all of their compounded drugs to FDA and does not

[1] See § 310.305(g).

distinguish between patient specific and non-patient specific compounded products.

Issue 13: One commenter noted that FDA may have written this guidance because it may be interested in knowing the sheer number of adverse events that occurred at each outsourcing facility. If this is the case, this kind of information could be collected by reporting the number of adverse events without the need for extensive detail about the affected patient or the components of the compounded product. This information could be collected through the recordkeeping and facility inspections that are already required of outsourcing facilities. Further, it may be more efficient to collect this information at regular intervals (*e.g.,* quarterly or biannually) rather than in relation to when the adverse event occurred.

FDA Response to Issue 13: FDA is not interested only in the number of adverse events associated with compounded drug products from a particular outsourcing facility, as the comment suggests. A single report of an adverse event can signal a serious public health concern, such as an outbreak resulting from drug contamination, or could signal serious quality problems at the outsourcing facility that if corrected promptly could prevent an outbreak. FDA evaluates each adverse event report to determine what followup action is appropriate. Collecting adverse events at longer intervals would conflict with the 15-calendar day submission timeline required under § 310.305 and would not be sufficient for FDA's need to evaluate adverse event reports in a timely way. Whether to require additional reporting or collect additional information is beyond the scope of the current guidance.

Issue 14: One commenter noted that an outsourcing facility would not necessarily know which patient received which drug, unless it was compounded issued in an individual prescription. Most outsourcing facilities make the majority of their preparations to be supplied to healthcare providers rather than issued in a prescription, so the only way an outsourcing facility would learn of the adverse event is if it is reported to the outsourcing facility by a patient or a healthcare provider. Healthcare providers are in a better position to know about the occurrence of adverse events. Therefore, it may be advantageous for FDA to seek to collect this information from healthcare providers with better access to the information, through submitting reports to FDA and supplying copies of those reports to the outsourcing facility. The outsourcing facility could then submit the adverse event report to FDA, reference the fact that the occurrence was already reported, and provide additional information about the product.

FDA Response to Issue 14: Reporting by healthcare providers is not mandatory under the FD&C Act or its implementing regulations. Section 503B of the FD&C Act requires outsourcing facilities, and not healthcare providers, to report adverse events to FDA. We agree with the comment that healthcare providers have useful information on a patient, and for this reason encourage outsourcing facilities to contact the healthcare provider to obtain additional information on the patient. The guidance makes clear that outsourcing facilities must report adverse events that they are aware of; if they do not learn of an adverse event, there would be nothing for them to report.

Issue 15: Two commenters asked what the consequences are if a practitioner reports a serious, unexpected adverse event but the outsourcing facility did not because it was not aware of the adverse event. The commenters indicated that an outsourcing facility should be permitted to refer to a previously submitted adverse event report instead of being required to prepare a separate, duplicative report.

FDA Response to Issue 15: Outsourcing facilities are required to report serious unexpected adverse events that they are aware of, regardless of whether anyone else voluntarily reported them. The guidance states that ''failure to report adverse events by an entity that is registered in accordance with section 503B(b) is a prohibited act under section 301(ccc)(3) of the FD&C Act. Violations relating to this provision are subject to regulatory and enforcement action.'' If an adverse event associated with an outsourcing facility's product is submitted to the FDA voluntarily by an entity other than the outsourcing facility (a healthcare provider), the outsourcing facility, under section 503B of the FD&C Act, is still required to submit an adverse event report if it also became aware of the same adverse event report and it is reportable. During the review and analysis of case reports from the FDA Adverse Event Reporting System, FDA reviewers identify duplicate cases and treat them as one case report in their evaluation.

Issue 16: One commenter asked if there would be a consequence to an outsourcing facility that does not report an adverse event because another individual or entity reported it directly to FDA.

FDA Response to Issue 16: The outsourcing facility is required to report any adverse events of which it becomes aware, regardless of whether anyone else voluntarily reported it. The guidance states that ''failure to report adverse events by an entity that is registered in accordance with section 503B(b) is a prohibited act under section 301(ccc)(3) of the FD&C Act. Violations relating to this provision are subject to regulatory and enforcement action.''

Issue 17: Two commenters stated that the draft guidance fails to account for compounded drug products being used for off-label treatment. By failing to address this issue, the reporting requirements detailed in the draft guidance may not provide FDA with the information it seeks. Additionally, an outsourcing facility may not know how the compounded drug is to be used, thereby limiting its ability to provide a full and accurate accounting of the adverse event. The patient's healthcare provider may be in a better position to provide this information.

FDA Response to Issue 17: FDA disagrees with this comment. The concept of ''off-label treatment'' is not applicable to compounded drugs because compounded drugs are not approved and do not have approved labeling. FDA evaluates adverse event reports associated with compounded drug products for quality issues. Furthermore, section 503B of the FD&C Act requires outsourcing facilities to report adverse events. Reporting by healthcare providers is voluntary and not the subject of this guidance.

Issue 18: Two commenters asked if, after complying with the reporting requirement, FDA will require any additional information or followup activity by the outsourcing facility that submits the report. They asked if the outsourcing facility will be required to provide information about the adverse event to healthcare providers or others who purchased the same or similar product, and if the adverse event does not trigger reporting requirements imposed by the applicable State board of pharmacy, whether the outsourcing facility must notify the State board.

FDA Response to Issue 18: The draft guidance describes the requirement under § 310.305(c)(2) that all serious, unexpected adverse drug experiences shall be promptly investigated by the outsourcing facility and a followup report must be submitted within 15 calendar days of receipt of new information ''or as requested by FDA.'' The guidance does not direct the outsourcing facility to provide information about adverse events to any other entities. Whether the outsourcing

facility must also notify the State is a question of State law. The guidance makes clear that the outsourcing facility must comply with any State requirements. As described above, for clarification, FDA added the following language to the guidance: ''Certain state boards of pharmacy may also require outsourcing facilities licensed in their states to report adverse events. Outsourcing facilities must comply with any applicable state reporting requirements independent of and in addition to reporting adverse events as described in this guidance.''

Issue 19: Two commenters asked what action, if any, FDA will take following the reporting of an adverse event. They asked if such reporting will trigger inspections or additional scrutiny by FDA, whether the filing of an adverse event report automatically means FDA will undertake any kind of formal enforcement action or any other followup, and whether FDA will notify the State board, or otherwise disclose the adverse event to the public, healthcare providers, purchasers, or others. A commenter also noted that if the purpose of the guidance is to monitor and identify issues with particular outsourcing facilities, the disclosure requirements go too far because information such as patient information, a reporter, or drug information would not be needed by FDA and can be addressed through recordkeeping and inspections.

FDA Response to Issue 19: When FDA receives a report of an adverse event associated with a compounded drug, FDA evaluates the report for appropriate action. In appropriate cases, FDA will contact the outsourcing facility or reporter for additional information, and if the report suggests a quality issue, FDA may initiate an inspection of the outsourcing facility and/or the reporter's facility, as appropriate. FDA may also contact such an outsourcing facility about initiating a recall or ceasing sterile operations if, for example, there is evidence that the firm may have released adulterated or misbranded drug products (*e.g.,* contaminated drug products) that could cause patient harm, or pursue regulatory action. In other cases, FDA may be able to determine that the adverse event resulted from the patient's underlying condition, improper administration, or concomitant product and not from a drug product compounded by the outsourcing facility. In the guidance, FDA has provided additional information about the actions that it takes upon receiving an adverse event report and why adverse event reporting is important. Specifically, FDA added the following language:

''Adverse event reporting for drug products compounded by outsourcing facilities is a critical mechanism by which FDA identifies signals of potential quality problems that may be associated with a particular drug or drug component, and which may have been caused by substandard conditions or processes at a facility where the drug or its components were made or handled. FDA needs to distinguish such cases from cases of medication error, hospital or clinic procedural problems, or quality issues associated with ingredients such as active pharmaceutical ingredients (APIs) or excipients. For example, several reports of adverse events in patients who received compounded drug products from the same outsourcing facility may be a signal of a quality issue resulting from a deficiency in the outsourcing facility's manufacturing processes. However, if several different outsourcing facilities report adverse events in patients who received drug products that contained the same API, this may suggest a quality problem associated with the API used in the compounded drug product.

An adverse event may be reported for reasons other than a quality problem. For example, it may be a side effect of taking the drug product, or may have resulted from lack of efficacy of the drug product, the patient's underlying medical condition, or use of a concomitant medication. To address the reported adverse event appropriately, FDA reviews information provided by the outsourcing facilities, such as the description of the circumstances associated with the adverse event such as the source of the drug and its ingredients, concomitant medications that the patient was taking, and relevant information reflected in hospital discharge summaries, autopsy reports/death certificates, relevant laboratory data, and other critical clinical data used to determine the cause of the adverse event.''

Issue 20: One commenter noted that the draft guidance requires that outsourcing facilities maintain for 10 years the records of all adverse events required to be reported, including certain specific information. The commenter asked when this 10-year period begins: From the date of the occurrence of the adverse event, the date the adverse event is reported to FDA, or another date, whether there are any requirements concerning how or where these records must be maintained, and whether FDA expects to provide additional guidance on the maintenance of such records

FDA Response to Issue 20: FDA clarified the guidance by adding the following language: ''The ten-year retention period for a particular record begins from the time that an outsourcing facility receives information (*e.g.,* a document with information about one of the four data elements).'' FDA does not feel that additional recordkeeping guidance is necessary.

Issue 21: One commenter requested clarification regarding the specific information that an outsourcing facility should keep in its records of an adverse event report. The commenter stated that if specific data are not available at the time of the report, FDA should specify that it is acceptable for those data to be missing from the record of the adverse event. In addition, FDA should clarify how outsourcing facilities should document their efforts to obtain the four data elements.

FDA Response to Issue 21: FDA has clarified this in the guidance. Specifically, FDA added the following italicized language: ''If the outsourcing facility was not able to include all four of the data elements in its initial report, it should exercise due diligence to obtain information about any of the remaining elements *and should keep records of its efforts to obtain this and other relevant information (e.g., dates of discussions with the reporter to determine how many patients experienced a particular adverse event or dates of discussions with a healthcare facility to obtain contact information for an identifiable person who purports to have knowledge about the patient, adverse event, or drug involved).*''

Issue 22: One commenter asked whether FDA anticipates requiring outsourcing facilities to adopt common standard operating procedures (SOPs) governing the reporting of adverse events. The commenter noted that having standardized SOPs issued by FDA may help ensure consistency in the frequency of reporting, the information reported, and how this information is provided. The commenter asked whether FDA will provide additional guidance or standards clarifying the ''written processes for the surveillance, receipt, evaluation, and reporting of adverse events for the drug products it compounds as described in 21 CFR 310.305(a) and 211.198'' that it anticipates reviewing during inspections of outsourcing facilities.

FDA Response to Issue 22: Outsourcing facilities are required to develop and implement written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse drug experiences as described in §§ 310.305(a) and

211.198. FDA will consider whether to provide additional guidance on SOPs, but outsourcing facilities are required to develop written procedures that enable them to fulfill their review, reporting, and recordkeeping obligations even if FDA does not provide such guidance.

Issue 23: One commenter suggests using the MedWatch Form FDA 3500 voluntary reporting instead of the mandatory Form FDA 3500A reporting form.

FDA Response to Issue 23: FDA disagrees with this comment. Section 503B of the FD&C Act requires that outsourcing facilities report adverse events. Therefore, voluntary reporting mechanisms such as the Form FDA 3500 would not be appropriate for outsourcing facility adverse event reporting.

Issue 24: One commenter asked for clarification about the type of products about which adverse event reports must be submitted, noting that outsourcing facilities often do more than compounding. The commenter asked whether the reporting requirements apply to other activities such as repackaging.

FDA Response to Issue 24: The guidance states that ''for purposes of reporting adverse drug experiences, the term *prescription drug products* includes any compounded drug product subject to the prescription requirements in section 503(b)(1) of the FD&C Act.'' Reporting for other activities such as repackaging will be addressed in separate guidance documents. For example, when finalized, FDA's draft guidance, ''Repackaging of Certain Human Drug Products by Pharmacies and Outsourcing Facilities,'' will describe adverse event reporting for drug products repackaged by outsourcing facilities, if they will be expected to report adverse events associated with their repackaged products, as contemplated by the draft guidance.

Burden Estimates:

The total estimated reporting and recordkeeping burdens for the guidance are as follows:

We estimate that approximately 55 outsourcing facilities (''Number of Respondents'' and ''Total Annual Responses'' in table 1) will annually submit adverse event reports to FDA as specified in the guidance, and that preparing and submitting this information will take approximately 1.1 hours per registrant (''Average Burden per Response'' in table 1).

We estimate that approximately 55 outsourcing facilities (''Number of Recordkeepers'' in table 2) will annually maintain records of adverse events as specified in the guidance, and that preparing and maintaining the records will take approximately 16 hours per registrant (''average burden per recordkeeping'' in table 2).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Compounding outsourcing facility	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of adverse event reports including copy of labeling and other information as described in the guidance	55	1	55	1.1	61

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of recordkeeping	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Records of adverse events, including records of efforts to obtain the data elements for each adverse event report	55	1	55	16	880

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18911 Filed 7–31–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Biosimilar User Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for biosimilar user fees for fiscal year (FY) 2016. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Biosimilar User Fee Act of 2012 (BsUFA), authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development, certain applications and supplements for approval of biosimilar biological products, establishments where approved biosimilar biological products are made, and a biosimilar biological product fee for each biosimilar biological product approved in a biosimilar biological product application.

BsUFA directs FDA to establish, before the beginning of each fiscal year, the initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application, establishment, and product fees. These fees are effective on October 1, 2015, and will remain in effect through September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Rachel Richter, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20993–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j–51, 379j–52, and 379j–53), as added by BsUFA (Title IV of the Food and Drug Administration Safety and Innovation Act, Pub. L. 112–144), establish fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application or within 5 calendar days after FDA grants the first BPD meeting, whichever occurs first. A sponsor who has paid the initial BPD fee is considered to be participating in FDA's BPD program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee is assessed beginning with the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing, or discontinues participation in FDA's BPD program.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD program and wants to re-engage with FDA on development of the product, the sponsor must pay a reactivation fee to resume participation in the program. The sponsor must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product or upon the date of submission of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application. The sponsor will be assessed an annual BPD fee beginning with the first fiscal year after payment of the reactivation fee.

BsUFA also establishes fees for certain applications and supplements, establishments where approved biosimilar biological products are made in final dosage form, and for each biosimilar biological product approved in a biosimilar biological product application (section 744H(a)(2), 744H(a)(3), and 744H(a)(4), respectively, of the FD&C Act). Under certain conditions, FDA may grant a small business a waiver from its first biosimilar biological product application fee (section 744H(c)(1) of the FD&C Act).

Under BsUFA, the initial and annual BPD fee rates for a fiscal year are equal to 10 percent of the fee rate established under the Prescription Drug User Fee Act (PDUFA) for an application requiring clinical data for that fiscal year. The reactivation fee is equal to 20 percent of the fee rate established under PDUFA for an application requiring clinical data for that fiscal year. Finally, the application, establishment, and product fee rates under BsUFA are equal to the application, establishment, and product fee rates under PDUFA, respectively (section 744H(b)(1) of the FD&C Act).

II. Fee Amounts for FY 2016

BsUFA directs FDA to establish the biosimilar biological product fee rates in each fiscal year by reference to the user fees established under PDUFA for that fiscal year. For more information about BsUFA, please refer to the FDA Web site at *http://www.fda.gov/bsufa.* PDUFA fee calculations for FY 2016 are published elsewhere in this issue of the **Federal Register**. The BsUFA fee calculations for FY 2016 are described in this document.

A. Initial and Annual BPD Fees, Reactivation Fees

Under BsUFA, the initial and annual BPD fees equal 10 percent of the PDUFA fee for an application requiring clinical data, and the reactivation fee equals 20 percent of the PDUFA fee for an application requiring clinical data. The FY 2016 fee for an application requiring clinical data under PDUFA is $2,374,200. Multiplying the PDUFA application fee, $2,374,200, by 0.1 results in FY 2016 initial and annual BPD fees of $237,420. Multiplying the PDUFA application fee, $2,374,200, by 0.2 results in a FY 2016 reactivation fee of $474,840.

B. Application and Supplement Fees

The FY 2016 fee for a biosimilar biological product application requiring clinical data equals the PDUFA fee for an application requiring clinical data, $2,374,200. The FY 2016 fee for a biosimilar biological product application not requiring clinical data equals half this amount, $1,187,100. However, under section 744H(a)(2)(A) of the FD&C Act, if a sponsor submitting a biosimilar biological product application has previously paid an initial BPD fee, annual BPD fee(s), and/or reactivation fee(s) for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees. The FY 2016 fee for a biosimilar biological product supplement with clinical data is $1,187,100, which is half the fee for a biosimilar biological product application requiring clinical data.

C. Establishment Fee

The FY 2016 biosimilar biological product establishment fee for establishments where approved biosimilar biological products are made is equal to the FY 2016 PDUFA establishment fee of $585,200.

D. Product Fee

The FY 2016 biosimilar biological product fee for each biosimilar biological product approved in a biosimilar biological product application is equal to the FY 2016 PDUFA product fee of $114,450.

III. Fee Schedule for FY 2016

The fee rates for FY 2016 are provided in table 1.

TABLE 1—FEE SCHEDULE FOR FY 2016

Fee category	Fee rates for FY 2016
Initial BPD	$237,420
Annual BPD	237,420
Reactivation	474,840
Applications [1]	
Requiring clinical data	2,374,200
Not requiring clinical data	1,187,100
Supplement requiring clinical data	1,187,100
Establishment	585,200
Product	114,450

[1] Under section 744H(a)(2)(A) of the FD&C Act, if a sponsor that submits a biosimilar biological product application has previously paid an initial BPD fee, annual BPD fees, and/or reactivation fees for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees.

IV. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, Application, and Supplement Fees

The fees established in the new fee schedule are effective October 1, 2015. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. Sponsors who have discontinued participation in the BPD program must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product; or upon the date of submission of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application.

The application or supplement fee for a biosimilar biological product is due upon submission of the application or supplement.

To make a payment of the initial BPD, reactivation, supplement, or application fee, complete the Biosimilar User Fee Cover Sheet, available on FDA's Web site (*http://www.fda.gov/bsufa*) and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on FDA's Web site after completing the Biosimilar User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order, and make it payable to the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If you prefer to send a check by a courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. Contact U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002.

The tax identification number of FDA is 53–0196965.

B. Annual BPD, Establishment, and Product Fees

FDA will issue invoices for annual BPD, biosimilar biological product establishment, and biosimilar biological product fees under the new fee schedule in August 2015. Payment instructions will be included in the invoices. Payment will be due on October 1, 2015. If sponsors join the BPD program after the annual BPD invoices have been issued in August 2015, FDA will issue invoices in November 2015 to firms subject to fees for FY 2016 that qualify for the annual BPD fee after the August 2015 billing. FDA will issue invoices in November 2016 for any annual products and establishments subject to fees for FY 2016 that qualify for fee assessments after the August 2015 billing.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18908 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Outsourcing Facility Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2016 rates for the establishment and reinspection fees related to human drug compounding outsourcing facilities (outsourcing facilities) that elect to register under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities that have elected to register, as well as a reinspection fee for each reinspection of an outsourcing facility. This document establishes the FY 2016 rates for the small business establishment fee ($5,203), the non-small business establishment fee ($16,465), and the reinspection fee ($15,610) for outsourcing facilities; provides information on how the fees for FY 2016 were determined; and describes the payment procedures outsourcing facilities should follow.

FOR FURTHER INFORMATION CONTACT:

For information on pharmacy compounding and pharmacy compounding user fees: Visit FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.*

For questions relating to this notice: Rachel Richter, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20933–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA), legislation that contains important provisions relating to the oversight of compounding of human drugs. Title I of this law, the Compounding Quality Act, creates a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B of the FD&C Act, a human drug compounder can become an ''outsourcing facility.''

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If these conditions are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from two sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use and (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities that elect to register under section 503B of the FD&C Act: (1) An annual establishment fee from each outsourcing facility and (2) a reinspection fee from each outsourcing facility subject to a reinspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for registered outsourcing facilities and adjustments required by law, reinspection fees, how to submit payment, the effect of failure to pay fees,

and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's Web site at *http://wcms.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf.*

II. Fees for FY 2016 [1]

A. FY 2016 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Reinspection Fee

1. Establishment Fee for Qualified Small Businesses [2]

The amount of the establishment fee for a qualified small business fee is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2016 is 1.040646. See section II.B.1 for the methodology used to calculate the FY 2016 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2016 is one third of $15,610, which, rounded to the nearest dollar, equals $5,203.

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business fee is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over- or under-collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2016 is 1.040646. The small business adjustment amount for FY 2016 is $855. See section II.B.2 for the methodology used to calculate the small business adjustment factor for FY 2016. Therefore, the establishment fee for a non-small business for FY 2016 is $15,000 multiplied by 1.040646 plus $855, which equals $16,465.3.

3. Reinspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2016 reinspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2016 is 1.040646. Therefore, the reinspection fee for FY 2016 is $15,000 multiplied by 1.040646, which equals $15,610. There is no reduction in this fee for small businesses.

B. Methodology for Calculating FY 2016 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-pay costs for the first three of the four previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in the FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first three of the four previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2016. The 3-year average is 2.2328 percent.

TABLE 1—FDA PC&B'S EACH YEAR AND PERCENT CHANGE

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total FTE	13,382	13,974	14,555	
PC&B per FTE	$136,355	$137,949	$141,184	
Percent change from previous year	3.1843%	1.1690%	2.3451%	2.2328%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 2.2328 percent should be multiplied by the proportion of PC&B to total costs of an average FTE of FDA for the same three fiscal years.

TABLE 2—FDA PC&B'S AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total Costs	$3,550,496,000	$4,151,343,000	4,298,476,000	
PC&B Percent	51.3929%	46.4356%	47.8062%	48.5449%

The payroll adjustment is 2.2328 percent multiplied by 48.5449 percent, or 1.0839 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2016 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FTE of the FDA for the same period.

[1] FY 2016 runs from October 1, 2015, through September 30, 2016.

[2] To qualify for a small business reduction of the FY 2016 establishment fee, entities had to submit their exception requests by April 30, 2015. See section 744K(c)(4)(B) of the FD&C Act. Although the time for requesting a small business exception for FY 2016 has now passed, an entity that wishes to request a small business exception for FY 2017 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's Web site at *http://wcms.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf.*

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''U.S. All items, 1982–84 = 100 − CUUR0000SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2012	2013	2014	3-Year average
Annual CPI	229.594	232.957	236.736	.....
Annual Percent Change	2.0694%	1.4648%	1.6222%	1.7188%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 1.7188 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same three fiscal years. The proportion of all non-PC&B costs to total costs of an average FTE of FDA for FYs 2012 to 2014 is 51.4551 percent (100 percent − 48.5449 percent = 51.4551 percent). Therefore, the non-pay adjustment is 1.7188 percent times 51.4551 percent, or 0.8844 percent.

The PC&B component (1.0839 percent) is added to the non-PC&B component (0.8844 percent), for a total inflation adjustment of 1.9683 percent (rounded), and then one is added, making the inflation adjustment 1.019683.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2016 (1.9683 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2015 (2.0558 percent), as published in the **Federal Register** of August 1, 2014 (79 FR 44805). The result of this multiplication of the inflation factors for the 1 year since FY 2015 (1.019683 × 1.020558) becomes the inflation adjustment for FY 2016. For FY 2016, the inflation adjustment is 4.0646 percent (rounded). We then add one, making the FY 2016 inflation adjustment factor 1.040646.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2016, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2016 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each outsourcing facility that registers for FY 2016 were to pay the inflation-adjusted fee amount of $15,610).

With respect to (1), FDA estimates that eight entities will qualify for small business exceptions and will pay the reduced fee for FY 2016. With respect to (2), to estimate the total number of outsourcing facilities that will register for FY 2016, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 55 outsourcing facilities, including 8 small businesses, will register with FDA in FY 2016.

If the projected 55 outsourcing facilities paid the full inflation-adjusted fee of $15,610, this would result in total revenue of $858,550 in FY 2016 ($15,610 × 55). However, because 8 of the outsourcing facilities expected to register for FY 2016 are estimated to qualify for the small business exception and will pay one-third of the full fee ($5,203 × 8), totaling $41,624 instead of paying the full fee ($15,610 × 8), which totals $124,880. This would leave a shortfall of $83,256 ($124,880 − $41,624).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. For each year, total target collections are calculated as (15,000 × [inflation adjustment factor] × [number of registrants]). This would have been $887,864 for FY 2015 ($15,308 × 58). However, because FDA did not have the exact number of registrants and had to rely on estimates of the number of small businesses and non-small businesses that would register in FY 2015, FDA's FY 2015 small business adjustment factor resulted in excess collections of $43,094 ($930,958 − $887,864) as of June 30, 2015.[3]

Therefore, to calculate the small business adjustment factor for FY 2016, FDA subtracts the $43,094 overage from FY 2015 from the $83,256 projected shortfall for FY 2016 to arrive at the numerator for the small business adjustment amount, which equals $40,162. This number divided by 47 (the number of expected non-small businesses for FY 2016) is the small business adjustment amount for FY 2016, which is $855. Therefore, the establishment fee for a non-small business for FY 2016 is $15,000 multiplied by 1.040646 plus $855, which equals $16,465.

C. Summary of FY 2016 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,203
Non-Small Business Establishment Fee	16,465
Reinspection Fee	15,610

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the

[3] If FDA receives additional excess collections for FY 2015 after June 30, 2015, then FDA will credit this amount when it establishes the small business adjustment factor for FY 2017.

email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be deemed registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as registered outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2015 and wish to maintain their status as an outsourcing facility in FY 2016 must register during the annual registration period that lasts from October 1, 2015, to December 31, 2015. Failure to register and complete payment by December 31, 2015, will result in a loss of status as an outsourcing facility on January 1, 2016. Entities should submit their registration information no later than December 10, 2015, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Reinspection Fee

FDA will issue invoices for each reinspection after the conclusion of the reinspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay*. Once you search for your invoice, click ''Pay Now'' to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances less than $50,000. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

3. If paying with a wire transfer: Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993. The originating financial institution may charge a wire transfer fee. An outsourcing facility should ask its financial institution about the fee and add it to the payment to ensure that the order is fully paid. The tax identification number of FDA is 53–0196965.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18916 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2372]

Promoting Semantic Interoperability of Laboratory Data; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the National Library of Medicine (NLM) of the National Institutes of Health are announcing the following public workshop entitled ''FDA/CDC/NLM Workshop on Promoting Semantic Interoperability of Laboratory Data.'' The purpose of this workshop is to receive and discuss input from stakeholders regarding proposed approaches to promoting the semantic interoperability of laboratory data between in vitro diagnostic devices and database systems, including laboratory information systems and electronic health records.

Date and Time: The public workshop will be held on September 28, 2015, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

Contact Person: Steven Gitterman, Food and Drug Administration, Center for Devices and Radiological Health, Bldg. 66, Rm. 5518, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6694, FAX: 301–847–2512, email: *steven.gitterman@fda.hhs.gov*.

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m. September 18, 2015. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7 a.m. (EDT).

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5231, Silver Spring, MD 20993–0002, 301–796–5661, email: *susan.monahan@fda.hhs.gov* no later than 4 p.m. on September 14, 2015.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title and affiliation, address, email, and telephone number. Those without Internet access should contact Susan Monahan to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register

online by September 18, 2015, 4 p.m. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 23, 2015. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm*. To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview*. (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Requests for Oral Presentations: This public workshop includes a public comment session. During online registration you may indicate if you wish to present during a public comment session, and which topics you wish to address. FDA has included general topics in this document which will be addressed in greater detail in a subsequent discussion paper (see **SUPPLEMENTARY INFORMATION**). FDA will do its best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. All requests to make oral presentations must be received by September 2, 2015. FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by September 7, 2015. If selected for presentation, any presentation materials must be emailed to Michael Waters at *michael.waters@fda.hhs.gov* no later than September 18, 2015, 5 p.m. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA, CDC, and NLM are holding this public workshop to receive input from stakeholders and discuss proposed approaches to promoting the semantic interoperability of laboratory data between in vitro diagnostic devices and database systems, including electronic health records. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is 4 p.m. on October 26, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

There is broad acknowledgement that interoperability between information providers and information consumers is essential for progress in health care. Semantic interoperability is the building block for permitting meaningful use of medical information across disparate systems; it is essential for supporting patient care, medical research, epidemiology, and numerous other patient health public health goals.

Laboratory tests are a critical aspect of patient care that may influence between 70 to 80 percent of clinical decisions and represent an important target for achieving interoperability. Much of laboratory information is directly generated by medical devices and as such should be readily amenable to standardization that would enable semantic interoperability; however, significant challenges exist both in the adoption of standards by device manufacturers and implementation by clinical and public health laboratories. FDA, CDC, and NLM are in unique positions to encourage and promote the adoption of standards for laboratory data that can enable semantic interoperability through the public health mandate of the Department of Human and Health Services (HHS), the role of FDA in device regulation, the leadership role of CDC in laboratory science and support, and the pivotal role of NLM in the development, enhancement, and adoption of clinical vocabulary standards.

The primary purpose of this workshop is to discuss and receive input from stakeholders regarding standards for the reporting of laboratory data and means to facilitate adoption by industry and laboratories. Specific models for semantic interoperability of laboratory data will be discussed, including the use of Logical Observation Identifiers Names and Codes (LOINC) for identifying laboratory tests, uniform Systematized Nomenclature of Medicine-Clinical Terms (SNOMED–CT) coding sets for describing results of qualitative test results and Unified Code for Units of Measure (UCUM) reporting of quantitative results. The use of other standards within interoperable laboratory result messages such as Unique Device Identifier (UDI) codes will also be addressed, as well as mechanisms for distributing device coding information such as Structured Product Labeling (SPL) or Electronically Exchanging Directory of Services (eDOS). Specifically, NLM, CDC, and FDA seek input from laboratorians, industry, government, academia, health care practitioners, and other stakeholders on these topics. This discussion is viewed as essential in expediting the adoption of standards to facilitate semantic interoperability of laboratory results.

II. Topics for Discussion at the Public Workshop

This public workshop will consist of brief presentations providing information to frame the goals of the workshop, and an interactive discussion via several panel sessions. The presentations will focus on proposed interoperability standards and mechanisms to promote adoption and implementation. Following the presentations there will be a moderated discussion where the participants and additional panelists will be asked to provide their individual perspectives.

In advance of the meeting, FDA, CDC, and NLM will place a summary of the issues they believe need to be addressed for promoting semantic interoperability

on file in the public docket (docket number found in brackets in the heading of this document) and will post it at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. The deadline for submitting comments to this document for presentation at the public workshop is September 18, 2015, although comments related to this document can be made until September 28, 2015.

The Agencies will use the input from this workshop and public comments to determine appropriate next steps to advance sematic interoperability of laboratory data.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18910 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for fiscal year (FY) 2016 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2013 (AGDUFA II), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, and for certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2016.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm,* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6888. For general questions, you may also email the Center for Veterinary Medicine (CVM) at *cvmagdufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) establishes three different types of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for fiscal years after FY 2014 may be adjusted for workload. The target revenue amounts for each fee category for FY 2016, after the adjustment for workload, are as follows: For application fees the target revenue amount is $2,426,000; for product fees the target revenue amount is $3,639,000; and for sponsor fees the target revenue amount is $3,639,000.

For FY 2016, the generic new animal drug user fee rates are: $233,300 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $116,650 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4); $8,705 for each generic new animal drug product; $83,800 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $62,850 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $41,900 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2016 product and sponsor fees by December 31, 2015. These fees will be due by January 31, 2016. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2015, and will remain in effect through September 30, 2016. Applications will not be accepted for review until FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program.

II. Revenue Amount for FY 2016

A. Statutory Fee Revenue Amounts

AGDUFA II, Title II of Public Law 113–14, specifies that the aggregate revenue amount for FY 2016 for abbreviated application fees is $1,857,000 and each of the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, is $2,786,000 each (see 21 U.S.C. 379j–21(b)).

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in AGDUFA II for each year for FY 2014 through FY 2018 include an inflation adjustment; therefore, no further inflation adjustment is required.

C. Workload Adjustment Fee Revenue Amount

For each FY beginning after FY 2014, AGDUFA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload. (See 21 U.S.C. 379j–21(c)(2).)

FDA calculated the average number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period that ended on September 30, 2013 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended on June 30, 2015.

The results of these calculations are presented in the first two columns in table 1. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1, the sum of the values in column 5 is calculated, reflecting a total change in workload of 30.6305 percent for FY 2016. This is the workload adjuster for FY 2016.

TABLE 1—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1 5-year average (base years)	Column 2 latest 5-year average	Column 3 percent change	Column 4 weighting factor	Column 5 weighted percent change
Abbreviated New Animal Drug Applications (ANADAs)	25.0	29.2	17	0.3741	6.2855
Manufacturing Supplements ANADAs	128.0	143.2	12	0.2780	3.3015
Generic Investigational Study Submissions	23.0	39.2	70	0.2217	15.6183
Generic Investigational Protocol Submissions	17.2	24.6	43	0.1261	5.4252
FY 2016 AGDUFA Workload Adjuster					30.6305

Over the last year FDA has continued to see more sponsors getting involved in the generic animal drug approval process including pioneer sponsors. This has contributed to small sustained increases in the number of ANADAs, manufacturing supplements, and protocols submitted. Additionally, more sponsors continue to pursue drug approvals that do not qualify for a waiver of the requirement to conduct an in vivo bioequivalence study. For this reason we are seeing a large sustained increase in the number of generic investigational new animal drug study submissions.

As a result, the statutory revenue amount for each category of fees for FY 2016 ($1,857,000 for application fees and $2,786,000 for both product and sponsor fees) must now be increased by 30.6305 percent, for a total fee revenue target in FY 2016 of $9,705,000 (rounded to the nearest thousand dollars) for fees from all three categories. The target for application fee revenue is $1,857,000 times 30.6305 percent, for a total of $2,426,000, rounded to the nearest thousand. The target for product fee revenue is $2,786,000 times 30.6305 percent, for a total of $3,639,000, rounded to the nearest thousand dollars, and the target for sponsor fee revenue is the same as for product fees ($3,639,000, rounded to the nearest thousand dollars).

III. Abbreviated Application Fee Calculations for FY 2016

The term ''abbreviated application for a generic new animal drug'' is defined in 21 U.S.C. 379j–21(k)(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for a generic new animal drug that is subject to fees under AGDUFA and that is submitted on or after July 1, 2008. The application fees are to be set so that they will generate $2,426,000 in fee revenue for FY 2016. This is the amount set out in the statute (21 U.S.C. 379j–21(b)(1)) after applying the workload adjuster.

To set fees for abbreviated applications for generic new animal drugs to realize $2,426,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2016.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates from year to year. FDA is making estimates and applying different assumptions for two types of full fee submissions: Original submissions of abbreviated applications for generic new animal drugs and ''reactivated'' submissions of abbreviated applications for generic new animal drugs. Any original submissions of abbreviated applications for generic new animal drugs that were received by FDA before July 1, 2008, were not assessed fees (21 U.S.C. 379j–21(a)(1)(A)). Some of these non-fee-paying submissions were later resubmitted on or after July 1 because the initial submission was not approved by FDA (*i.e.,* FDA marked the submission as incomplete and requested additional non-administrative information) or because the original submission was withdrawn by the sponsor. Abbreviated applications for generic new animal drugs resubmitted on or after July 1, 2008, are subject to user fees. In this notice, FDA refers to these resubmitted applications as ''reactivated'' applications.

Also, under AGDUFA II, an abbreviated application for an animal generic drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug.

Regarding original submissions of abbreviated applications for generic new animal drugs, FDA is assuming that the number of applications that will pay fees in FY 2016 will equal the average number of submissions over the 5 most recent completed years of AGDUFA (FY 2010–FY 2014). FDA believes that this is a reasonable approach after 6 complete years of experience with this program.

The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recently completed years is 8.6 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 3.6 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number which are subject to such criteria results in a total of 10.4 anticipated full fees.

Under AGDUFA I, FDA estimated the number of reactivations of abbreviated applications for generic new animal drugs which had been originally submitted prior to July 1, 2008. That number has decreased over the years to the point that FDA no longer expects to receive any reactivations of applications initially submitted prior to July 1, 2008, and will include no provision for them in its fee estimates. Should such a submission be made, the submitter will be expected to pay the appropriate fee.

Based on the previous assumptions, FDA is estimating that it will receive a total of 10.4 fee-paying generic new animal drug applications in FY 2016 (8.6 original applications paying a full fee and 3.6 applications paying a half fee).

B. Application Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 10.4 abbreviated applications that pay the fee will generate a total of $2,426,000. To generate this amount, the fee for a generic new animal drug application, rounded to the nearest hundred dollars, will have to be $233,300, and for those applications that are subject to the

criteria set forth in section 512(d)(4) of the FD&C Act 50 percent of that amount, or $116,650.

IV. Generic New Animal Drug Product Fee Calculations for FY 2016

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated application or supplemental abbreviated application for a generic new animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application or supplemental abbreviated application for a generic new animal drug product pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $3,639,000 in fee revenue for FY 2016, after workload adjustment ($2,786,000 times 1.306305, rounded to the nearest thousand dollars).

To set generic new animal drug product fees to realize $3,639,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2016. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who FDA estimated would have an abbreviated new animal drug application or supplemental abbreviated application pending after September 1, 2008. As of June 2015, FDA estimates a total of 418 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 418 products will be subject to this fee in FY 2016.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2016, FDA is assuming that no products invoiced will qualify for minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has changed the estimate of the percentage of products that will not pay fees to zero percent this year, based on historical data over the past 5 completed years of the AGDUFA program.

Accordingly, the Agency estimates that a total of 418 products will be subject to product fees in FY 2016.

B. Product Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated 418 products that pay fees will generate a total of $3,639,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest $5, to be $8,705.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2016

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than six approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with more than one and fewer than seven approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with one or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $3,639,000 in fee revenue for FY 2016, after workload adjustment ($2,786,000 times 1.306305, rounded to the nearest thousand dollars).

To set generic new animal drug sponsor fees to realize $3,639,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2016. FDA now has 6 complete years of experience collecting these sponsor fees. Based on the number of firms that meet this definition and the average number of firms paying fees at each level over the 5 most recent completed years of AGDUFA (FY 2010 through FY 2014), FDA estimates that in FY 2016, 12 sponsors will pay 100 percent fees, 17 sponsors will pay 75 percent fees, and 41 sponsors will pay 50 percent fees. That totals the equivalent of 45.25 full sponsor fees (12 times 100 percent or 12, plus 17 times 75 percent or 12.75, plus 41 times 50 percent or 20.5).

FDA estimates that about 4 percent of all of these sponsors, or 1.81, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has changed the estimate of the percentage of sponsors that will not pay fees to 4 percent this year, based on historical data over the past 5 completed years of the AGDUFA program.

Accordingly, the Agency estimates that the equivalent of 43.44 full sponsor fees (45.25 minus 1.81) are likely to be paid in FY 2016.

B. Sponsor Fee Rates for FY 2016

FDA must set the fee rates for FY 2016 so that the estimated equivalent of 43.44 full sponsor fees will generate a total of $3,639,000. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest $50, to be $83,800. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $62,850, and the fee for those paying 50 percent of the full sponsor fee will be $41,900.

VI. Fee Schedule for FY 2016

The fee rates for FY 2016 are summarized in table 2 of this document.

TABLE 2—FY 2016 FEE RATES

Generic new animal drug user fee category	Fee rate for FY 2016
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4)	$233,300

TABLE 2—FY 2016 FEE RATES—Continued

Generic new animal drug user fee category	Fee rate for FY 2016
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4)	116,650
Generic New Animal Drug Product Fee	8,705
100 Percent Generic New Animal Drug Sponsor Fee [1]	83,800
75 Percent Generic New Animal Drug Sponsor Fee [1]	62,850
50 Percent Generic New Animal Drug Sponsor Fee [1]	41,900

[1] An animal drug sponsor is subject to only one fee each fiscal year.

VII. Procedures for Paying FY 2016 Generic New Animal Drug User Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2016 fee established in the new fee schedule must be paid for an abbreviated new animal drug application subject to fees under AGDUFA that is submitted on or after October 1, 2015. Payment must be made in U.S. currency from a U.S. bank by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or by automatic clearing house using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button). On your check, bank draft, U.S. or postal money order, please write your application's unique Payment Identification Number, beginning with the letters ''AG'', from the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000.

If payment is made via wire transfer, send payment to U. S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's Center for Veterinary Medicine (CVM). FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of payment. U.S. Bank and the United States Treasury are required to notify FDA within 1 working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and scroll down the page until you find the link ''Create AGDUFA User Fee Cover Sheet.'' Click on that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated animal drug application. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the payment for your application as described in Section VII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product and Sponsor Fees

By December 31, 2015, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2016 using this fee schedule. Fees will be due by January 31, 2016. FDA will issue invoices in November 2016 for any products and sponsors subject to fees for FY 2016 that qualify for fees after the December 2015 billing.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Generic Drug User Fee—Abbreviated New Drug Application, Prior Approval Supplement, Drug Master File, Final Dosage Form Facility, and Active Pharmaceutical Ingredient Facility Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for abbreviated new drug applications (ANDAs), prior approval supplements to an approved ANDA (PASs), drug master files (DMFs),

generic drug active pharmaceutical ingredient (API) facilities, and finished dosage form (FDF) facilities user fees related to the Generic Drug User Fee Program for fiscal year (FY) 2016. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), authorizes FDA to assess and collect user fees for certain applications and supplements for human generic drug products, on applications in the backlog as of October 1, 2012 (only applicable to FY 2013), on FDF and API facilities, and on type II active pharmaceutical ingredient DMFs to be made available for reference. This document establishes the fee rates for FY 2016.

FOR FURTHER INFORMATION CONTACT: Rachel Richter, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20993–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain applications in the backlog as of October 1, 2012 (only applicable to FY 2013); (2) certain types of applications and supplements for human generic drug products; (3) certain facilities where APIs and FDFs are produced; and (4) certain DMFs associated with human generic drug products (see section 744B(a)(1)–(4) of the FD&C Act).

For FY 2016, the generic drug fee rates are: ANDA ($76,030), PAS ($38,020), DMF ($42,170), domestic API facility ($40,867), foreign API facility ($55,867), domestic FDF facility ($243,905), and foreign FDF facility ($258,905). These fees are effective on October 1, 2015, and will remain in effect through September 30, 2016.

Fees for ANDA, PAS, and DMF will increase in FY 2016 over the corresponding fees in FY 2015 due to a drop in the number of submissions in each of those three categories over the course of FY 2015. The fees for all types of facilities will decrease in FY 2016 over the corresponding fees in FY 2015 due to an increase in the number of facilities that self-identified for FY 2016.

II. Fee Revenue Amount for FY 2016

The base revenue amount for FY 2016 is $299 million, as set in the statute prior to the inflation adjustment. GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The ANDA, PAS, DMF, API facility, and FDF facility fee calculations for FY 2016 are described in this document.

Inflation Adjustment

GDUFA specifies that the $299 million is to be adjusted for inflation increases for FY 2016 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744B(c)(1) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first three of the four preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the review of human generic drug activities for the first three of the preceding four fiscal years (see section 744B(c)(1)(A)–(B) of the FD&C Act).

Table 1 summarizes the actual cost and total FTE for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2016. The 3-year average is 2.2328 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total FTE	13,382	13,974	14,555	
PC&B per FTE	$136,355	$137,949	$141,184	
% Change from Previous Year	3.1843%	1.1690%	2.3451%	2.2328%

The statute specifies that this 2.2328 percent should be multiplied by the proportion of PC&B expended for human generic drug activities for the first three of the preceding four fiscal years. When FDA set fees in FY 2014, the 3-year average of PC&B costs for the entire Agency was used because information for GDUFA was not available. Now that the first 2 years of GDUFA have been completed, FDA will use the data from FY 2013 and FY 2014 to calculate the PC&B and non-PC&B proportions. Table 2 shows the amount of PC&B and the total amount obligated for human generic drug activities in FY 2013 and FY 2014.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS OF HUMAN GENERIC DRUG APPLICATIONS OVER THE LAST 3 YEARS

Fiscal year	2012	2013	2014	3-Year Average
PC&B	NA	$117,576,760	$171,612,147	
Non-PC&B	NA	$149,307,336	$215,469,133	
Total Costs	NA	$266,884,096	$387,081,279	
PC&B percent		44.0554%	44.3349%	44.1952%
Non-PC&B percent		55.9446%	55.6651%	55.8048%

The payroll adjustment is 2.2328 percent multiplied by 44.1952 percent (or 0.9868 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2016 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual

index) for the first three of the preceding four years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of human generic drug activities (see section 744B(c)(1)(C) of the FD&C Act). Table 3 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data are published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100—CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR BALTIMORE-WASHINGTON AREA

Year	2012	2013	2014	3-Year average
Annual CPI	150.212	152.500	154.847	
Annual Percent Change	2.2024%	1.5232%	1.5390%	1.754867%

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (1.7549 percent) by the proportion of all costs other than PC&B to total costs of human generic drug activities obligated. Since 44.1952 percent was obligated for PC&B as shown in table 2, 55.8048 percent is the portion of costs other than PC&B. The non-pay adjustment is 1.7549 percent times 55.8048 percent, or 0.9793 percent.

To complete the inflation adjustment for FY 2016, we add the PC&B component (0.9868 percent) to the non-PC&B component (0.9793 percent) for a total inflation adjustment of 1.9661 percent (rounded) for FY 2016.

GDUFA provides for this inflation adjustment to be compounded after FY 2013 (see section 744B(c)(1) of the FD&C Act). This factor for FY 2016 (1.9661 percent) is compounded by adding one to it, and then multiplying it by the compounded inflation adjustment factor for FY 2015 (1.044228), as published in the **Federal Register** of August 1, 2014 (79 FR 44797). The result of this multiplication of the inflation factors for the 3 years since FY 2013 (1.019661 times 1.044228 percent) becomes the inflation adjustment for FY 2016. For FY 2016, the inflation adjustment is 6.4759 percent (rounded). We then add one, making 1.064759. Finally, we multiply the FY 2016 base revenue amount ($299 million) by 1.064759, yielding inflation-adjusted target revenue of $318,363,000 (rounded to the nearest thousand dollars).

III. ANDA and PAS Fees

Under GDUFA, the FY 2016 ANDA and PAS fees are owed by each applicant that submits an ANDA or a PAS, on or after October 1, 2015. These fees are due on the receipt date of the ANDA or PAS. Section 744B(b)(2)(B) specifies that the ANDA and PAS fees will make up 24 percent of the $318,363,000, which is $76,407,000 (rounded to the nearest thousand dollars), and further specifies that the PAS fee is equal to half the ANDA fee.

In order to calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2016. This is done by assuming ANDAs count as one FAE and PASs (supplements) count as one-half an FAE since the fee for a PAS is one half of the fee for an ANDA. GDUFA also requires, however, that 75 percent of the fee paid for an ANDA or PAS filing fee be refunded if the ANDA or PAS is refused due to issues other than failure to pay fees (section 744B(a)(3)(D) of the FD&C Act). Therefore, an ANDA or PAS that is considered not to have been received by the Secretary due to reasons other than failure to pay fees counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant paid the supplement fee (one half of the full application fee amount).

FDA utilized data from ANDAs and PASs submitted from October 1, 2012, to May 31, 2015, to estimate the number of new original ANDAs and PASs that will incur filing fees in FY 2016. For FY 2016, the Agency estimates that approximately 801 new original ANDAs and 421 PASs will be submitted and incur filing fees. Not all of the new original ANDAs and PASs will be received by the Agency, and some of those not received will be resubmitted in the same fiscal year. Therefore, the Agency expects that the FAE count for ANDAs and PASs will be 1,005 for FY 2016.

The FY 2016 application fee is estimated by dividing the number of FAEs that will pay the fee in FY 2016 (1,005) into the fee revenue amount to be derived from application fees in FY 2016 ($76,407,000). The result, rounded to the nearest $10, is a fee of $76,030 per ANDA. The PAS fee is one-half that amount, or $38,020, rounded to the nearest $10.

The statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients (see section 744B(a)(3)(F) of the FD&C Act). FDA considers that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs and PASs.

IV. DMF Fee

Under GDUFA, the DMF fee is owed by each person that owns a type II active pharmaceutical ingredient DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each individual DMF. This fee is due no later than the date on which the first generic drug submission is submitted that references the associated DMF. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference. Thus, some DMF holders may choose to pay the fee prior to the date that it would otherwise be due in order to have the DMF placed on that list.

In order to calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The statistical forecasting methodology of power regression analysis was selected because this model showed a very good fit to the distribution of DMF submissions over time. Based on data representing the total paid DMFs from October 2012 to May 2015 and projecting a 5-year timeline (October 2012 to September 2017), FDA is estimating 453 fee-paying DMFs for FY 2016.

The FY 2016 DMF fee is determined by dividing the DMF target revenue by the estimated number of fee-paying DMFs in FY 2016. Section 744B(b)(2)(A) specifies that the DMF fees will make up 6 percent of the $318,363,000, which is $19,102,000 (rounded up to the

nearest thousand dollars). Dividing the DMF revenue amount ($19,102,000) by the estimated fee-paying DMFs (453), and rounding to the nearest $10, yields a DMF fee of $42,170 for FY 2016.

V. Foreign Facility Fee Differential

Under GDUFA, the fee for a facility located outside the United States and its territories and possessions shall be not less than $15,000 and not more than $30,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions, as determined by the Secretary. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions. For FY 2016, FDA has determined that the differential for foreign facilities will be $15,000. The differential may be adjusted in future years.

VI. FDF Facility Fee

Under GDUFA, the annual FDF facility fee is owed by each person that owns a facility which is identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce one or more finished dosage forms of a human generic drug. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF facility fee revenue will make up 56 percent of $318,363,000, which is $178,283,000 (rounded to the nearest thousand dollars).

In order to calculate the FDF fee, FDA used data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012 (77 FR 60125). The total number of FDF facilities identified through self-identification was 705. Of the total facilities identified as FDF, there were 283 domestic facilities and 422 foreign facilities. The foreign facility fee differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (422) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $6,330,000 of the total FDF fee revenue. Subtracting the foreign facility differential fee revenue ($6,330,000), from the total FDF facility target revenue ($178,283,000) results in a remaining fee revenue balance of $171,953,000. To determine the domestic FDF facility fee, we divide the $171,953,000 by the total number of facilities (705) which gives us a domestic FDF facility fee of $243,905. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $258,905.

VII. API Facility Fee

Under GDUFA, the annual API facility fee is owed by each person that owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies that the API facility fee will make up 14 percent of $318,363,000 in fee revenue, which is $44,571,000 (rounded to the nearest thousand dollars).

In order to calculate the API fee, FDA used data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012. The total number of API facilities identified through self-identification was 826. Of the total facilities identified as API facilities, there were 105 domestic facilities and 721 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (721) to determine the total fees that will result from the foreign facility differential. As a result of that calculation, the foreign fee differential will make up $10,815,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($10,815,000) from the total API facility target revenue ($44,571,000) results in a remaining balance of $33,756,000. To determine the domestic API facility fee, we divide the $33,756,000 by the total number of facilities (826) which gives us a domestic API facility fee of $40,867. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $55,867.

VIII. Fee Schedule for FY 2016

The fee rates for FY 2016 are set out in table 4.

TABLE 4—FEE SCHEDULE FOR FY 2016

Fee category	Fee rates for FY 2016
Applications:	
Abbreviated New Drug Application (ANDA)	$76,030
Prior Approval Supplement (PAS) to an ANDA	38,020
Drug Master File (DMF)	42,170
Facilities:	
Active Pharmaceutical Ingredient (API)—Domestic	40,867
API—Foreign	55,867
Finished Dosage Form (FDF)—Domestic	243,905
FDF—Foreign	258,905

IX. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2015. To pay the ANDA, PAS, DMF, API facility, and FDF facility fee, you must complete a Generic Drug User Fee Cover Sheet, available at *http://www.fda.gov/gdufa,* and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic

payment. The Pay.gov feature is available on the FDA Web site after completing the Generic Drug User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the wire transfer fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. The tax identification number of FDA is 53–0196965.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18915 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1997–D–0187]

Dissolution Testing and Specification Criteria for Immediate-Release Solid Oral Dosage Forms Containing Biopharmaceutics Classification System Class 1 and 3 Drugs; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Dissolution Testing and Specification Criteria for Immediate-Release Solid Oral Dosage Forms Containing Biopharmaceutics Classification System Class 1 and 3 Drugs.'' This draft guidance has been developed to provide manufacturers with recommendations for submission of new drug applications (NDAs), investigational new drug applications (INDs), and/or abbreviated new drug applications (ANDAs), as appropriate, for immediate-release (IR) tablets and capsules that contain highly soluble drug substances. The draft guidance is intended to define when a standard release test and criteria may be used in lieu of extensive method development and specification-setting exercises. When final, this guidance will supersede the guidance for industry on ''Dissolution Testing of Immediate Release Solid Oral Dosage Forms'' (August 1997) for biopharmaceutics classification system (BCS) class 1 and 3 drug substances that meet the criteria in this draft guidance. For class 2 and 4 drug substances, applicants should still refer to the August 1997 guidance mentioned previously.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 2, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Richard Lostritto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Silver Spring, MD 20993, 301–796–1667.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Dissolution Testing and Specification Criteria for Immediate-Release Solid Oral Dosage Forms Containing Biopharmaceutics Classification System Class 1 and 3 Drugs.'' Drug absorption from a solid dosage form after oral administration depends on the release of the drug substance from the drug product, the dissolution or solubilization of the drug under physiological conditions, and the permeation across the gastrointestinal membrane. NDAs and ANDAs submitted to FDA contain bioavailability (BA) or bioequivalence (BE) data and in vitro dissolution data that, together with chemistry, manufacturing, and controls (CMC) data, characterize the quality and performance of the drug product. In vitro dissolution data are generally obtained from batches that have been used in pivotal clinical and/or bioavailability studies and from other human studies conducted during product development. Knowledge about the solubility, permeability, dissolution, and pharmacokinetics of a drug product is considered when defining dissolution test specifications for the drug approval process.

The BCS is a scientific framework for classifying drug substances based on their aqueous solubility and intestinal permeability. The definitions of high and low solubility and high and low permeability are used as described in FDA's Biopharmaceutics Classification System (BCS) Guidance. The different classifications are:

Class 1: High Solubility—High Permeability Drugs
Class 2: Low Solubility—High Permeability Drugs
Class 3: High Solubility—Low Permeability Drugs
Class 4: Low Solubility—Low Permeability Drugs

This classification can be used as a basis for determining when in vivo bioavailability and bioequivalence studies are needed and can be used to determine when a successful in vivo-in vitro correlation (IVIVC) is likely. The BCS suggests that, for certain high solubility drugs, dissolution testing can be standardized or may not be needed. Owing to their high solubility, BCS class 1 and 3 drugs are considered to be relatively low risk regarding the impact of dissolution on performance, provided the in vitro performance meets or exceeds the recommendations discussed in the guidance.

This draft guidance establishes standard dissolution methodology and specifications that are appropriate for BCS class 1 and class 3 drugs. The availability of these standards will facilitate the rapid development of dissolution methodology and related specifications for these classes during drug development and application review.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on Dissolution Testing and Specification Criteria for Immediate-Release Solid Oral Dosage Forms Containing Biopharmaceutics Classification System Class 1 and 3 Drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18968 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2016 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2015, and will remain in effect through September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jason Lewis, Office of Resource Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2046, Rockville, MD 20857, 301–796–5957, email: *Jason.Lewis@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) The responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2015, and will remain in effect through September 30, 2016. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm274176.htm*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2016.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2016

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2016. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

A. Estimating the Full Cost per Direct Work Hour in FY 2014

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of a full-time equivalent (FTE) or paid staff year for the relevant activity. This is done by dividing the total funds allocated to the elements of FDA primarily responsible for carrying out the activities for which fees are being collected by the total FTEs allocated to those activities. For the purposes of the reinspection and recall order fees authorized by section 743 of the FD&C Act (the fees that are the subject of this notice), primary responsibility for the activities for which fees will be collected rests with FDA's Office of Regulatory Affairs (ORA). ORA carries out inspections and other field-based activities on behalf of FDA's product centers, including the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM). Thus, as the starting point for estimating the full cost per direct work hour, FDA will use the total funds allocated to ORA for CFSAN and CVM related field activities. The most recent FY with available data was FY 2014. In that year, FDA obligated a total of $669,055,119 for ORA in carrying out the CFSAN and CVM related field activities work, excluding the cost of inspection travel. In that same year, the number of ORA staff primarily conducting the CFSAN and CVM related field activities was 3,016 FTEs or paid staff years. Dividing $669,055,119 by 3,016 FTEs results in an average cost of $221,835 per paid staff year, excluding travel costs.

Not all of the FTEs required to support the activities for which fees will be collected are conducting direct work such as inspecting or reinspecting facilities, examining imports, or monitoring recalls. Data collected over a number of years and used consistently in other FDA user fee programs (*e.g.,* under the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act) show that every seven FTEs who perform direct FDA work require three indirect and supporting FTEs. These indirect and supporting FTEs function in budget, facility, human resource, information technology, planning, security, administrative support, legislative liaison, legal counsel, program management, and other essential program areas. On average, two of these indirect and supporting FTEs are located in ORA or the FDA center where the direct work is being conducted, and one of them is located in the Office of the Commissioner. To get the fully supported cost of an FTE, FDA needs to multiply the average cost of an FTE by 1.43, to take into account the indirect and supporting functions. The 1.43 factor is derived by dividing the 10 fully supported FTEs by 7 direct FTEs. In FY 2014, the average cost of an FTE was $221,835. Multiplying this amount by 1.43 results in an average fully supported cost of $317,224 per FTE, excluding the cost of inspection travel.

To calculate an hourly rate, FDA must divide the average fully supported cost of $317,224 per FTE by the average number of supported direct FDA work hours. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	80
20 days of annual leave	160
10 days of sick leave	80
10 days of training	80
2 hours of meetings per week	80
Net Supported Direct FDA Work Hours Available for Assignments	1,600

Dividing the average fully supported cost of an FTE in FY 2014 ($317,224) by the total number of supported direct work hours available for assignment (1,600) results in an average fully supported cost of $198 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2014—the last FY for which data are available.

B. Adjusting FY 2014 Costs for Inflation To Estimate FY 2016 Costs

To adjust the hourly rate for FY 2016, FDA must estimate the cost of inflation in each year for FY 2015 and FY 2016. FDA uses the method prescribed for estimating inflationary costs under the PDUFA provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2015 inflation rate to be 2.0813; this rate was published in the FY 2015 PDUFA user fee rates notice in the **Federal Register** of August 1, 2014 (79 FR 44807). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.0266 percent for FY 2016, and FDA intends to use this inflation rate to make inflation adjustments for FY 2016 for several of its user fee programs; the derivation of this rate is published in the **Federal Register** in the FY 2016 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2015 and 2016, therefore, is 4.150 percent (1 plus 2.0813 percent times 1 plus 2.0266 percent).

Increasing the FY 2014 average fully supported cost per supported direct FDA work hour of $198 (excluding inspection travel costs) by 4.150 percent yields an inflationary adjusted estimated cost of $206 per a supported direct work hour in FY 2016, excluding inspection travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2016 prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2014, ORA spent a total of $4,536,206 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's CFSAN and CVM field activities programs. The total ORA domestic travel costs spent is then divided by the 10,392 CFSAN and CVM domestic inspections, which averages a total of $437 per inspection. These inspections average 31.64 hours per inspection. Dividing $437 per inspection by 31.64 hours per inspection results in a total and an additional cost of $14 per hour spent for domestic inspection travel costs in FY 2014. To adjust $14 for inflationary increases in FY 2015 and FY 2016, FDA must multiply it by the same inflation factor mentioned previously in this document (1.04150), which results in an estimated cost of $15 dollars per paid hour in addition to $206 for a total of $221 per paid hour ($206 plus $15) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2016 when domestic travel is required.

In FY 2014, ORA spent a total of $3,209,009 on 255 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $12,584 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $12,584 per trip by 120 hours per trip results in a total and an additional cost of $105 per paid hour spent for foreign inspection travel costs in FY 2014. To adjust $105 for inflationary increases in FY 2015 and FY 2016, FDA must multiply it by the same inflation factor mentioned previously in this document (1.04150), which results in an estimated cost of $109 dollars per paid hour in addition to $206 for a total of $315 per paid hour ($206 plus $109) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2016 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2016

Fee category	Fee rates for FY 2016
Hourly rate if domestic travel is required	$221
Hourly rate if foreign travel is required	315

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (*e.g.,* failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the United States agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility, ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350*l*(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) Not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and

from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

V. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 90 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

VI. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18906 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2596]

Understanding Potential Intervention Measures To Reduce the Risk of Foodborne Illness From Consumption of Cheese Manufactured From Unpasteurized Milk

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA or we) is requesting comments and scientific data and information that would assist us in identifying and evaluating intervention measures that might have an effect on the presence of bacterial pathogens in cheeses manufactured from unpasteurized milk. We are taking this action in light of scientific data on potential health risks associated with consumption of cheese made from unpasteurized milk.

DATES: Submit either electronic or written comments and scientific data and information by November 2, 2015.

ADDRESSES: Submit electronic comments and scientific data and information to *http://www.regulations.gov*. Submit written comments and scientific data and information to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew Yeung, Center for Food Safety and Applied Nutrition (HFS–316), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1541, *andrew.yeung@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A 2012 review of outbreaks of foodborne illness that occurred in the United States between 1993 and 2006 that were attributed to dairy products determined that more than 50 percent of the outbreaks reviewed in the study involved cheese, with the remaining outbreaks being attributable to fluid milk (Ref. 1). Forty-two percent of the 65 cheese-associated outbreaks (*i.e.,* 27 outbreaks) were attributable to products manufactured from unpasteurized milk, even though the contribution of unpasteurized dairy products to all dairy product consumption in the United States during the time period under study was estimated at below 1 percent (on a weight or volume base) (Ref. 1). The 65 analyzed outbreaks due to cheese made from unpasteurized milk resulted in 641 associated illnesses with 131 hospitalizations (*i.e.,* a hospitalization rate of more than 20 percent). Pathogens associated with these outbreaks included *Listeria monocytogenes, Escherichia coli* (*E. coli*) O157, *Salmonella,* and others (Ref. 1). All of these pathogens can cause significant illness and even death.

FDA and Health Canada recently collaborated on the development of a model to evaluate the impact of factors, such as the microbiological status of milk used in cheese production, various cheese manufacturing steps, conditions during distribution and storage, and cross-contamination during processing and handling, on the public health risk of listeriosis from consumption of soft-ripened cheese. Elsewhere in this issue of the **Federal Register,** we are announcing the release of the ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis From Soft-Ripened Cheese Consumption in the United States and Canada'' (the FDA/Health Canada QRA) (Ref. 2).

FDA establishes food standards of identity, to promote honesty and fair dealing in the interest of consumers, under the authority set forth in section 401 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 341). Some of these standards of identity (*e.g.,* the standard of identity for soft-ripened cheese in § 133.182 (21 CFR 133.182)) permit the manufacture of cheese from unpasteurized milk. These standards of identity specify that the process for cheese manufactured from unpasteurized milk include an aging period. A typical aging period is not less than 60 days at not less than 35 °F (see § 133.182(a) in the standard of identity for soft-ripened cheese).

The aging period for cheese manufactured from unpasteurized milk was presumed to act as a control measure to reduce the risk that pathogens would be present when the cheese was consumed. However, the available data and information raise questions about the safety of cheese manufactured from unpasteurized milk, even when aged. For example, research has demonstrated that pathogens such as *E. coli* O157:H7 can survive a 60-day aging period in a hard cheese such as Cheddar cheese (Refs. 3 and 4). In addition, a 1997 memorandum from a subcommittee of the National Advisory Committee on Microbiological Criteria for Foods stated that the scientific literature confirms that pathogens can survive the 60-day aging process for cheeses manufactured using unpasteurized milk (Ref. 5). More recently, the results of the FDA/Health Canada QRA suggest that the 60-day aging period for soft-ripened cheese may increase the risk of listeriosis from consumption of soft-ripened cheese by allowing more time for *L. monocytogenes,* if present, to multiply (rather than decrease) as the soft-ripened cheese ages (Ref. 6).

FDA recognizes that there is broad diversity in cheese manufacturing operations and approaches and that many factors go into ensuring the safety of the food. Many types of raw milk cheeses are made using traditional methods that require a successful balance involving the quality of the milk, the equipment, and the environment, including ensuring the presence of bacteria critical to the nature of the cheese while preventing the introduction or growth of pathogens. In issuing this call for data and information, we are particularly interested in learning more about the standards and practices in use by the growing artisanal cheese manufacturing community.

II. Request for Comments, Scientific Data, and Information

We are continuing to evaluate the safety of processes for the manufacture of cheese, particularly processes for the manufacture of cheese from unpasteurized milk. We are requesting comments and scientific data and other information to:

- Understand what (if any) aspects of the current regulatory framework for the production of cheese manufactured from unpasteurized milk act as an impediment to efficient and effective control measures to significantly minimize pathogens that may be present in unpasteurized milk.
- Understand current practices to reduce the potential for foodborne illness during the manufacture of cheese from unpasteurized milk. To what extent do producers of cheese manufactured from unpasteurized milk solely rely on an aging period to significantly minimize pathogens that may be present in unpasteurized cheese? If such producers rely on control measures other than the aging process, what are those control measures and what is the prevalence of those control measures among such producers? How effective and practical are these control measures?
- Understand the availability and feasibility of various treatments (*e.g.,* to achieve bacterial reductions of from 100- to 1,000,000-fold) that could reduce the risk of listeriosis and other foodborne illness from the consumption of all types of cheeses manufactured from unpasteurized milk. We are aware of non-thermal control measures such as added substances (such as bacteriocins, lactoferrins, lysozyme, other enzymes, and salt), bactofugation, carbon dioxide, high hydrostatic pressure, microfiltration, microwave, pulsed electric field, pulsed light, ultrasound, and ultraviolet light. However, we would like to receive additional data regarding the efficacy, on a consistent basis, of such treatments when used to minimize the broad spectrum of pathogens that may be present in unpasteurized milk.
- Evaluate the impact of the currently required 60-day minimum aging period for soft-ripened cheese on pathogens other than *L. monocytogenes* in soft-ripened cheese. For example, how does the minimum aging period affect the safety of the cheese with respect to pathogens other than *L. monocytogenes*? Are there alternatives to the currently required 60-day aging period for soft-ripened cheese that would ensure the safety of such cheese with respect to these pathogens?
- Evaluate the impact on pathogens of a minimum aging period for all those cheeses that are subject to a required minimum aging period through an applicable standard of identity. As discussed in section I, research and a literature review show that pathogens can survive the 60-day aging process for cheeses manufactured using unpasteurized milk. For pathogens other than *L. monocytogenes,* is a 60-day aging period effective in adequately reducing a broad spectrum of pathogens that could be in cheese manufactured from unpasteurized milk?
- Determine whether, consistent with modern international approaches to food safety (Ref. 7), a performance objective (or standard) for *L. monocytogenes* should be used as a replacement for the 60-day aging requirement and whether a second performance standard for Gram-negative enteric pathogens should also be used. If a second performance standard is used for Gram-negative enteric pathogens, which Gram-negative pathogen should be specified?
- Understand the prevalence of testing during manufacture (*e.g.,* testing for pathogens of each lot of cheese manufactured from unpasteurized milk and of bulk shipments of unpasteurized milk). If testing is not currently being used, how practical would such testing be? How much would it cost?
- Determine the extent to which consumers understand the risk of foodborne listeriosis or other illness from consumption of cheese manufactured from unpasteurized milk. To what extent are consumers aware that an aging process has had (and may continue to have) a role in food safety as well as a role in the particular type of cheese produced? To what extent do consumers consider whether a cheese is made from pasteurized or unpasteurized milk in making purchase decisions?

III. Comments

Interested persons may submit either electronic comments and scientific data and information regarding this document to *http://www.regulations.gov* or written comments and scientific data and information to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify submissions with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

X. 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, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Langer, A. J., T. Ayers, J. Grass, *et al.*, ''Nonpasteurized Dairy Products, Disease Outbreaks, and State Laws—United States, 1993–2006,'' *Emerging Infectious Disease* 18(3): 385–391, 2012.
2. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada.'' Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm* (2015).
3. Reitsma, C.J. and D.R. Henning, ''Survival of Enterohemorrhagic *Escherichia coli* O157:H7 During the Manufacture and Curing of Cheddar Cheese,'' *Journal of Food Protection,* 59(5): 460–464, 1996.
4. Schlesser, J.E., R, Gerdes, S. Ravishankar, et al, ''Survival of a Five-Strain Cocktail of *Escherichia coli* O157:H7 During the 60-Day Aging Period of Cheddar Cheese Made from Unpasteurized Milk,'' *Journal of Food Protection,* 69(5):990–998, 2006.
5. Memorandum from Chair, Cheese Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods to Chair, National Advisory Committee on Microbiological Criteria for Foods, ''Review of Scientific Literature Regarding the Sixty-Day Aging Process for Hard Cheese,'' April 3, 1997.
6. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Interpretative Summary.'' Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm* (2015).
7. Codex Alimentarius Commission, ''Principles and Guidelines for the Establishment and Application of Microbiological Criteria Related to Foods, CAC/GL 21–1997,'' 1997.

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18972 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0145]

Agency Information Collection Activities; Proposed Collection; Comment Request; Improving Food Safety and Defense Capacity of the State and Local Level: Review of State and Local Capacities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey entitled ''Improving Food Safety and Defense Capacity of the State and Local Level: Review of State and Local Capacities''. The data collection will obtain knowledge of State and local capacities including food safety defense staffing and expertise, laboratory capacities, and information systems to support food and feed safety and defense.

DATES: Submit either electronic or written comments on the collection of information by October 2, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Improving Food Safety and Defense Capacity at the State and Local Level: Review of State and Local Capacities

(OMB Control Number 0910–0726)—Extension

The Food Safety Modernization Act (FSMA) (Pub. L. 111–353) states that a review must be conducted to assess the State and local capacities to show needs for enhancement in the areas or staffing levels, laboratory capacities, and information technology systems. This mandate referenced in FSMA section 110 stating that a review of current food safety and food defense capabilities must be presented to Congress no later than 2 years after the date of enactment (enactment date January 4, 2011). This review was completed in 2013 through this information collection request.

This collection provided a baseline measurement of the nation's current food safety and food defense capabilities; FDA wants to renew this information collection to gather more data. By renewing this collection, FDA will be able to analyze the gaps and trends at the State and local levels, allowing FDA and its partners to develop ways to create a national integrated food safety system.

FDA will conduct the survey electronically, allowing FDA to conduct streamlined analysis while creating a low-burden, user-friendly environment for respondents to complete the survey. Once the results have been tabulated, FDA and its partners can assess the current progress towards an integrated food safety system.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Current State and Local Government Employees	1400	1	1400	1	1400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: *July 28, 2015.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18912 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0967]

Patient-Focused Drug Development for Nontuberculous Mycobacterial Lung Infections; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting and an opportunity for public comment on Patient-Focused Drug Development for nontuberculous mycobacterial (NTM) lung infections. Patient-Focused Drug Development is part of FDA's performance commitments made as part of the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to allow FDA to obtain patient perspectives on the impact of NTM lung infections on daily life and patient views on treatment approaches. FDA is also interested in discussing issues related to scientific challenges in developing drugs to treat NTM lung infections. In the afternoon, FDA will hold a workshop and provide information for and gain perspective from patients and patient advocacy organizations, health care providers, academic experts, and industry on various aspects of clinical development of drug products intended to treat NTM lung infections. The input from this public meeting will help in developing topics for further discussion.

DATES: The public meeting will be held on October 15, 2015, from 9 a.m. to 5 p.m. Please register for the meeting by October 7, 2015. Registration from those individuals interested in presenting comments as part of the panel discussions should be received by September 28, 2015. See the **SUPPLEMENTARY INFORMATION** section for instructions on how to register for the meeting. Submit electronic or written comments to the public docket by December 15, 2015.

ADDRESSES: The meeting and workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Participants must enter through Building 1 and undergo security screening. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit electronic comments to *www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the agenda approximately 5 days before the meeting at *http://www.fda.gov/Drugs/NewsEvents/ucm453877.htm.*

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, *graham.thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Patient-Focused Drug Development

FDA has selected NTM lung infections as the focus of a public meeting under Patient-Focused Drug Development, an initiative that involves obtaining a better understanding of patient perspectives on the severity of a disease and the available therapies for these conditions. Patient-Focused Drug Development is being conducted to fulfill FDA performance commitments that are part of the reauthorization of PDUFA under Title I of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144). The full set of performance commitments is available at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

FDA committed to obtain the patient perspective on 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients' perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient communities, and other interested stakeholders.

On July 2, 2015, FDA published a notice (80 FR 38216) in the **Federal Register** announcing the disease areas for meetings in fiscal years 2016–2017, the final 2 years of the PDUFA V time frame. The Agency used several criteria outlined in that notice to develop the list of disease areas. FDA obtained public comment on the Agency's proposed criteria and potential disease areas through a public docket. In selecting the set of disease areas, FDA carefully considered the public comments received and the perspectives of review divisions at FDA. More information, including the list of disease areas and a general schedule of meetings, is posted at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

II. Purpose and Scope of the Meeting

The purpose of this Patient-Focused Drug Development meeting is to obtain input on the symptoms and other impacts of NTM lung infections that matter most to patients, as well as perspectives on current approaches to treating this condition. NTM infections can affect all organs in the body; however, NTM infections primarily affect the lungs, especially in patients with underlying lung disease. Common causes of NTM lung infections include *Mycobacterium avium-intracellulare* and *Mycobacterium abscessus.* Symptoms of NTM lung infections include chronic cough, shortness of breath, blood in sputum, fever, fatigue, loss of appetite, night sweats, and weight loss. There are no FDA-approved therapies for NTM lung infections. Treatment requires a combination of drugs given for prolonged duration. The antibacterial drugs used can cause severe side effects that make treatment of this condition difficult. FDA is committed to working with all stakeholders to develop safe and effective therapies for affected individuals.

The questions that will be asked of patients and patient stakeholders at the meeting are listed in this section, organized by topic. For each topic, a brief initial patient panel discussion will begin the dialogue. This will be followed by a facilitated discussion inviting comments from other patient and patient stakeholder participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**). When submitting comments, if you are commenting on behalf of a child please indicate that you are doing so and answer the following questions as much as possible from the patient's perspective.

Topic 1: Disease Symptoms and Daily Impacts That Matter Most to Patients

1. Of all the symptoms that you experience because of your condition, which 1–3 symptoms have the most significant impact on your life? (Examples may include cough, increased sputum production, shortness of breath, difficulty breathing, chest pain)

2. Are there specific activities that are important to you but that you cannot do at all or as fully as you would like because of your condition? (Examples of activities may include sleeping through the night, daily hygiene, driving, walking/running, exercising, etc.)

- How do your symptoms and their negative impacts affect your daily life on the best days? On the worst days? (Examples may include limitations on the ability to undertake physically strenuous activities, restrictions on the ability to travel, inability to sleep, lack of appetite, fatigue, etc.)

3. How has your condition and its symptoms changed over time?

- Do your symptoms come and go? If so, do you know of anything that makes your symptoms better? Worse?

4. What worries you most about your condition?

Topic 2: Patients' Perspectives on Current Approaches To Treating NTM Lung Infections

1. What are you currently doing to help treat your condition or its symptoms? (Examples may include prescription medicines, over-the-counter products, nebulizers, and other therapies including non-drug therapies)

- What specific symptoms do your treatments address?
- How has your treatment regimen changed over time, and why?

2. How well does your current treatment regimen treat the most significant symptoms of your disease?

- How well do these treatments stop or slow the progression of your disease?
- How well do these therapies improve your ability to do specific activities that are important to you in your daily life?
- How well have these treatments worked for you as your condition has changed over time?

3. What are the most significant downsides to your current treatments, and how do they affect your daily life? (Examples of downsides may include bothersome side effects, need for multiple medications, need for injections, going to the hospital for treatment, etc.)

4. Assuming there is no complete cure for your condition, what specific things would you look for in an ideal treatment for your condition?

In the afternoon, discussion will be related to scientific topics, with the goal of understanding issues that may affect the development of drugs for the treatment of NTM lung infections and identifying topics for future discussion. Discussion topics for the afternoon will include the following: Epidemiology and natural history of NTM lung infections, current treatment considerations, clinical trial designs, and clinical trial endpoints.

III. Attendance and Registration

If you wish to attend this meeting, visit *http://ntmpfdd.eventbrite.com.* Please register by October 7, 2015. If you are unable to attend the meeting in person, you can register to view a live Webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability.

If you need special accommodations because of a disability, please contact Graham Thompson at least 7 days before the meeting.

IV. Comments

Patients who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients also must send to *PatientFocused@fda.hhs.gov* a brief summary of responses to the topic questions by September 28, 2015. Panelists will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all patients and patient stakeholders who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

FDA will hold an open public comment period to give the public an opportunity to comment. Registration for open public comment will occur at the registration desk on the day of the meeting and workshop on a first-come, first-served basis.

Regardless of attendance at the public meeting, you can submit electronic or written responses to the questions pertaining to topics 1 and 2 to the Division of Dockets Management (see **ADDRESSES**) by December 15, 2015. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Transcripts

As soon as a transcript is available, FDA will post it at *http://www.fda.gov/Drugs/NewsEvents/ucm453877.htm.*

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18919 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1182]

Joint Food and Drug Administration/Health Canada Quantitative Assessment of the Risk of Listeriosis From Soft-Ripened Cheese Consumption in the United States and Canada

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of the ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis From Soft-Ripened Cheese Consumption in the United States and Canada.'' We are making available an interpretative summary, a technical Quantitative Risk Assessment (QRA) report with appendices, a risk-assessment model, and a document responding to public comments that we received regarding the 2013 ''Draft Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis From Soft-Ripened Cheese Consumption in the United States and Canada.'' The purpose of the QRA is to evaluate the effect of factors such as the microbiological status of milk, cheese-manufacturing steps, and conditions during distribution and storage on the overall risk of invasive listeriosis to the consumer of soft-ripened cheese in the United States or Canada. The QRA

makes it possible to evaluate the effectiveness of some process changes and intervention strategies in reducing the risk of listeriosis.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for electronic access to the QRA and related documents.

FOR FURTHER INFORMATION CONTACT: Sherri Dennis, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1914.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 11, 2013 (78 FR 9701), we made available a document entitled ''Draft Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis From Soft-Ripened Cheese Consumption in the United States and Canada.'' We gave interested parties an opportunity to submit comments by April 29, 2013, for us to consider on the approach used, the assumptions made, the modeling techniques, the data used, and the clarity and the transparency of the QRA documentation. We received nearly 100 comments on the draft QRA and have revised the QRA where appropriate (See Refs. 1 to 5).

Elsewhere in this issue of the **Federal Register,** we are issuing a notice requesting comments and scientific data and information that would assist us in understanding potential intervention measures to reduce the risk of foodborne illness from consumption of cheeses manufactured from unpasteurized milk.

II. Electronic Access

The QRA and related documents are available electronically on the FDA Web site at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm, http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm,* and *http://www.regulations.gov.*

III. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.)**

1. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Interpretative Summary,'' 2015. Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm.*
2. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Technical Report,'' 2015. Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm.*
3. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Technical Report Appendices,'' 2015. Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm.*
4. FDA and Health Canada, ''Joint Food and Drug Administration/Health Canada—Santé Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Risk Assessment Model,'' 2015. Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm.*
5. Joint FDA/Health Canada Quantitative Assessment of the Risk of Listeriosis from Soft-Ripened Cheese Consumption in the United States and Canada: Replies to Public Comments, 2015. Accessible at *http://www.fda.gov/Food/FoodScienceResearch/RiskSafetyAssessment/default.htm* and *http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/ucm079120.htm.*

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18960 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Prescription Drug User Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2016. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2012 (PDUFA V), authorizes FDA to collect user fees for certain applications for the review of human drug and biological products, on establishments where the products are made, and on such products. This notice establishes the fee rates for FY 2016.

FOR FURTHER INFORMATION CONTACT: Robert J. Marcarelli, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14202F, Silver Spring, MD 20993–0002, 301–796–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively) establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for the review of human drug and biological products; (2) certain establishments where such products are made; and (3) certain products (section 736(a) of the FD&C Act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act).

For FY 2013 through FY 2017, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA V. The base revenue amount for FY 2013, which became the base amount for the remaining 4 FYs of PDUFA V, is $718,669,000, as published in the **Federal Register** of August 1, 2012 (77 FR 45639). The FY 2013 base revenue amount is further adjusted each year after FY 2013 for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This document provides fee rates for FY 2016 for an application requiring

clinical data ($2,374,200), for an application not requiring clinical data or a supplement requiring clinical data ($1,187,100), for an establishment ($585,200), and for a product ($114,450). These fees are effective on October 1, 2015, and will remain in effect through September 30, 2016. For applications and supplements that are submitted on or after October 1, 2015, the new fee schedule must be used. Invoices for establishment and product fees for FY 2016 will be issued in August 2015 using the new fee schedule.

II. Fee Revenue Amount for FY 2016

The base revenue amount for FY 2016 is $718,669,000 prior to adjustments for inflation and workload (see section 736(c)(1) and (c)(2) of the FD&C Act).

A. FY 2016 Statutory Fee Revenue Adjustments for Inflation

PDUFA V specifies that the $718,669,000 is to be further adjusted for inflation increases for FY 2016 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be 1 plus the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) position at FDA for the first 3 of the preceding 4 FYs, multiplied by the proportion of PC&B costs to total FDA costs of process for the review of human drug applications for the first 3 of the preceding 4 FYs (see section 736(c)(1)(A) and (c)(1)(B) of the FD&C Act).

Table 1 summarizes that actual cost and FTE data for the specified FYs, and provides the percent changes from the previous FYs and the average percent changes over the first 3 of the 4 FYs preceding FY 2016. The 3-year average is 2.2328 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total FTE	13,382	13,974	14,555	
PC&B per FTE	$136,355	$137,949	$141,184	
Percent Change From Previous Year	3.1843%	1.1690%	2.3451%	2.2328%

The statute specifies that this 2.2328 percent should be multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the process for the review of human drug applications for 3 FYs.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$592,642,252	$568,206,210	$585,260,720	
Total Costs	$1,032,419,218	$966,169,007	$1,077,263,695	
PC&B Percent	57.4033%	58.8102%	54.3285%	56.8473%

The payroll adjustment is 2.2328 percent from table 1 multiplied by 56.8473 percent (or 1.2693 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of human drug applications for the first 3 years of the preceding 4 FYs (see section 736(c)(1)(C) of the FD&C Act). Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Baltimore area. The data are published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100—CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-BALTIMORE AREA

Year	2012	2013	2014	3-Year average
Annual CPI	150.212	152.500	154.847	
Annual Percent Change	2.2024%	1.5232%	1.5390%	1.7549%

To calculate the inflation adjustment for non-payroll costs, we multiply the 1.7549 percent by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Since 56.8473 percent was obligated for PC&B as shown in table 2, 43.1527 percent is the portion of costs other than PC&B (100 percent minus 56.8473 percent equals 43.1527 percent). The non-payroll adjustment is 1.7549 percent times 43.1527 percent, or 0.7573 percent.

Next, we add the payroll adjustment (1.2693 percent) to the non-payroll adjustment (0.7573 percent), for a total inflation adjustment of 2.0266 percent (rounded) for FY 2016.

PDUFA V provides for this inflation adjustment to be compounded after FY 2013 (see section 736(c)(1) of the FD&C Act). This factor for FY 2016 (2.0266 percent) is compounded by adding 1

and then multiplying by 1 plus the compound inflation adjustment factor for FY 2015 (4.327 percent), as published in the **Federal Register** of August 1, 2014 (79 FR 44807 at 44809), which equals to 1.064414 (rounded) (1.020266 times 1.04327) for FY 2016. We then multiply the base revenue amount for FY 2016 ($718,669,000) by 1.064414, yielding an inflation-adjusted amount of $764,961,345.

B. FY 2016 Statutory Fee Revenue Adjustments for Workload

The statute specifies that after the $718,669,000 has been adjusted for inflation, the inflation-adjusted amount shall be further adjusted for workload (see section 736(c)(2) of the FD&C Act).

To calculate the FY 2016 workload adjustment, FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications; (2) active commercial investigational new drug applications (INDs) (applications that have at least one submission during the previous 12 months); (3) efficacy supplements; and (4) manufacturing supplements received over the 3-year period that ended on June 30, 2012 (base years), and the average number of each of these types of applications over the most recent 3 year period that ended June 30, 2015.

The calculations are summarized in table 4. The 3-year averages for each application category are provided in column 1 (''3-Year Average Base Years 2010–2012'') and column 2 (''3-Year Average 2013–2015''). Column 3 reflects the percent change in workload from column 1 to column 2. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 3 years. Column 5 is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. The sum of the values in column 5 is added, reflecting an increase in workload of 11.31 percent (rounded) for FY 2016 when compared to the base years.

TABLE 4—WORKLOAD ADJUSTER CALCULATION FOR FY 2016

Application type	Column 1 3-Year average base years 2010–2012	Column 2 3-Year average 2013–2015	Column 3 Percent change (column 1 to column 2)	Column 4 Weighting factor (percent)	Column 5 Weighted percent change
New Drug Applications/Biologics License Applications	124.3	148.3	19.3081	38.9	7.51
Active Commercial INDs	6830.0	7375.3	7.9839	39.2	3.13
Efficacy Supplements	136.3	175.0	28.3933	6.0	1.69
Manufacturing Supplements	2548.3	2386.7	−6.3415	16.0	−1.01
FY 2016 Workload Adjuster					11.31

Table 5 shows the calculation of the revenue amount for FY 2016. The $718,669,000 subject to adjustment on Line 1 is multiplied by the inflation adjustment factor of 1.064414, resulting in the inflation-adjusted amount on Line 3, $764,961,345. That amount is then multiplied by one plus the workload adjustment of 11.31 percent, resulting in the inflation and workload adjusted amount of $851,481,000 on Line 5, rounded to the nearest thousand dollars.

TABLE 5—PDUFA REVENUE AMOUNT FOR FY 2016, SUMMARY CALCULATION

FY 2013 Revenue Amount and Base Subsequent FYs as published in the **Federal Register** of August 1, 2012 (77 FR 45639) (Rounded to nearest thousand dollars).	$718,669,000	Line 1.
Inflation Adjustment Factor for FY 2016 (1 plus 6.4414 percent)	1.064414	Line 2.
Inflation Adjusted Amount	$764,961,345	Line 3.
Workload Adjustment Factor for FY 2016 (1 plus 11.31 percent)	1.1131	Line 4.
Inflation and Workload Adjusted Amount (Rounded to nearest thousand dollars)	$851,481,000	Line 5.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the FD&C Act). Accordingly, one-third of the total revenue amount ($851,481,000), or a total of $283,827,000, is the amount of fee revenue that will be derived from each of these fee categories: Application Fees, Establishment Fees, and Product Fees.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $283,827,000 in FY 2016.

B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees

For FY 2013 through FY 2017, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the 3 most recently completed FYs. Beginning with FY 2016, prior year FAE totals will be updated annually to reflect refunds and waivers processed after the close of the FY.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half of an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

As table 6 shows, the average number of fee-paying FAEs received annually in the most recent 3-year period is 119.545 FAEs. FDA will set fees for FY 2016 based on this estimate as the number of

full application equivalents that will pay fees.

TABLE 6—FEE-PAYING FAE 3-YEAR AVERAGE

FY	2012	2013	2014	3-Year average
Fee-Paying FAEs	120.375	109.510	128.750	119.545

Beginning with FY 2016, prior year FAE totals will be updated annually to reflect refunds and waivers processed after the close of the FY.

The FY 2016 application fee is estimated by dividing the average number of full applications that paid fees over the latest 3 years, 119.545, into the fee revenue amount to be derived from application fees in FY 2016, $283,827,000. The result, rounded to the nearest hundred dollars, is a fee of $2,374,200 per full application requiring clinical data, and $1,187,100 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2015, the establishment fee was based on an estimate that 509 establishments would be subject to and would pay fees. By the end of FY 2015, FDA estimates that 516 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA estimates that a total of 15 establishment fee waivers or reductions will be made for FY 2015. In addition, FDA estimates that another 16 full establishment fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. Subtracting 31 establishments (15 waivers, plus the estimated 16 establishments under the orphan exemption) from 516 leaves a net of 485 fee-paying establishments. FDA will use 485 to estimate the FY 2016 establishments paying fees. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($283,827,000) by the estimated 485 establishments, for an establishment fee rate for FY 2016 of $585,200 (rounded to the nearest hundred dollars).

B. Product Fees

At the beginning of FY 2015, the product fee was based on an estimate that 2,434 products would be subject to and would pay product fees. By the end of FY 2015, FDA estimates that 2,554 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be 39 waivers and reductions granted. In addition, FDA estimates that another 35 product fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates that 2,480 products will qualify for and pay product fees in FY 2015, after allowing for an estimated 74 waivers and reductions, including the orphan drug products, and will use this number for its FY 2016 estimate. The FY 2016 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($283,827,000) by the estimated 2,480 products for a FY 2016 product fee of $114,450 (rounded to the nearest ten dollars).

V. Fee Schedule for FY 2016

The fee rates for FY 2016 are displayed in table 7:

TABLE 7—FEE SCHEDULE FOR FY 2016

Fee category	Fee rates for FY 2016
Applications:	
Requiring clinical data	$2,374,200
Not requiring clinical data	1,187,100
Supplements requiring clinical data	1,187,100
Establishments	585,200
Products	114,450

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received on or after October 1, 2015. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your fee is fully paid. The account information for wire transfers is as follows: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of FDA is 53–0196965.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2016 under the new fee schedule in August 2015. Payment will be due on October 1, 2015. FDA will issue invoices in November 2016 for any products and establishments subject to fees for FY 2016 that qualify for fee assessments after the August 2015 billing.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18914 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1358]

Recommendations for Premarket Notification (510(k)) Submissions for Nucleic Acid-Based Human Leukocyte Antigen Test Kits Used for Matching of Donors and Recipients in Transfusion and Transplantation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled ''Recommendations for Premarket Notification (510(k)) Submissions for Nucleic Acid-Based Human Leukocyte Antigen (HLA) Test Kits Used for Matching of Donors and Recipients in Transfusion and Transplantation; Guidance for Industry.'' The guidance document provides recommendations to submitters and FDA reviewers in preparing and reviewing premarket notification submissions (hereafter referred to as ''510(k) submission'' or ''510(k)'') for HLA in vitro diagnostic (IVD) device test kits. The guidance applies specifically to nucleic acid-based HLA test kits used for the matching of donors and recipients in transfusion and transplantation, whether testing is for a single locus or for multiple loci simultaneously, for which the premarket submission to FDA will be a 510(k). The guidance announced in this notice finalizes the draft guidance of the same title dated November 2013.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Recommendations for Premarket Notification (510(k)) Submissions for Nucleic Acid-Based Human Leukocyte Antigen Test Kits Used for Matching of Donors and Recipients in Transfusion and Transplantation; Guidance for Industry.'' The guidance provides recommendations to submitters and FDA reviewers in preparing and reviewing 510(k) submissions for IVD device test kits, specifically for nucleic acid-based HLA test kits used for the matching of donors and recipients in transfusion and transplantation, whether testing is for a single locus or for multiple loci simultaneously. The guidance includes detailed information on the types of studies FDA recommends for validation of HLA test kits submitted as 510(k)s. More specifically, the guidance document addresses the types of studies and other information that FDA recommends to be used in designing and conducting studies for validation of nucleic acid-based HLA test kits and preparing a 510(k) submission.

In the **Federal Register** of November 20, 2013 (78 FR 69693), FDA announced the availability of the draft guidance of the same title dated November 2013. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made for purposes of clarity and accuracy. The guidance announced in this notice finalizes the draft guidance dated November 2013.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on premarket notification (510(k)) submissions for nucleic acid-based HLA test kits used for matching of donors and recipients in transfusion and transplantation. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 have been approved under OMB control numbers 0910–0078 and 0910–0582; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 56 have been approved under OMB control number 0910–0130; and the collections of information in 21 CFR part 50 have been approved under OMB control number 0910–0586.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the

heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18956 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0007]

Medical Device User Fee Rates for Fiscal Year 2016

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2016. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device User Fee Amendments of 2012 (MDUFA III), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2016, which apply from October 1, 2015, through September 30, 2016. To avoid delay in the review of your application, you should pay the application fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before making your submission to FDA; if you do not qualify as a small business before making your submission to FDA, you will have to pay the higher standard fee. Please note that the establishment registration fee is not eligible for a reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2016, you should not submit a FY 2016 Small Business Qualification and Certification request. This document provides information on how the fees for FY 2016 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT: *For information on Medical Device User Fees:* Visit FDA's Web site at *http://www.fda.gov/mdufa.*

For questions relating to this notice: David Miller, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd. (COLE–14202E), Silver Spring, MD 20993–0002, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee. (See 21 U.S.C. 379j(d) and (e).) Additionally, the Secretary of Health and Human Services (the Secretary) may, at the Secretary's sole discretion, grant a fee waiver or reduction if the Secretary finds that such waiver or reduction is in the interest of public health. (See 21 U.S.C. 379j(f).)

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2013 through FY 2017; the base fee for a premarket application received by FDA during FY 2016 is $263,180. From this starting point, this document establishes FY 2016 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2013 through FY 2017; the base fee for an establishment registration in FY 2016 is $3,872. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2016

The total revenue amount for FY 2016 is $129,339,949, as set forth in the statute prior to the inflation adjustment. (See 21 U.S.C. 379j(b)(3)(D)). MDUFA III (Pub. L. 112–144) directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2016 are described in this document.

Inflation Adjustment

MDUFA III specifies that the $129,339,949 is to be adjusted for inflation increases for FY 2016 using two separate adjustments—one for payroll costs and one for non-pay costs (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2016 is the sum of one plus these two separate adjustments, and is compounded as specified (see 21 U.S.C. 379j(c)(2)(C)(1) and 379j(c)(2)(B)(ii)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2016. The 3-year average is 2.2328 percent (rounded).

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2012	2013	2014	3-Year average
Total PC&B	$1,824,703,000	$1,927,703,000	$2,054,937,000	
Total FTE	13,382	13,974	14,555	

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE—Continued

Fiscal year	2012	2013	2014	3-Year average
PC&B per FTE	$136,355	$137,949	$141,184	
Percent change from previous year	3.1843%	1.1690%	2.3451%	2.2328%

The payroll adjustment is 2.2328 percent multiplied by 60 percent, or 1.3397 percent.

The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2016 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Baltimore-Washington area. These data are published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100—CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Fiscal year	2012	2013	2014	3-Year average
Annual CPI	150.212	152.500	154.847	
Annual Percent Change	2.2024%	1.5232%	1.5390%	
3-Yr Avg. Percent Change in CPI				1.7549%

The non-pay adjustment is 1.7549 percent multiplied by 40 percent, or 0.7019 percent.

Next, the payroll adjustment (1.3397 percent or 0.013397) is added to the non-pay adjustment (0.7019 percent or 0.007019), for a total of 2.0416 percent (or 0.020416). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.020416 for FY 2016.

MDUFA III provides for this inflation adjustment to be compounded for FY 2015 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). The base inflation adjustment for FY 2016 (1.020416) is compounded by multiplying it by the compounded applicable inflation adjustment for FY 2015 (1.04316), as published in the **Federal Register** of July 30, 2014 (79 FR 44178 to 44184), to reach the applicable inflation adjustment of 1.064457 (rounded) (1.020416 times 1.04316) for FY 2016. We then multiply the total revenue amount for FY 2016 ($129,339,949) by 1.064457, yielding an inflation adjusted total revenue amount of $137,677,000 (rounded to the nearest thousand dollars).

III. Fees for FY 2016

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)). Table 3 provides the last 3 years of fee paying submission counts and the 3-year average. These numbers are used to project the fee paying submission counts that FDA will receive in FY 2016. The fee paying submission counts are published in the MDUFA Financial Report to Congress each year.

TABLE 3—3-YEAR AVERAGE OF FEE PAYING SUBMISSIONS

Application type	FY 2012 actual	FY 2013 actual	FY 2014 actual	3-Year average
Full Fee Applications	25	23	25	24
Small Business	6	9	5	7
Panel-Track Supplement	12	19	12	14
Small Business	0	0	3	1
180-Day Supplements	145	128	122	132
Small Business	21	21	24	22
Real-Time Supplements	196	182	192	190
Small Business	22	23	19	21
510(k)s	2,865	3,149	3,034	3,016
Small Business	1,086	1,202	1,037	1,108
30-Day Notice	801	956	934	897
Small Business	60	69	91	73
513(g) Request for Classification Information	46	65	69	60
Small Business	30	38	31	33
Annual Fee for Periodic Reporting [1]	478	614	514	535
Small Business [1]	39	54	56	50
Establishment Registration [2]		23,477	24,026	23,752

[1] Includes collection of quarter 4 billing for FY 2014 during FY 2015.

[2] Establishment Registration total comes from the registration system and will vary from the financial report.

The information in Table 3 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 4 displays both the estimated revenue using the FY 2016 base fees set in statute and the

estimated revenue after the inflation adjustment to the FY 2016 base fees. Using the fees set in statute and the 3-year averages of fee paying submissions, the collections would total $138,620,884, which is $943,884 higher than the statutory revenue limit. Accordingly the PMA and establishment fee need to be decreased so that collections come as close to the statutory revenue limit of $137,677,000 as possible without exceeding the limit. This is done by calculating the percentage difference between the statutory revenue limit and the estimated resulting 2016 revenue collections, and then lowering the fees proportionally by that percentage (rounded to the nearest dollar). After recalculating the fees, a further $1 negative adjustment is made to the establishment fee in order for the estimated revenue to not exceed the statutory limit. The fees in the second column from the right are those we are establishing in FY 2016, which are the standard fees.

TABLE 4—FEES NEEDED TO ACHIEVE NEW FY 2016 REVENUE TARGET

Application type	FY 2016 Statutory fees (base fees)	Estimated resulting 2016 revenue	Adjusted FY 2016 fees to meet revenue target (standard fees)	FY 2016 revenue from adjusted fees
Full Fee Applications	$263,180	$6,316,320	$261,388	$6,273,312
Small Business	65,795	460,565	65,347	457,429
Panel-Track Supplement	197,385	2,763,390	196,041	2,744,574
Small Business	49,346	49,346	49,010	49,010
180-Day Supplements	39,477	5,210,964	39,208	5,175,456
Small Business	9,869	217,118	9,802	215,644
Real-Time Supplements	18,423	3,500,370	18,297	3,476,340
Small Business	4,606	96,726	4,574	96,054
510(k)s	5,264	15,876,224	5,228	15,764,648
Small Business	2,632	2,916,256	2,614	2,896,312
30-Day Notice	$4,211	$3,777,267	$4,182	$3,751,254
Small Business	2,106	153,738	2,091	152,643
513(g) Request for Classification Information	3,553	213,180	3,529	211,740
Small Business	1,777	58,641	1,765	58,245
Annual Fee for Periodic Reporting	9,211	4,927,885	9,149	4,894,715
Small Business	2,303	115,150	2,287	114,350
Establishment Registration	3,872	91,967,744	3,845	91,326,440
Total		138,620,884		137,661,256

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $261,388 for FY 2016. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- for a 180-day supplement, 15 percent of the standard fee;
- for a real-time supplement, 7 percent of the standard fee;
- for a 510(k) premarket notification, 2 percent of the standard fee;
- for a 30-day notice, 1.6 percent of the standard fee;
- for a 513(g) (21 U.S.C. 360c(g)) request for classification information, 1.35 percent of the standard fee; and
- for an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C).) For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission. (See 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C).)

The annual fee for establishment registration, after adjustment, is set at $3,845 for FY 2016. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 5 summarizes the FY 2016 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2016

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2016 Standard fee	FY 2016 Small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act (21 U.S.C. 360e(f)), or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base Fee Adjusted as Specified in the Statute.	$261,388	$65,347
Premarket report (submitted under section 515(c)(2) of the FD&C Act).	100	261,388	65,347
Efficacy supplement (to an approved BLA under section 351 of the PHS Act).	100	261,388	65,347
Panel-track supplement	75	196,041	49,010
180-day supplement	15	39,208	9,802
Real-time supplement	7	18,297	4,574
510(k) premarket notification submission	2	5,228	2,614

TABLE 5—MEDICAL DEVICE FEES FOR FY 2016—Continued

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2016 Standard fee	FY 2016 Small business fee
30-day notice	1.60	4,182	2,091
513(g) request for classification information	1.35	3,529	1,765
Annual Fee Type:			
Annual fee for periodic reporting on a class III device	3.50	9,149	2,287
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(13)).	Base Fee Adjusted as Specified in the Statute.	3,845	3,845

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2015, your status as a small business will expire at the close of business on September 30, 2015. You must requalify for FY 2016 in order to pay small business fees during FY 2016.

A. Domestic (U.S.) Small Business

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2016, you must submit the following to FDA:

1. A completed FY 2016 MDUFA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, ''FY 2016 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.*

2. A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2015, except:

If you submit your FY 2016 MDUFA Small Business Qualification before April 15, 2016, and you have not yet filed your return for 2015, you may use tax year 2014.

If you submit your FY 2016 MDUFA Small Business Qualification on or after April 15, 2016, and have not yet filed your 2015 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- if the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

B. Foreign Small Business

If you are a foreign business, and wish to qualify as a small business for FY 2016, you must submit the following:

1. A completed FY 2016 MDUFA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, ''FY 2016 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.*

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2015 or later), or
- if the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is

received by FDA between October 1, 2015, and September 30, 2016, you must pay the fee in effect for FY 2016. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2015 or FY 2016 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: *https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp.* Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2015. One choice is for applications and fees that will be received on or before September 30, 2015, which are subject to FY 2015 fee rates. A second choice is for applications and fees received on or after October 1, 2015, which are subject to FY 2016 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet are accurate, electronically transmit the data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. If paying with credit card or electronic check (Automated Clearing House (ACH) also known as eCheck):

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. To pay online, select the ''Pay Now'' button. Credit card transactions for cover sheets cannot exceed $49,999.99.

2. If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (If needed, FDA's tax identification number is 53–0196965.)
- Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.
- Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. Contact U.S. Bank at 314–418–4013 if you have any questions about courier delivery.)

3. If paying with a wire transfer:

- Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.
- The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your cover sheet is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002.

FDA records the official application receipt date as the later of the following: (1) The date the application was received by FDA or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to one of the following addresses:

1. Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center, 10903 New Hampshire Ave., Building 66, Rm. 0609, Silver Spring, MD 20993–0002.

2. Biologics license applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center, 10903 New Hampshire Ave, Building 71, Rm. G112, Silver Spring, MD 20993–0002.

VI. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment.

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* After searching for and locating your invoice, click ''Pay Now'' to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that do not exceed $49,999.99. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S bank accounts or made with U.S. credit cards.

2. If paying with a paper check:

All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (If needed, FDA's tax identification number is 53–0196965.)

- Please write your invoice number on the check.
- Mail the paper check and a copy of invoice to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000.

(Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101.

(**Note:** This address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions about courier delivery.)

3. If paying with a wire transfer:

• Please include your invoice number in your wire transfer. Without the invoice number, your payment may not be applied and you may be referred to collections.

• The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your invoice is fully paid.

Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002.

VII. Procedures for Paying Annual Establishment Fees

To pay the annual establishment fee, firms must access the Device Facility User Fee (DFUF) Web site at *https://userfees.fda.gov/OA_HTML/furls.jsp.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2016 until it has completed the steps below to register and pay any applicable fee. (See 21 U.S.C. 379j(g)(2).)

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee Web site listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2016 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit the data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay For Your DFUF Order

Unless paying by credit card, all payments must be in U.S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH or eCheck):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

You may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (Note: This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. (If needed, FDA's tax identification number is 53–0196965.)

C. Complete the Information Online To Update Your Establishment's Annual Registration for FY 2016, or To Register a New Establishment for FY 2016

Go to the Center for Devices and Radiological Health's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left side of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the ''Access Electronic Registration'' link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2015. Manufacturers of licensed biologics should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (Note: This email address and telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with BERS should be directed to *http://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm* or call 240–402–8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the

manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–18907 Filed 7–31–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children

Dates and Times: August 27, 2015, 9 a.m. to 5 p.m.

August 28, 2015, 10 a.m. to 1 p.m.

Place: Webinar and In-Person, National Institutes of Health, 5635 Fishers Lane, Rockville, Maryland 20857

Status: The meeting will be open to the public with attendance limited to space availability. Participants also have the option of viewing the meeting via webinar. Whether attending in-person or via webinar, all participants must register for the meeting. Please register at *https://www.blsmeetings.net/ACHDNCAugust2015.* The registration deadline is Friday, August 14, 2015, 11:59 p.m. Eastern Time.

Purpose: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act, Title XI, § 1111 (42 U.S.C. 300b-10), as amended by the Newborn Screening Saves Lives Reauthorization Act of 2014 (Pub. L. 113–240), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/heritable disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans and group and individual health insurance issuers are required to cover evidence-informed care and screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market, policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) A final evidence review report on the Adrenoleukodystrophy (ALD) condition nomination for inclusion in the RUSP; (2) a presentation by the Newborn Screening Technical Assistance and Evaluation Program (NewSTEPs) on their activities and the NewSTEPs data repository, a centralized and secure database designed for state newborn screening programs to explore data to meet program needs; (3) updates on the implementation of screening for Severe Combined Immunodeficiency, Critical Congenital Heart Disease, and Pompe Disease; and (4) updates from workgroups focused on cost analysis in newborn screening, newborn screening timeliness, and pilot studies for evidence-based reviews of conditions. Following the final evidence review report on ALD, the Committee also is expected to vote on whether or not to recommend to the Secretary the addition of ALD to the RUSP. Agenda items are subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials will be located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for both days of the meeting. Advance registration is required to present oral comments and/or submit written comments. Please register at *https://www.blsmeetings.net/ACHDNCAugust2015.* The registration deadline is Friday, August 14, 2015, 11:59 p.m. Eastern Time. Written comments must be received by the deadline in order to be included in the August meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.,* parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; email: *lvasquez@hrsa.gov.*

Contact Person: Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18W68, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; email: *dsarkar@hrsa.gov.*More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–18953 Filed 7–31–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV Molecular Biology.

Date: August 7, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 28, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–18875 Filed 7–31–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Science Moving TowArds Research Translation and Therapy (SMARTT), Coordinating Center—Program Extension.

Date: August 25, 2015.

Time: 3:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Science Moving TowArds Research Translation and Therapy (SMARTT), Biologics Production Facility (PF), Program Extension.

Date: August 25, 2015.

Time: 3:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Science Moving TowArds Research Translation and Therapy (SMARTT), Non-Biological Production Facility (PF), Program Extension.

Date: August 25, 2015.

Time: 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Science Moving TowArds Research Translation and Therapy (SMARTT), Pharmacology and Toxicology, Program Extension.

Date: August 25, 2015.

Time: 4:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 28, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–18874 Filed 7–31–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and

specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be

included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Summer King,

Statistician.

[FR Doc. 2015–18948 Filed 7–31–15; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N146; FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 2, 2015. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by September 2, 2015.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: KJC Holdings LP, Lohn, TX; PRT–200211

The applicant requests a permit for cull and take of excess barasingha (*Rucervus duvaucelii*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Fleming Creative Concept LLC, Scottsdale, AZ; PRT–65772B

The applicant requests a permit for interstate transport of 10 jackass penguins (*Spheniscus demersus*) from the Six Flags Discovery Kingdom, Vallejo, California to Miami Seaquarium, Miami, Florida, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Earth Promise, Glen Rose, TX; PRT–59071B

The applicant requests a permit to export two scimitar-horned oryx (*Oryx dammah*) and two addaxes (*Addax nasomaculatus*) born in captivity to African Lion Safari, Ontario, Canada, for the purpose of enhancement of the survival of the species.

Applicant: Barefoot Zoological, dba Alligator Adventure, North Myrtle Beach, SC; PRT–141742

The applicant requests renewal of a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Ring-tailed lemur (*Lemur catta*), red ruffed lemur (*Varecia rubra*), black and white ruffed lemur (*Varecia variegata*), Chinese alligator (*Alligator sinensis*), Nile crocodile (*Crocodylus niloticus*), saltwater crocodile (*Crocodylus porosus*), common caiman (*Caiman crocodilus crocodilus*), brown caiman (*Caiman crocodilus fuscus*), Cuban crocodile (*Crocodylus rhombifer*), Siamese crocodile (*Crocodylus siamensis*), Yacare (*Caiman yacare*), dwarf crocodile (*Osteolaemus*

tetraspis), false gavial (*Tomistoma schlegelii*), Tracaja (*Podocnemis unifilis*), Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), Cuban ground iguana (*Cyclura nubila nubila*), and the Aruba Island rattlesnake (*Crotalus unicolor*). This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mark Corry, Washington, UT; PRT–71117B

Applicant: Gary Loveless, Oklahoma City, OK; PRT–71073B

B. Endangered Marine Mammals and Marine Mammals

Applicant: Florian Schulz; PRT–61681B

The applicant requests a permit to photograph polar bears (*Ursus maritimus*) in Alaska for the purpose of photography for commercial and educational purposes from land and boat. This notification covers activities to be conducted by the applicant up to a 4-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–18893 Filed 7–31–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NAL–2015–N111; FXGO1660091NALO156FF09D02000]

Native American Policy for the U.S. Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft policy for public notice and comment.

SUMMARY: The Fish and Wildlife Service (Service) issues this draft Native American policy for public comment. The purpose of this policy is to further the United States' trust responsibility to Indian tribes by establishing a framework on which to base our continued interactions with federally recognized tribes as well as interactions with Alaska Native Corporations. The policy recognizes the sovereignty of federally recognized tribes; states that the Service will work on a government-to-government basis with tribal governments; and includes guidance on co-management, access to and use of cultural resources, capacity development, law enforcement, and education.

DATES: The Service will accept public comment through September 2, 2015.

ADDRESSES: The draft Native American policy is available at *http://www.fws.gov/policy/draft510fw1.pdf.* The existing policy is available in the Fish and Wildlife Service Manual at *http://www.fws.gov/policy/native-american-policy.pdf.* To submit comments, please mail or email them to Scott Aikin (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Scott Aikin, Native American Programs Coordinator, by mail at U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR, 97232; or via email at *scott_aikin@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

We are publishing this draft Native American policy, which is available at *http://www.fws.gov/policy/draft510fw1.pdf.*

When it becomes final, we will incorporate the policy in Part 510 of the Fish and Wildlife Service Manual. The purpose of the policy is to articulate principles and serve as a framework for government-to-government relationships and interactions between the Service and federally recognized tribes to conserve fish and wildlife and protect cultural resources. The policy includes guidance on:

- The relationship between the Service and federally recognized tribes, inter-tribal organizations, including Alaska Native Organizations (ANO), and Alaska Native Claims Settlement Act (ANCSA) corporations,
- Service employee responsibilities,
- Government-to-government consultation and relations,
- Communication,
- Co-management,
- Tribal access to Service lands and Service-managed resources for cultural and religious practices,
- Tribal cultural use of plants and animals,
- Law enforcement,
- Training and education,
- Capacity building and funding, and
- Guidance for implementing and monitoring the policy.

This policy is not meant to stand on its own. To implement this policy, the Service will update its *U.S. Fish and Wildlife Service Tribal Consultation Handbook* and develop training so that Service employees will be able to better perform duties related to this policy.

Draft Policy

We recognize that when the Service and tribes work together on resource matters, our longstanding relationship is strengthened and resources are better served. This policy provides guidance on recognition of tribal sovereign status, Service responsibilities, and opportunities for the Service and tribes to work together toward natural and cultural resource conservation and access. The purpose of this policy is to provide Service employees with guidance when working with recognized tribes and other entities such as Alaska Native Organizations and Corporations.

Section 1 of this policy recognizes the unique relationship that Federal governmental agencies have with federally recognized tribes. It explains that while this is a nationwide policy, the Service maintains flexibility for Service Regions and programs to work more appropriately with the tribes and ANCSA corporations.

Section 2 includes the definitions of terms used in the policy.

Section 3 lists the authorities under which the Service is able to take the actions described in the policy.

Section 4 describes the responsibilities of employees at all levels of the Service to carry out this policy.

Section 5 recognizes the U.S. Government's trust responsibility toward federally recognized tribes, tribes' sovereign authority over their members and territory, the tribes' rights to self-govern, and that government-to-government communication may occur at various levels within the Service and the tribes.

Section 6 describes communication, consultation, and information sharing between the Service and tribes.

Section 7 sets out a range of collaborative management opportunities and establishes principles of co-management where tribes and the Service have shared responsibility.

Section 8 recognizes that, for meaningful cultural and religious

practices, tribal members may need to access Service lands and use plants and animals for which the Service has management responsibility.

Section 9 recognizes tribal law enforcement responsibilities for managing Indian lands and tribal resources and encourages cooperative law enforcement between the Service and tribes.

Section 10 invites tribal governments to work with the Service to develop and present training for Service employees. It also makes available Service technical experts to help tribes develop technical expertise, supports tribal self-determination, encourages cross-training of Service and tribal personnel, and supports Native American professional development.

Section 11 establishes monitoring and implementation guidance for the policy.

Section 12 describes the policy's scope and limitations.

Background and Development of This Draft Policy

On June 28, 1994, the U.S. Fish and Wildlife Service (Service) adopted its Native American Policy (available at *http://www.fws.gov/policy/native-american-policy.pdf)* to guide the Service's government-to-government relations with federally recognized tribal governments in conserving fish and wildlife resources and to ''help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets.''

In July 2013, the Service convened a Native American Policy Team to review and update the policy. The Native American Policy Team is comprised of Service representatives from its Regions and programs. In addition, the Service invited all federally recognized tribal governments across the United States to nominate representatives to serve on the team. A total of 16 self-nominated tribal representatives from all of the major Regions across the country joined the team to provide input and tribal perspective.

Tribal representatives from the following tribal governments and organizations participated in a series of meetings with Service representatives to review and update the policy: Cherokee Nation, Chugach Regional Resources Commission, Confederated Tribes of Grand Ronde, Eastern Band Cherokee Indians, Fond du Lac Band of Lake Superior Chippewa, Gros Ventre and Assiniboine of Fort Belknap, Great Lakes Indian Fish and Wildlife Commission, Muckleshoot Indian Tribe, Native Village of Emmonak, Navajo Nation, Oglala Sioux Tribe, Penobscot Indian Nation, Quinault Indian Nation, San Manuel Band of Serrano Mission Indians, Central Council of Tlingit & Haida Indian Tribes of Alaska, and Yurok Tribe. Varying perspectives were shared on a wide range of issues including sovereignty, co-management, law enforcement, and trust responsibilities, among others. Substantial focus and attention was given to improving the implementation and accountability aspects of the policy.

Although Service and tribal team members took part in writing the draft, full agreement was not possible on every issue and some differences remain. In November 2014, the Yurok Tribe withdrew from the Service's Native American Policy Team. Other tribal representatives have continued to participate in an effort to work out differences and make further improvements to the policy.

In November 2014, the Service invited federally recognized tribal governments in each of its Regions and Alaska Native Corporations to consult on a government-to-government basis. The Service provided an early working draft of the updated policy for their review and input. A total of 23 of the tribal representatives submitted written comments to further develop and refine the draft updated policy.

From December 2014 to April 2015, the Service also held 24 consultation meetings and webinars within the Regions and nationally. Representatives from approximately 100 tribes attended these meetings. In March 2015, the Service revised the working draft of the updated policy and distributed it for internal Service review throughout all levels, Regions, and programs within the agency. We incorporated feedback from the internal Service review and additional comments received from tribal governments into this draft updated Native American Policy.

Open Comment Period

While this publication opens the 30-day public review period, we also invite and encourage tribes and Alaska Native Corporations (ANCs) to continue to review and submit comments. The Service's invitation to federally recognized tribal governments to consult on a government-to-government basis regarding development of this updated Native American Policy continues until 30 days after this **Federal Register** notification. Comments from local, State, and Federal government agencies; federally recognized tribal governments; inter-tribal organizations, non-federally recognized tribal governments; ANCSA corporations; and the general public are welcome.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 24, 2015.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–18918 Filed 7–31–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000 15X 6100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The Arizona RAC Business meeting will take place September 16, 2015, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the BLM Arizona State Office located at One North Central Avenue, Suite 800, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9500. 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: 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 Arizona. Planned agenda items include: A Welcome and Introduction of Council Members; BLM State Director's Update on BLM Programs and Issues; Mining 101 Overview; Updates on Reclaim Our Arizona Monuments (ROAM) and Solar Program Mitigation Strategy; RAC Committee Reports; RAC Questions on BLM District Manager Reports and other items of interest to the RAC. Members of the public are welcome to attend the RAC Business meeting. A public comment period is scheduled on the day of the Business meeting from 1:45 to 2:15 p.m. for any interested members of the public who wish to address the Council on BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. The final meeting agenda will be available two weeks prior to the meeting and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Additionally, directions to the meeting site and parking information may be found on the BLM Web site at: *http://www.blm.gov/az/st/en/res/pub_room/location.html.* Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation RAC and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The Recreation RAC will not review recreation fee program proposals at this meeting.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2015–18959 Filed 7–31–15; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000.PC0000. LXSIADVSBD00]

Notice of Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Wednesday September 2, 2015 from 1 p.m. to 5 p.m. Central Time and Thursday September 3, 2015 from 8:00 a.m. to 5:00 p.m. Central Time. This will be a one and a half day meeting.

ADDRESSES: This Advisory Board meeting will take place in Oklahoma City, Oklahoma at the Sheraton Oklahoma City Downtown Hotel, 1 North Broadway Avenue, Oklahoma City, OK 73102, *http://www.sheratonokc.com,* phone: 405–235–2780. Written comments pertaining to the September 2–3, 2015, Advisory Board meeting can be mailed to National Wild Horse and Burro Program,WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV. 89502–7147, or sent electronically to *whbadvisoryboard@blm.gov.* Please include ''Advisory Board Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. 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: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the meeting is:

I. Advisory Board Public Meeting

Wednesday, September 2, 2015 (1:00 p.m.–5:00 p.m.)

1:00 p.m.—Welcome, Introductions, and Agenda Review
1:50 p.m.—Approval of April 2015 Minutes
2:10 p.m.—BLM Response to Advisory Board Recommendations
2:30 p.m.—Wild Horse and Burro Program Update
5:00 p.m.—Adjourn

Thursday, September 3, 2015 (8:00 a.m.–5:00 p.m.)

8:00 a.m.—Program Update continued
10:30 a.m.—Public Comment Period Begins
12:00 p.m.—Public Comment Period Ends
12:05 p.m.—Lunch
1:15 p.m.—Working Group Reports
2:45 p.m.—Advisory Board Discussion and Recommendations to the BLM
5:00 p.m.—Adjourn

The meeting will be live-streamed. The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Thursday, September 3, 2015 at 10:30 a.m. members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the meeting should register in person with the BLM by 10:15 a.m. on September 3, 2015, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to three minutes in length; however, this time may vary. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above, email comments to *whbadvisoryboard@blm.gov,* or bring a written copy to the meeting. There may

be a webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence BLM's decisions on the management and protection of wild horses and burros.

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 in your comment that the BLM withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Authority: 43 CFR 1784.4–1.

Michael Tupper,

Deputy Assistant Director, Resources and Planning.

[FR Doc. 2015–18869 Filed 7–31–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–18920; PPNCWHHOP0, PPMVSIE1Z.I00000 (155)]

Proposed Information Collection; National Park Service President's Park National Christmas Tree Music Program Application

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before October 2, 2015.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Room 2C114, Mail Stop 242), Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include ''1024–New NPS Lost and Found Report'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Katie Wilmes, National Park Service, 1100 Ohio Drive SW., Rm 344, Washington, DC 20242; or via email: *Katie_Wilmes@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. Consistent with the Organic Act, as well as the Constitution's Establishment Clause which mandates government neutrality and allows the placement of holiday secular and religious displays, the National Christmas Tree Music Program's holiday musical entertainment may include both holiday secular and religious music. To ensure that any proposed music selection is consistent with the Establishment Clause, and presented in a prudent and objective manner as a traditional part of the culture and heritage of this annual holiday event, it must be approved in advance by the NPS.

The NPS National Christmas Tree Music Program at President's Park is intended to provide musical entertainment for park visitors during December on the Ellipse, where in celebration of the holiday season, visitors can observe the National Christmas Tree, visit assorted yuletide displays, and attend musical presentations. Each year, park officials accept applications from musical groups who wish to participate in the annual National Christmas Tree Program. The NPS utilizes Form 10–942, ''National Christmas Tree Music Program Application'' to accept applications from the public for participation in the program. Park officials utilize the following information from applicants in order to select, plan, schedule, and contact performers for the National Christmas Tree Program:

- Contact name, phone number, and email.
- Group Name and location (city, state).
- Preferred performance dates and times.
- Music selections/song list.
- Equipment needs.
- Number of performers.
- Type of group (choir, etc.).
- Acknowledgement of the musical entertainment policy.

II. Data

OMB Control Number: 1024—New.

Title: National Christmas Tree Music Program Application.

Service Form Number(s): NPS Form 10–942.

Type of Request: Collection in use without approval.

Description of Respondents: Local, national, and international bands, choirs, or dance groups.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Activity	Estimated annual number of responses	Estimated completion time per response (min)	Estimated total annual burden hours
NPS Form 10–942, ''National Christmas Tree Music Program Application''	75	5	6.25
Totals	75		6.25

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We 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.

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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 27, 2015.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2015–18935 Filed 7–31–15; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–540–544 and 731–TA–1283–1290 (Preliminary)]

Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–540–544 and 731–TA–1283–1290 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of cold-rolled steel flat products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom, provided for in subheadings 7209.15.00, 7209.16.00, 7209.17.00, 7209.18.15, 7209.18.25, 7209.18.60, 7209.25.00, 7209.26.00, 7209.27.00, 7209.28.00, 7209.90.00, 7210.70.30, 7211.23.15, 7211.23.20, 7211.23.30, 7211.23.45, 7211.23.60, 7211.29.20, 7211.29.45, 7211.29.60, 7211.90.00, 7212.40.10, 7212.40.50, 7225.50.60, 7225.50.80, 7225.99.00, 7226.92.50, 7226.92.70, and 7226.92.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of Brazil, China, India, Korea, and Russia. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by September 11, 2015. The Commission's views must be transmitted to Commerce within five business days thereafter, or by September 18, 2015.

DATES: *Effective Date:* July 28, 2015.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on July 28, 2015, by AK Steel Corporation (West Chester, Ohio), ArcelorMittal USA LLC (Chicago, Illinois), Nucor Corporation (Charlotte, North Carolina), Steel Dynamics, Inc. (Fort Wayne, Indiana), and United States Steel Corporation (Pittsburgh, Pennsylvania).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 18, 2015, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before August 14, 2015. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 21, 2015, a written brief containing information and arguments pertinent to the subject matter of the

investigations. Parties may file written testimony in connection with their presentation at the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 29, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–18951 Filed 7–31–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Review)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on narrow woven ribbons with woven selvedge (''narrow woven ribbons'') from China and the antidumping duty orders on narrow woven ribbons from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 2, 2015. Comments on the adequacy of responses may be filed with the Commission by October 16, 2015.

DATES: *Effective date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On September 1, 2010, the Department of Commerce issued a countervailing duty order on imports of narrow woven ribbons from China (75 FR 53642) and antidumping duty orders on imports of narrow woven ribbons from China and Taiwan (75 FR 53632, as amended on September 17, 2010 (75 FR 56982)). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of narrow woven ribbons other than cut-edge ribbons that are within Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all producers of narrow woven ribbons.

(5) The *Order Date* is the date that the orders under review became effective. In these reviews, the *Order Date* is September 1, 2010.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–340, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov*. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided In Response To This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are

employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 28, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–18819 Filed 7–31–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–468 and 731–TA–1167–1168 (Review)]

Certain Magnesia Carbon Bricks From China and Mexico; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on certain magnesia carbon bricks from China and the antidumping duty orders on certain magnesia carbon bricks from China and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 2, 2015. Comments on the adequacy of responses may be filed with the Commission by October 16, 2015.

DATES: *Effective:* August 3, 2015.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 15–5–339, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 20, 2010, the Department of Commerce issued antidumping duty orders on imports of certain magnesia carbon bricks from China and Mexico (75 FR 57257). On September 21, 2010, the Department of Commerce issued a countervailing duty order on imports of certain magnesia carbon bricks from China (75 FR 57442). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of magnesia carbon bricks that are within Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of magnesia carbon bricks.

(5) The *Order Date* is the date that the orders under review became effective. In the reviews of the antidumping duty orders concerning imports of magnesia carbon bricks from China and Mexico, the *Order Date* is September 20, 2010. In the review of the countervailing duty order concerning imports of magnesia carbon bricks from China, the *Order Date* is September 21, 2010.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2015. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2015. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any

submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution.—If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2014, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that

product during calendar year 2014 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Dated: July 28, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–18818 Filed 7–31–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Foreign Labor Certification Quarterly Activity Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Foreign Labor Certification Quarterly Activity Report,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 2, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201505-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Foreign Labor Certification Quarterly Activity Report information collection. The Foreign Labor Certification Quarterly Activity Report, Form ETA–9127, is used to collect information from a State Workforce Agency (SWA) on activities performed under a Foreign (Alien) Labor Certification reimbursable grant and provides a sound basis for program management, including budget, workload management, and monitoring for compliance with the grant. This information collection has been classified as a revision, because the burden hours and the number of responses and respondents have changed to reflect the recent corresponding burden transfer for prevailing practice surveys and ad hoc surveys to OMB Control Number 1205–0017. In addition, minor changes are proposed for Form ETA–9127 and its instructions. These latter changes would not affect public burden. The Wagner-Peyser Act and Immigration and Nationality Act section 218(c)(3)(A) authorize this information collection. *See* 29 U.S.C. 49(i) and 8 U.S.C. 1188(c)(3)(A).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0457. The current approval is scheduled to expire on September 30, 2015; however, the DOL

notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 5, 2015 (80 FR 12039).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0457. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Foreign Labor Certification Quarterly Activity Report.

OMB Control Number: 1205–0457.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 54.

Total Estimated Number of Responses: 216.

Total Estimated Annual Time Burden: 432 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 28, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–18892 Filed 7–31–15; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Trade Adjustment Assistance Community College Career Training Grants Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) proposal titled, ''Evaluation of the Trade Adjustment Assistance Community College Career Training Grants Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 2, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201501-1291-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OASAM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for an information collection to support an evaluation of the Trade Adjustment Assistance Community College Career Training (TAACCCT) Grants Program. The data collection will obtain information about the program from TAACCCT grant recipients through a survey of colleges receiving funds under the first three rounds of TAACCCT grants and site visits to selected round 2 and 3 grantees. More specifically, an Internet based survey will collect data from colleges about TAACCCT activities, especially around program development and capacity building at community colleges, and the changes that occurred because of the TAACCCT grant. Site visits will collect more in-depth qualitative data on the TAACCCT grants via semi-structured interviews with program coordinators, faculty, and industry and employer partners, as well as focus groups with students participating in the TAACCCT-funded programs. American Recovery and Reinvestment Act of 2009 section 801 authorizes this information collection. *See* Public Law 111–5 section 801.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on August 1, 2014 (79 FR 44868).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201501–1291–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-OASAM.

Title of Collection: Evaluation of the Trade Adjustment Assistance Community College Career Training Grants Program.

OMB ICR Reference Number: 201501–1291–001.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1,360.

Total Estimated Number of Responses: 1,360.

Total Estimated Annual Time Burden: 1,900 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 28, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–18944 Filed 7–31–15; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0051]

Proposed Extension of Information Collection; Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines.

DATES: All comments must be received on or before October 2, 2015.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2015–0017.

• *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• *Hand Delivery:* USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The escape and evacuation plan required by existing standard 30 CFR 77.1101 is prepared by the mine operator and is used by mines, the Mine Safety and Health Administration (MSHA), and persons involved in rescue and recovery operations. The plan is used to instruct employees in the proper methods to evacuate structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0051

Affected Public: Business or other for-profit.

Number of Respondents: 137.

Frequency: On occasion.

Number of Responses: 137.

Annual Burden Hours: 235 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 28, 2015.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2015–18899 Filed 7–31–15; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0095]

Proposed Extension of Information Collection; Explosive Materials and Blasting Units (Pertains Only to Metal and Nonmetal Underground Mines Deemed To Be Gassy)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Explosive Materials and Blasting Units (pertains only to metal and nonmetal underground mines deemed to be gassy).

DATES: All comments must be received on or before October 2, 2015.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- Federal E-Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2015–0024.
- Regular Mail: Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- Hand Delivery: USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under Title 30 U.S. Code of Federal Regulations (30 CFR) Parts 7 and 15, the Mine Safety and Health Administration (MSHA) evaluates and approves explosive materials and blasting units as permissible for use in the mining industry. However, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, 30 CFR 57.22606(a) outlines the procedures for mine operators to follow when using nonapproved explosive materials and blasting units. The standard requires mine operators of Class III metal or nonmetal mines to notify MSHA in writing prior to their use of nonapproved explosive materials and blasting units. MSHA then evaluates the non-approved explosive materials and determines whether they are safe for use in a gassy environment.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Explosive Materials and Blasting Units (pertains only to metal and nonmetal underground mines deemed to be gassy). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Explosive Materials and Blasting Units (pertains only to metal and nonmetal underground mines deemed to be gassy). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0095.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Frequency: On occasion.

Number of Responses: 1.

Annual Burden Hours: 1 hour.

Annual Respondent or Recordkeeper Cost: $6.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 28, 2015.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2015–18898 Filed 7–31–15; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. 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. Currently, the Division of Longshore and Harbor Workers' Compensation is soliciting comments concerning the proposed collection: Carrier's Report of Issuance of Policy (LS–570). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 2, 2015.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The form LS–570 is completed by the insurance carrier and forwarded to the Department of Labor for review. The Longshore and Harbor Workers' Compensation staff review the completed LS–570 to identify those operators who have secured insurance for payment of Longshore benefits as required by 20 CFR 703.116. This feedback will help DOL improve the quality and delivery of compliance assistance tools and services. This clearance allows Longshore to gather information from both Federal and non-Federal users. This information collection is currently approved for use through January 31, 2016.

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;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this currently approved information collection. The information is necessary (i) to ensure compliance by employers, (ii) to bind the carrier to the liabilities of the employer under 20 CFR 703.118 and (iii) so that the districts can identify the correct carrier for claims to ensure prompt payment of compensation to injured workers.

Type of Review: Extension.

Agency: Division of Longshore and Harbor Workers' Compensation.

Title: Carrier's Report of Issuance of Policy.

OMB Number: 1240–0004.

Agency Number: LS–570.

Affected Public: Private Sector Business or other for-profits.

Total Respondents: 400.

Total Responses: 1,500.

Time per Response: 1 minute.

Estimated Total Burden Hours: 25.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $ 780.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 28, 2015.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2015–18943 Filed 7–31–15; 8:45 am]

BILLING CODE 4510–CF–P

NUCLEAR REGULATORY COMMISSSION

[NRC–2015–0182]

Financial Planning for Management of Radioactive Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Financial scoping study; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will conduct a financial scoping study to determine if financial planning requirements for decommissioning and end-of-life management for some radioactive byproduct material are necessary. The NRC is seeking stakeholder input and perspective on this action. Respondents are asked to consider recommendations from recent studies addressing this topic, national and international activities, and specific questions posed by the NRC staff in this notice when preparing their responses.

DATES: Submit comments by October 19, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC 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 submitted comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0182. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ryan Whited, telephone: 301–415–1154; email: *Ryan.Whited@nrc.gov* or James Shaffner, telephone: 301–415–5496; email: *James.Shaffner@nrc.gov, both are staff of the* Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0182 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–2015–0182.
- *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 a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0182 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The issue of adequacy of financial mechanisms for end-of-life management of disused Category 1 and 2 sealed sources [1] was raised in the 2006 report by the Radiation Source Protection and Security Task Force (Task Force) (see *http://www.nrc.gov/security/byproduct/task-force.html).* The Task Force, comprised of 14 Federal agencies and the Organization of Agreement States, was created by the Energy Policy Act of 2005 to evaluate the status of various factors affecting the security of Category 1 and 2 sealed sources. This resulted in the 2006 Task Force report recommendation 9–2 that the NRC ''evaluate the financial assurance required for possession of Category 1 and 2 radioactive sources to assure that funding is available for final disposition of the sources.''

Similarly, in the NRC staff's 2007 ''Strategic Assessment of the U.S. Nuclear Regulatory Commission's Low-Level Radioactive Waste Regulatory Program'' (ADAMS Accession No. ML071350291) (Strategic Assessment), financial assurance scoping for byproduct material was identified as one of seven high priorities. The Strategic Assessment identified the issue more broadly than the Task Force, whose charter was to focus on security related to Category 1 and 2 sources. In fact, the NRC staff proposed to also review the ''adequacy of financial assurance requirements to anticipate the ultimate costs of disposal of or dispositioning *radioactive sources not addressed by the Task Force''* (emphasis added, Appendix C, p. C–21).

Two recent drivers that prompted the NRC staff to initiate this financial scoping study were specific recommendations related to financial planning in the 2014 Task Force report (ADAMS Accession No. ML14219A642) and recommendations related to financial assurance in a March 2014 report issued by the Low-Level Waste (LLW) Forum Disused Sources Working Group (ADAMS Accession No. ML14084A394) (2014 Disused Sources Working Group report). These recommendations are discussed in detail later in this **Federal Register** notice (FRN).

During a September 18, 2014, Commission briefing on management of low-level waste, high-level waste, and spent nuclear fuel, the Director of the Division of Waste Management and Environmental Protection (now the Division of Decommissioning, Uranium Recovery, and Waste Programs) stressed the timeliness of a scoping study related to financial requirements for end-of-life management of byproduct material, in particular disused radioactive sealed sources (transcript of ''Briefing on Management of Low-Level Waste, High Level Waste and Spent Nuclear Fuel'' is available at ADAMS Accession No. ML14265A396):

> The 2007 programmatic assessment [*i.e.,* the Strategic Assessment of the U.S. Nuclear Regulatory Commission's Low-Level Radioactive Waste Regulatory Program] included an activity to perform a scoping study of the need to revise or expand byproduct material financial assurance. Resource constraints unfortunately delayed that initiative. However, it has become more important and timely based upon the recommendation of the 2014 Radiation Source Protection and Security Task Force report as well as a report prepared by the Low-Level Waste Forum Task Group on disused cell [sealed] sources. And the staff now intends to focus on this important and emerging issue.

In its September 24, 2014, Staff Requirements Memorandum (SRM) (ADAMS Accession No. ML14267A365) in response to the briefing, the Commission stated that ''[t]he staff should provide the Commission with the results of the byproduct financial scoping study and provide recommendations on next steps.'' The staff received subsequent administrative instructions to report the results of the scoping study and recommendations by April 13, 2015. In preparing a response to the Commission in compliance with the first directive in the SRM, the staff determined that the byproduct material financial scoping study would benefit from much broader stakeholder involvement than was originally envisioned. The four primary reasons for the expanded involvement are as follows:

1. Recent reports (the 2014 Task Force report and the 2014 Disused Sources Working Group report) addressing this topic have been generated by a limited group of Federal and State stakeholders. The views and perspectives of

[1] The International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources lists 26 radionuclides and identifies three threshold activity levels for each, referred to as Categories 1, 2, and 3. These levels are based upon the relative health hazards each radionuclide would present if not kept under adequate controls. The Category 1 and 2 quantities of radioactive sources are considered the most risk significant and have been the focus of Federal and State efforts to enact tighter security controls.

important external stakeholders such as industry, users groups, and current licensees are needed to fully inform the scoping study and any subsequent NRC staff's recommendations.

2. Currently, there are a number of ongoing national initiatives and activities that could add perspective to the staff's consideration of options and recommendations to address byproduct material financial planning.

3. Financial planning associated with end-of-life management of byproduct material has also garnered the attention of the international community. The financial scoping study would benefit from consideration of international experience and perspectives.

4. An NRC internal working group has identified a number of topical areas that are relevant to financial planning. Broader stakeholder input would assist the NRC staff in analyzing these topical areas and potentially identifying other financial planning issues.

Additional background discussion for items 1, 2 and 3 is provided below. The NRC staff is requesting that respondents consider this background information when developing and providing their comments. Item 4 is addressed in the ''Request for Comments'' section of this FRN.

A. Recommendations Warranting Broader Review

The NRC staff believes that the following recommendations warrant broader review in the scoping study and asks that respondents consider them when developing their comments.

Summary recommendations from the report by the Interagency Working Group (IWG) on Financial Assurance for Disposition of Category 1, 2, and 3 Radioactive Sealed Sources (ADAMS Accession No. ML100050105). To address the financial assurance concerns raised in the 2006 Task Force Report, an Interagency Working Group (IWG) on Financial Assurance for Disposition of Category 1, 2, and 3 Radioactive Sealed Sources was established in December 2008. The IWG was tasked with proposing a comprehensive list of viable financial assurance solutions to increase the likelihood that Category 1, 2, and 3 radioactive sealed sources will be disposed of in a safe, appropriate and timely manner. The IWG identified three main areas of concern: (1) lack of disposal capacity for sources, (2) an inadequate supply of containers for transportation of these sources for final disposition/disposal, and (3) storage of these sources by licensees for extended periods of time.

The IWG recognized that certain financial assurance options may mitigate, but not resolve, these concerns. Possible options considered in the evaluation included:

1. Develop risk-based financial assurance requirements and lower financial assurance thresholds in § 30.35 of Title 10 of the *Code of Federal Regulations* to capture all Category 1, 2, and 3 radioactive sealed sources.

2. Assess a universal surcharge on all licensees to cover the cost of disposal.

3. Assess an up-front surcharge on all new Category 1, 2, and 3 sources to cover the entire anticipated cost of packaging and disposal.

The IWG report has recently been made publicly available. The recommendations from the IWG report were also articulated in the 2010 Radiation Source Protection and Security Task Force report (ADAMS Accession No. ML102230141).

Recommendation 2 of the 2014 Task Force Report. The 2014 Task Force report highlighted that significant progress has been made to address the commercial sealed source management and disposal challenges identified in the 2006 and 2010 Task Force reports. Disposal options for many commercial Class A, B, and C sealed sources are now available to Low-Level Radioactive Waste (LLRW) generators in all 50 states, including the 36 states which had been without such an option when the 2010 Task Force report was published. The 2014 Task Force report further discussed that progress has also been made in addressing ongoing challenges regarding both the transportation and disposal of the highest activity sealed sources. The Task Force noted that although disposal options for many sealed sources are now available, there are currently few incentives for generators to dispose of their disused sealed sources in a timely fashion. In addition, commercial disposal options are still unavailable for many Category 1 and 2 sources, and challenges remain regarding the availability of certified Type B shipping containers required for transport of these sources. Consequently, the 2014 Task Force report contains a specific recommendation, recommendation 2, related to financial planning:

> The Task Force recommends that the NRC evaluate the need for sealed source licensees to address the eventual disposition/disposal costs of Category 1 and 2 quantities of radioactive sources through source disposition/disposal financial planning or other mechanisms. Disposition costs should include the cost of packaging, transport, and disposal (when available) of these sources.

Recommendations from the 2014 Disused Sources Working Group Report. The 2014 Disused Sources Working Group report contained a recommendation that the NRC develop financial assurance requirements for sealed source radionuclides of concern for all categories. The report suggested that the requirement apply to general licensees as well as specific licensees. The vast majority of licensees possessing Category 1 and 2 sources are specific licensees. However, some sources in the lower categories (Category 3–5) are possessed under a general license. The Disused Sources Working Group offered several recommendations directly related to financial assurance:

1. To encourage timely disposal, the NRC should develop robust financial assurance requirements for all licensees with sources that pose a threat to national security (Categories 1 through 3). The financial assurance requirements should be adequate to cover the entire cost of packaging, transport, and disposal.

2. The existing NRC-Conference of Radiation Control Program Directors (CRCPD) program should be adequately funded to address orphaned and abandoned sources throughout the U.S. Individual states should retain the ability to operate their own orphaned and abandoned source programs, such as is currently done in Texas.

3. Federal research agencies should require applicants to budget for the full life-cycle cost of use and disposition in grant applications.

B. Relevant National Activities Related to Byproduct Material Financial Planning

In recent years, several important activities have ensued related to byproduct material financial assurance. The NRC invites public comment and perspective as to the impact that these activities, individually or in combination, may have on financial planning related to end-of-life management of radioactive sealed sources (or other byproduct material):

1. The NRC staff published a revised Concentration Averaging and Encapsulation Branch Technical Position (ADAMS Accession No. ML14169A380), which increased the recommended activity limit for Cs-137 disposal from 30 curies to 130 curies allowing disposal of more Cs-137 sources (February 2015).

2. The Waste Control Specialists disposal facility in Texas was authorized to collect and dispose of sealed sources on April 25, 2012.

3. The Department of Energy National Nuclear Security Administration's (DOE/NNSA) Office of Radiological Security (ORS), formerly Global Threat Reduction Initiative (*http://nnsa.energy.gov/mediaroom/factsheets/reducingthreats*) continued to offer federally-funded security upgrades based on best practices. When requested by a licensee, the ORS works to assess existing security conditions, provide recommendations on security enhancements, and, when warranted, fund the procurement and installation of jointly agreed-upon security best practices. These voluntary security enhancements complement and do not replace the NRC's current requirements. Also, some sealed sources are recovered through ORS' Offsite Source Recovery Project.

4. The Source Collection and Threat Reduction Program (SCATR) (*http://www.crcpd.org/StateServices/SCATR.aspx*), administered by the CRCPD, was created in early 2007 to provide sealed source licensees in States which do not have access to a LLW disposal facility an opportunity to dispose of certain unwanted radioactive sealed sources. SCATR is funded through a grant provided by the DOE/NNSA.

5. New Type B packages were available for use beginning in 2014. DOE/NNSA's ORS procured vendor services for the design, development, testing, and certification of two Type B packages to support the recovery and transportation of Category 1 and Category 2 sources commonly used in irradiators and cancer treatment devices. The new containers will enable shipment of nearly 100 percent of all commercially used devices containing Cs-137 and cobalt-60 (Co-60).

6. The CRCPD is currently convening a working group to consider revising Agreement State financial planning requirements, to include restructuring the criteria used to determine what radioactive material requires financial surety to ensure proper end-of-life management, particularly (but not exclusively) Category 1 and 2 sealed sources.

C. Recent International Activities Related to Byproduct Financial Planning

The staff is also aware of recent activities in the international community related to byproduct material financial planning. In November 2014, IAEA Nuclear Energy Series No. NW–T–1.3 was released, which summarizes the reviewed information distributed in previous IAEA publications. It also provides an up-to-date, overall picture of the management of disused sealed radioactive sources based upon the current status and trends in this field. Section 5.5 of the publication addresses aspects of financing including cost distribution, cost uncertainty, and financial implications of the lack of availability of an ownership transfer path.

Further, the Joint Convention on the Safety of Spent Nuclear Fuel and on the Safety of Radioactive Waste Management requires that contracting parties address aspects of end-of-life source management.

Respondents to this request with insight into relevant international initiatives are invited to provide their perspectives regarding international best practices or other experiences that the NRC staff should consider.

III. Request for Comments

The NRC is conducting this financial scoping study to determine if financial planning requirements for decommissioning and end-of-life management for some radioactive byproduct material are necessary. The NRC is seeking stakeholder input and perspective on this action. Respondents are asked to consider the background material discussed in Section II above when preparing their comments and insights. In addition, the NRC staff requests that respondents consider the following topical areas, and specifically the eight questions listed below, that an NRC staff internal working group has identified.

Consideration of Feasible Disposition Paths Other Than Disposal

Disposition pathways other than disposal may be available and appropriate for sources, including reuse and recycling. Factors important for financial planning for these disposition pathways may be significantly different from those associated with disposal.

Question 1: What disposition pathways are available to various licensee types beyond the traditional disposal pathway and should be considered in any potential new financial planning requirements?

Establishing Funding Requirements for Dispositioning

Establishing appropriate and equitable funding requirements sufficient for the disposition of certain individual sources is a challenge. Funding requirements must account for interim storage, conditioning, and packaging for transportation and disposal, as well as the transportation and disposal costs. In many cases it is difficult to establish accurate values for each of these elements even with current information. Further, there will be uncertainty regarding the adequacy of financial surety requirements in the future. Some sealed sources may have a service life of decades; therefore, a financial surety established today may not be adequate 20 to 30 years from now. At present, it may be easier to articulate an appropriate decommissioning funding plan or fixed dollar amount for Category 3 and 4 sources than for Category 1 and 2 sources at present. That is because disposal access is more readily available for smaller sources.

Question 2: What should be the primary considerations in establishing and imposing appropriate and equitable financial planning requirements on radioactive sealed sources?

Timeliness in Declaring Disused Sources

Currently there is no NRC requirement for licensees to declare licensed sources as disused (although they are encouraged to do so). Financial planning requirements may establish an appropriate time (for example two years) for applying requirements to sources considered disused by the licensee.

Question 3: Should licensees be required to specifically declare disused sources? If so, how long after a source is disused must a licensee declare it as disused?

Source Characteristics

Financial planning must also account for source characteristics such as type of radioactive material, half-life, physical form, and remaining useful life. For relatively short half-life byproduct material, there is a need to evaluate the equitable application (and removal) of financial planning requirements for sources that may decay below the quantities of concern.

Question 4: How should source characteristics be factored into establishing equitable financial planning requirements for end-of-life management?

Compatibility With Agreement State Requirements

Any NRC rulemaking must involve Agreement State regulators in determining the compatibility category assigned to a potential rule.

Question 5: If NRC rulemaking is initiated as a result of this scoping study, how should NRC engage with and consider the impact on Agreement States? What would be the primary considerations in establishing

compatibility levels for rule requirements?

Applicability to General Licensees

The applicability of financial planning requirements to licensees possessing generally licensed sealed sources should be considered. According to the 2014 Disused Sources Working Group report, there are at least a few licensees who possess generally licensed sources in quantities of concern.

Question 6: When necessary, what mechanism should be used to administer financial planning requirements on general licensees?

Characteristics and Qualifications of the Fund Custodian

Another consideration in establishing financial planning requirements is how to determine the proper custodian for the fund that is to be earmarked for disposition.

Question 7: What are the ideal characteristics and qualifications for an entity that will act as the custodian for any funds earmarked for long-term management of disused sealed sources? For instance, what characteristics and qualifications should be taken into consideration regarding the custodian's relationship to the licensee (*e.g.,* the ability of the custodian to access the funds, or the custodian's independent financial viability)? In the event that there is a residual amount remaining in the fund following payment of disposition cost, what should be the fate of the residual funds?

Tracking

For licensees possessing Category 1 or 2 radioactive sealed sources, regulators can access the National Source Tracking System (NSTS) to determine the number and type of licensees that would be potentially impacted by end-of-life financial assurance requirements. For new sources, source manufacturers or suppliers could be contacted to determine how they would be impacted by any new requirements. However, it may be more difficult to implement requirements and ensure accountability regarding sources that are not tracked in the NSTS (*e.g.* Category 3 and lower).

Question 8: What are the key characteristics of a tracking system for byproduct material (sealed sources) subject to financial planning requirements? Which of these characteristics are not available as part of the NSTS?

The topical areas and questions that the NRC staff has identified above are consequential, but not exhaustive. Varied perspectives from a broad range of stakeholders will be beneficial. Further, NRC staff anticipates that stakeholders will identify and provide their perspectives on additional issues they identify that are relevant to financial planning for management of disused or unwanted radioactive byproduct material.

Based on the results of the expanded byproduct material financial scoping study, staff will compile a report with study results and recommendations for next steps to be provided to the Commission in spring 2016. Staff recommendations could include options such as limited rulemaking, broad scope rulemaking, advance notice of proposed rulemaking, development of guidance, issuance of a generic communication, or no action.

IV. Topic-Specific Public Meeting

The NRC will convene a topic-specific public meeting in Rockville, MD, in early fall 2015. The public meeting will include a webinar and teleconference for the convenience of participants who find attendance inconvenient or prohibitive. A meeting notice will be posted to the NRC's public Web site at *http://meetings.nrc.gov/pmns/mtg* no fewer than 10 days prior to the meeting providing the date, time, and venue of the meeting, as well as remote participation instructions. A transcript of the public meeting will be made publicly available in ADAMS, as well as posted on the Federal Rulemaking Web site at *http://www.regulations.gov,* under Docket ID NRC–2015–0182. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0182); (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

The NRC staff will use the information gathered from the public meeting to supplement information gathered in response to this FRN and other sources to prepare a report on byproduct material financial scoping study for the Commission, which will include the NRC staff's recommendations for next steps.

Dated at Rockville, MD this 24th day of July 2015.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–18891 Filed 7–31–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0183]

Testing of Open Secondary Window-Type Current Transformers—Test Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft test plan; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a proposed draft test plan, ''Testing of Open Secondary Window-Type Current Transformers—Test Plan.'' The purpose of this testing is to better understand the following scenario: Will open circuiting of the secondary circuit of a current transformer (CT), which is operating within its rated continuous primary current limits, result in an excessively high voltage in the secondary circuit sufficient to start a fire in the form of explosion or arcing in the circuit's insulation at the location of the CT itself or at some other location in the secondary circuit?

DATES: Submit comments by September 2, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0183. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shivani Mehta, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0860, email: *Shivani.Mehta@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0183 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–2015–0183.

• *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 proposed draft test plan, ''Testing of Open Secondary Window-Type Current Transformers—Test Plan'' is available in ADAMS under Accession No. ML15203A228.

• *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–2015–0183 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The NRC is issuing for public comment a proposed draft test plan. The purpose of this test program is to better understand and obtain information to form a technical basis for assessing the propensity of a secondary fire or damage to the secondary side circuit or components as a result of an open-circuited current transformer (CT) secondary winding. Specifically, the test program will allow investigation of the high-voltage in the secondary circuit to determine if it is sufficient to induce a fire in the circuit's insulation at the CT location or within the secondary circuit.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes as necessary, and make the final test plan available to the public through ADAMS and *http://www.regulations.gov* at Docket ID NRC–2015–0183, and will be documented in the final test report. No responses will be provided to specific commenters in regards to the disposition of their comments.

Current transformers (CTs) are widely used to monitor the current at strategic locations of electrical power distribution systems in nuclear power plants (NPPs). The CTs provide isolation from the high-voltage primary, and step-down the magnitude of the measured current to a value that can be safely handled by the monitoring instruments. Thus, they are designed to measure the current in alternating current (AC) power systems (generally three-phase systems) in their primary winding and transform this current into a representative low secondary current for instrumentation used for remote readout of the current. An open-circuit in a CT's secondary winding can cause high voltages on the secondary circuit as the CT attempts to maintain the current relationship dictated by the transformer's winding turns ratio. The resulting high voltage condition in the secondary circuit from an open-circuited CT introduces a potential failure mode that warrants further investigation as part of the final resolution of circuit failure issues associated with the fire protection strategies at nuclear power plants. Specifically, an open circuit on a high voltage CT circuit may result in secondary damage, possibly resulting in the occurrence of an additional fire in the location of the CT itself or at a location remote to the CT. This potential event is described in Section 3.5.2.1 of the NEI 00–01, Revision 2 (ADAMS Accession No. ML091770265), and endorsed by Regulatory Guide 1.189, Revision 2 (ADAMS under Accession No. ML092580550).

Accordingly, the purpose of this test program is to better understand and obtain information to form a technical basis for assessing the propensity of a secondary fire or damage to the secondary side circuit or components under an open-circuited CT secondary winding. Specifically, the test program will allow investigation of the high-voltage in the secondary circuit to determine if it is sufficient to induce a fire in the circuit's insulation at the CT location or within the secondary circuit.

Dated at Rockville, Maryland, this 27th day of July 2015.

For the Nuclear Regulatory Commission.

Felix Gonzalez,

Acting Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2015–18997 Filed 7–31–15; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2015–0180]

Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon Generation Company, LLC (Exelon, the licensee) for operation of LaSalle County Station (LSCS), Units 1 and 2, located in LaSalle County, Illinois. The proposed amendment would revise the maximum allowable technical specification (TS) temperature of the ultimate heat sink for the plant. The NRC staff is issuing a final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) associated with the proposed license amendments.

DATES: The environmental assessment and finding of no significant impact referenced in this document is available on August 3, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0180 when contacting the NRC about the availability of information regarding this document. You may obtain publically available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff 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 available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the AVAILABILITY OF DOCUMENTS section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bhalchandra Vaidya, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhachandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon Generation Company, LLC for operation of LaSalle County Station (LSCS), Units 1 and 2, located in LaSalle County, Illinois, in accordance with section 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR).

LSCS is located in Brookfield Township of LaSalle County in northeastern Illinois. The Illinois River is 5 miles north of the site. A 2,058-acre cooling pond provides water for the station's condenser cooling. A small river screen house, located on the Illinois River, pumps makeup water to the cooling pond. The ultimate heat sink (UHS) for emergency core cooling consists of an excavated portion of the cooling pond with an intake flume. LSCS discharges liquid effluents to the cooling pond blowdown line, which subsequently discharges into the Illinois River.

In accordance with 10 CFR 51.21, the NRC staff prepared an environmental assessment documenting its finding.

Based on the results of the EA documented herein, the NRC has determined not to prepare any environmental impact statement for the proposed license amendment, and is instead issuing a FONSI in accordance with 10 CFR 51.32.

II. Environmental Assessment

Plant Site and Environs

LSCS is located in Brookfield Township in LaSalle County in northeastern Illinois. The Illinois River is 5 miles north of the site. Condenser cooling for the station is provided from a perched cooling lake of 2,058 acres. A small river screen house, located on the Illinois River, provides makeup water to the cooling lake. The ultimate heat sink (UHS) for emergency core cooling consists of an excavated pond integral with the cooling lake. Liquid effluents from LSCS are discharged into the cooling lake blowdown line that subsequently discharges into the Illinois River.

Description of the Proposed Action

The proposed action would amend LSCS TS 3.7.3, ''Ultimate Heat Sink'' by changing Surveillance Requirement (SR) 3.7.3.1 and adding a new action statement. The SR 3.7.3.1 currently requires verification that the cooling water temperature supplied to the plant from the core standby cooling system pond (*i.e.,* the UHS) be less than or equal to 101.25 degrees Fahrenheit (°F) (38.47 degrees Celsius [°C]). The licensee proposes to change SR 3.7.3.1 to require verification that the UHS cooling water upper temperature limit is between 101.25 and 104 °F (38.47 and 40 °C) depending on the time of day. The proposed SR change would permit the plant to continue to operate during times when the UHS cooling water temperature exceeds 101.25 °F (38.47 °C) but is less than or equal to 104 °F (40 °C). In addition, the licensee proposes to add a new action statement to TS 3.7.3 requiring SR 3.7.3.1, ''temperature verification,'' be performed each hour when the cooling water temperature supplied to the plant from the Core Standby Cooling System pond is greater than or equal to 101 °F (38.33 °C).

The proposed action to amend TS 3.7.3 is in accordance with the licensee's application dated July 12, 2012 (ADAMS Accession No. ML12200A330), as supplemented by letters dated September 17, 2012 (ADAMS Accession No. ML122690041), January 18, 2013 (ADAMS Accession No. ML13022A476), February 11, 2013 (ADAMS Accession No. ML13042A405), October 4, 2013 (ADAMS Accession No. ML13282A339), December 4, 2014 (ADAMS Accession No. ML14352A311), and April 15, 2015 (ADAMS Accession No. ML15113B115).

Need for the Proposed Action

The proposed action is needed for operational flexibility during periods of high UHS temperature in order to prevent any unnecessary plant shutdown. The licensee states that recent summer weather conditions have resulted in the UHS temperature limit being challenged. These conditions include elevated air temperatures, high humidity, and low wind speed. The current temperature limit does not account for daytime weather effects on the allowable UHS temperature. The proposed action will allow the temperature limit to vary with the diurnal cycle, thereby better reflecting the effect of more severe weather conditions.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental evaluation of the proposed action. No changes would occur in the types of radioactive effluents that may be released from the plant offsite. No significant increase in the amount of any radioactive effluent released offsite or significant increase in occupational or public radiation exposure is expected from the proposed action. Separate from the environmental assessment in this document, the NRC staff is evaluating the licensee's analyses of the potential radiological consequences of an accident that may result from the proposed action. The results of the NRC staff's safety evaluation and conclusion will be documented in a Safety Evaluation (SE). If the NRC staff concludes in the SE that all pertinent regulatory requirements are met by the proposed elevated temperature limit, then there would be no significant radiological environmental impact due to the proposed action. The NRC staff's SE will be issued with the license amendment if the amendment is approved.

With regard to potential non-radiological impacts, raising the maximum allowable temperature of the UHS would likely result in cooling pond water temperature increases, especially during periods of extreme high air temperature, high humidity, and low wind. The cooling pond is a wastewater treatment works as defined by Illinois Administrative Code (35 IAC 301.415). Under this definition, the cooling pond is not considered waters of the State under Illinois Administrative Code (35 IAC 301.440) or waters of the United States under the Federal Clean Water Act (40 CFR 230.3(s)), and so the cooling pond is not subject to State water quality standards.

Exelon leases a large portion of the LSCS cooling pond to the Illinois Department of Natural Resources (IDNR), which maintains the LSCS cooling pond as an outdoor recreation area for public use and fishing. For example, IDNR surveys the cooling pond each year and determines which fish to stock based on fishermen preferences, fish abundance, different species' tolerance to warm waters, predator and prey dynamics, and other factors (Exelon 2002). The cooling pond can be characterized as a managed ecosystem where IDNR fish stocking and other human activities primarily influence the species composition and population dynamics. Commonly stocked species include largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), blue catfish (*Ictalurus furcatus*), striped bass hybrid (*Morone saxatilis*), walleye (*Sander vitreus*), bluegill (*Lepomis macrochirus*), and other species (Exelon 2002, ADAMS Accession No. ML021330421). The IDNR (2007 and 2009, ADAMS Accession Nos. ML15160A289 and ML15160A296) reported abundant, growing populations of striped bass hybrids and channel catfish. Gizzard shad (*Dorosoma cepedianum*) and threadfin shad (*Dorosoma petenense*)—together called ''shad''—also occur in the cooling pond. Shad are not recreationally fished, and IDNR does not stock them. The IDNR stocks some recreationally fished species that consume shad (*e.g.,* catfish and striped bass) in part to limit the size of shad populations (Exelon 2002, ADAMS Accession No. ML021330421).

Raising the maximum allowable temperature of the UHS could result in increased cooling pond water temperatures, especially during extreme warm weather conditions. Fish kills would sometimes occur when cooling pond temperatures rise above 95 °F (35 °C), the temperature at which most fish in the cooling pond are thermally stressed. For example, LSCS has had four reportable fish kills in the cooling pond since 2001, including fish kills in July 2001, June 2005, June 2009, and August 2010 (Exelon 2014, ADAMS Accession Nos. ML14343A883 and ML14343A897). The temperature in the cooling pond during these events ranged from 93 °F (33.9 °C) to 101 °F (38.3 °C) (Exelon 2001, 2009, and 2010, ADAMS Accession Nos. ML012330070, ML092040381, and ML102371289, respectively). In addition, several smaller non-reportable fish kills have occurred when the cooling pond was 95 °F (35 °C) or above. The largest fish kill occurred in July 2001 when IDNR reported approximately 94,500 dead fish due to high temperatures that peaked at 98.2 °F (36.9 °C) (Exelon 2001, ADAMS Accession No. ML012330070). The IDNR found the maximum temperature in the cooling pond discharge canal to be 120 °F (48.9 °C) and dissolved oxygen levels to range from 6.2 to 18.8 parts per million. The majority of dead fish (96 percent) were gizzard shad (90,800) (Exelon 2001, ADAMS Accession No. ML012330070). The IDNR identified other dead fish to include 1,279 carp (*cyprinus carpio*), 1,143 smallmouth buffalo (*Ictiobus bubalus*), 610 freshwater drum (*Aplodinotus grunniens*), 345 channel catfish, 238 striped bass hybrid, 93 smallmouth bass, 24 walleye, 13 bluegill, 12 white bass (*Morone chrysops*), 6 yellow bullhead catfish (*Ameiurus natalis*), and 4 yellow bass (*M. mississippiensis*) (Exelon 2001, ADAMS Accession No. ML012330070). Exelon (2001, ADAMS Accession No. ML012330070) attributed the fish kill to high water temperatures resulting in part from a combination of high summer air temperatures, high dew points, and low wind speeds.

The majority of the fish in kills since 2001 were either gizzard shad or threadfin shad (Exelon 2001, 2009, and 2010, ADAMS Accession Nos. ML012330070, ML092040381, and ML102371289, respectively). Shad populations generally recovered within one year after a kill occurred (Exelon 2002, ADAMS Accession No. ML021330421), and loss of shad did not significantly affect the community dynamics within the cooling pond (Exelon 2010, ADAMS Accession No. ML102371289).

The NRC staff determined that an increase in the number or intensity of fish kills would not result in a significant impact because the cooling pond is a managed ecosystem where fish populations affected by fish kills generally recover within a year and do not significantly alter the fish community structure. The NRC staff also did not identify any long-term changes from previous fish kills and many recreationally fished species continue to grow abundantly within the cooling pond (IDNR 2007 and 2009, ADAMS Accession Nos. ML15160A289 and ML15160A296). The most affected fish species from fish kills are gizzard shad and threadfin shad, which are managed partly by stocking predators to limit shad populations in the cooling pond (Exelon 2002, ADAMS Accession No. ML021330421). Lastly, any impacts from the increased temperatures would be limited to the cooling pond, which is a managed ecosystem and sustained by IDNR's annual fish stockings.

Some terrestrial species resources, such as birds or other wildlife, rely on fish or other aquatic resources from the cooling pond as a source of food. The NRC staff does not expect any significant impacts to birds or other wildlife because, if a fish kill occurs, the number of dead fish would be a small proportion of the total population of fish in the cooling pond. Furthermore, during fish kills, birds and other wildlife consume many of the floating, dead fish.

In regards to water resources and ecological resources along and within the Illinois River, Exelon (2015, ADAMS Accession No. ML15023A459) reports that raising the allowable temperature in the UHS would not result in noticeably warmer thermal discharges to the Illinois River. Further, Exelon is required to administratively control cooling pond discharges to the Illinois River in accordance with the current National Pollutant Discharge Elimination System (NPDES) permit. Exelon's Extreme Heat Implementation Plan describes procedures for Exelon to follow during extreme warm weather events to maintain compliance with the NPDES permit requirements for thermal discharges to the Illinois River (Exelon 2015, ADAMS Accession No. ML15023A459). Therefore, the NRC staff does not expect any significant impacts to water resources or ecological resources within and along the Illinois River as a result of raising the maximum allowable intake temperature in the UHS.

Exelon (2014, ADAMS Accession Nos. ML14343A883 and ML14343A897) reports that it is not aware of any State- or Federally listed species occurring in the cooling pond. As referenced above, increasing the allowable temperature at the UHS intake would not noticeably affect the discharge temperature of

effluent released in Illinois River. Therefore, the NRC staff does not expect any impacts to State- or Federally listed species. The NRC staff has identified no foreseeable land or air quality impacts given that the proposed action would not change any land uses on or off site or result in air emissions beyond what has already been experienced. In addition, there would be no socioeconomic or environmental justice impacts associated with the proposed action since no physical change would occur beyond the site boundaries and any impacts would be limited to the cooling pond. Accordingly, the NRC staff concludes that the proposed action would have no significant environmental impacts.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed amendment (*i.e.*, the ''no-action'' alternative). Denial of the proposed amendment would have no impact on current environmental conditions at LSCS.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (NUREG–0486, ADAMS Accession No. ML14353A388) for LSCS.

Agencies and Persons Consulted

The staff did not enter into consultation with any other Federal Agency or with the State of Illinois regarding the environmental impact of the proposed action.

III. Finding of No Significant Impact

The NRC is considering issuing amendments for Facility Operating License Nos. NPF–11 and NPF–18, issued to Exelon for operation of LSCS. The proposed amendments would revise SR 3.7.3.1 to require verification that the cooling water upper TS temperature limit is between 101.25 and 104 °F (38.47 and 40 °C) depending on the time of day and to add an action statement to TS 3.7.3 requiring SR 3.7.3.1 be performed each hour when the cooling water temperature from the UHS being supplied to the plant is greater than or equal to 101 °F (38.3 °C). The NRC's evaluation considered information provided in the licensee's application and its associated supplements, as well as the NRC staff's independent review of other environmental documents. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of these documents. On the basis of the EA, the NRC staff concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has decided an environmental impact statement for the proposed action would not be necessary.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as previously described.

Document	ADAMS Accession No.
Application dated June 12, 2012	ML12200A330
Supplemental Response dated September 17, 2012	ML122690041
Supplemental Response dated January 18, 2013	ML13022A476
Supplemental Response dated February 11, 2013	ML13042A405
Supplemental Response dated October 4, 2013	ML13282A339
Supplemental Response dated February 20, 2014	ML14066A174
Exelon Generation Company, LLC. 2001. Letter from William Riffer, Regulatory Assurance Manager, LaSalle County Station to U.S. NRC, Document Control Desk. Subject: Environmental Non-Routine Event Report for Exelon Generation Company, LLC—LaSalle County Station. August 17, 2001	ML012330070
Exelon Generation Company, LLC. 2002. Letter from Glen T. Kaegi, Regulatory Assurance Manager, LaSalle County Station to U.S. NRC, Document Control Desk. Subject: Environmental Protection Plan and Operating Report Appendix B to Facility License No. NPF–11 and NPF–18. April 29, 2002	ML021330421
Exelon Generation Company, LLC. 2009. Letter from David Rhoads, Plant Manager, LaSalle County Station to U.S. NRC, Document Control Desk. Subject: Environmental Non-Routine Event Report for Exelon Generation Company, LLC—LaSalle County Station. July 22, 2009	ML092040381
Exelon Generation Company, LLC. 2010. Letter from Peter J. Karaba, Plant Manager, LaSalle County Station to U.S. NRC, Document Control Desk. Subject: Environmental Non-Routine Event Report for Exelon Generation Company, LLC—LaSalle County Station. August 25, 2010	ML102371289
Exelon Generation Company, LLC. 2014. LaSalle County Station, Units 1 and 2, License Renewal Application, Appendix E, Applicant's Environmental Report, Operating License Renewal Stage. December 9, 2014	ML14343A883 ML14343A897
Exelon Generation Company, LLC (Exelon). 2015. Letter from David M. Gullott, Manager—Licensing, LaSalle County Station to U.S. NRC, Document Control Desk. Subject: Response to Request for Additional Environmental Information Regarding Request to Revise Ultimate Heat Sink Temperature Limits. January 23, 2015	ML15023A459
Illinois Department of Natural Resources. 2007. Status of the Catfish Fishery. Illinois Department of Natural Resources, Division of Fisheries. March 2007. Available at: *http://www.dnr.state.il.us/orc/fisheries/07/07%20catfish%20status%20report.pdf* (accessed 21 May 2015)	ML15160A289
[IDNR] Illinois Department of Natural Resources. 2009. Status of the Striped Bass/Hybrid Striped Bass Fishery. Illinois Department of Natural Resources, Division of Fisheries. March 2009. Available at: *http://www.prairiestateoutdoors.com/images/uploads/2009_Striped_Bass_Status.pdf* (accessed 21 May 2015)	ML15160A296
LaSalle County Station, Units 1 and 2—Request for Additional Environmental Information Regarding Request to Revise Ultimate Heat Sink Temperature Limits	ML14338A612
NUREG–0486, ''Environmental Statement Related to the Operation of LaSalle County Nuclear Power Station, Unit Nos. 1 and 2, Commonwealth Edison Company,'' November 1978	ML14353A388
Response to Request for Additional Environmental Information Regarding Request to Revise Ultimate Heat Sink Temperature Limits	ML15023A459

Dated at Rockville, Maryland, this 24th day of July 2015.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443; NRC–2015–0184]

NextEra Energy Seabrook, LLC, Seabrook Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 24, 2014, request from NextEra Energy Seabrook, LLC (NextEra or the licensee), from specific requirements in NRC's regulations, as they pertain to the establishment of minimum temperature requirements, for all modes of operation, based on the material properties of the material of the reactor pressure vessel (RPV) closure flange region that is highly stressed by the bolt preload.

ADDRESSES: Please refer to Docket ID NRC–2015–0184 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0184. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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 that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100, email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NextEra is the holder of Facility Operating License No. NPF–86, which authorizes operation of the Seabrook Station, Unit No. 1 (Seabrook).

The Seabrook facility consists of a pressurized-water reactor located in Rockingham County, New Hampshire.

II. Request/Action

By letter dated July 24, 2014 (ADAMS Accession No. ML14216A404), as supplemented by letters dated March 9, April 24, and June 24, 2015 (ADAMS Accession Nos. ML15072A023, ML15125A140, and ML15181A262, respectively), the licensee requested an exemption from section 50.60 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation,'' pursuant to 10 CFR 50.12, ''Specific exemptions.''

Part 50, appendix G requires that pressure-temperature (P–T) limits be established for RPVs during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that ''[t]he minimum temperature requirements . . . pertain to the controlling material, which is either the material in the closure flange or the material in the beltline region with the highest reference temperature. . . . the minimum temperature requirements and the controlling material depend on the operating condition (*i.e.,* hydrostatic pressure and leak tests, or normal operation including anticipated normal operational occurrences), the vessel pressure, whether fuel is in the vessel, and whether the core is critical. The metal temperature of the controlling material, in the region of the controlling material which has the least favorable combination of stress and temperature, must exceed the appropriate minimum temperature requirement for the condition and pressure of the vessel specified in Table 1 [of 10 CFR part 50, appendix G].'' Footnote 2 to Table 1 in 10 CFR part 50, appendix G specifies that RPV minimum temperature requirements related to RPV closure flange considerations shall be based on ''[t]he highest reference temperature of the material in the closure flange region that is highly stressed by bolt preload.''

By letter dated July 24, 2014, NextEra submitted a license amendment request (LAR) to implement a revision of the P–T operating limits for Seabrook. In requesting the revisions to the P–T operating limits, the licensee referenced a topical report with a methodology that did not meet some of the requirements of 10 CFR part 50, appendix G, thus requiring the exemption pursuant to 10 CFR 50.12. Specifically, the exemption would permit use of an alternate methodology contained in WCAP–17444–P, Revision 0 (ADAMS Accession No. ML14216A406), ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Seabrook, Unit 1,'' October 2011. The exemption would permit the methodology contained in WCAP–17444–P, in lieu of the specific requirements of 10 CFR part 50, appendix G, related to the establishment of minimum temperature criteria for all modes of reactor operation addressed by Table 1 of 10 CFR part 50, appendix G, that are based on the properties of the material of the RPV closure flange region, that is highly stressed by the bolt preload for pressures greater than 20 percent of the pre-service hydrostatic test pressure. A non-proprietary version of WCAP–17444–P is available in ADAMS under Accession No. ML14216A406. The requirements from which NextEra requested that Seabrook be exempted shall be referred to, for the purpose of this exemption, as those requirements related to the application of footnote (2) to Table 1 of 10 CFR part 50, appendix G, for pressures greater than 20 percent of the pre-service hydrostatic test pressure. The licensee did not request exemption from those requirements related to the application of footnote (2) to Table 1 of 10 CFR part 50, appendix G, for pressures less than or equal to 20 percent of the pre-service hydrostatic test pressure. These minimum temperature requirements (hereafter referred to as the minimum bolt-up temperature requirements) shall remain in effect for the Technical Specification (TS) P–T limit curves for all modes of reactor operation.

WCAP–17444–P documents a linear elastic fracture mechanics (LEFM) analysis of postulated flaws in the Seabrook RPV closure flange region under normal operating conditions associated with RPV bolt-up, the 100

degrees Fahrenheit (°F) per hour reactor coolant system (RCS) heat-up transient, and the 100 °F per hour cool-down transient. The LEFM analysis was performed by first calculating through-wall stress distributions for the flange region based on a finite element analysis (FEA) for bolt-up and the 100 °F per hour heat-up and cool-down transients. The RCS heat-up and cool-down transients were evaluated by calculating the flange stresses as RCS pressure and temperature vary with time. The pressure and temperature changes were modeled based on realistic 100 °F per hour heat-up and cool-down transients that would be considered permissible for normal operating conditions based on the TS P–T limit curves. Therefore, the stress at any given temperature is based on a lower pressure than the limiting pressure from the proposed TS P–T limit curve, which is based on the limiting RPV beltline material properties and minimum bolt-up temperature requirement. The pressures used are those that are actually achievable based on physical properties of the reactor coolant during the heat-up process and the plant operating configuration, rather than what is permitted by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Appendix G, P–T limits that are calculated based on the beltline material properties.

The NRC concluded in its safety evaluation (SE) (ADAMS Accession No. ML15205A333) that the licensee has demonstrated that the combination of high stresses along with low metal temperature in the RPV flange region cannot exist simultaneously, based on the NRC staff's evaluation of WCAP–17444–P and the licensee's RAI responses. The NRC staff determined that the licensee also demonstrated that the structural integrity of the Seabrook RPV closure flange materials will not be challenged by facility operation in accordance with the proposed TS P–T limit curves that are based on the Seabrook RPV beltline region and the flange minimum bolt-up temperature, without the minimum temperature requirements related to Footnote (2) to Table 1 of 10 CFR part 50, appendix G for pressures greater than 20 percent of the pre-service hydrostatic test pressure.

Therefore, for pressures greater than 20 percent of the pre-service hydrostatic test pressure, the minimum temperature requirements related to Footnote (2) to Table 1 of 10 CFR part 50, appendix G are not necessary to meet the underlying intent of 10 CFR part 50, appendix G, to protect the Seabrook RPV closure flange from brittle fracture during normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule. The NRC staff's detailed review and technical basis for the approval of the exemption, requested by NextEra, is provided in the NRC staff's SE (ADAMS Accession No. ML15205A333).

A. The Exemption Is Authorized by Law

This exemption would allow the use of WCAP–17444–P, Revision 0, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Seabrook Unit 1,'' in lieu of the minimum temperature requirement that is based on the highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload, for pressures greater than 20 percent of the pre-service hydrostatic test pressure, as required by 10 CFR part 50, appendix G, Table 1. As stated previously, 10 CFR 50.12(a)(2) allows the NRC to grant exemptions from the requirements of 10 CFR part 50, appendix G, provided that special circumstances are present. As described below, the NRC staff has determined that special circumstances exist to grant the requested exemption. In addition, granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The revised P–T limit curves developed for Seabrook reference the methodology described in WCAP–17444–P, as the technical basis for eliminating the minimum temperature requirement for the flange for pressures greater than 20 percent of the pre-service hydrostatic test pressure. The WCAP–17444–P methodology uses a higher material fracture toughness, K_{Ic} (fracture toughness based on the lower bound of static initiation critical values measured as a function of temperature) instead of K_{Ia} (fracture toughness based upon the lower bound of crack arrest critical values measured as a function of temperature), which results in less restrictive operating conditions for the flange than those required by Table 1 of 10 CFR part 50, appendix G, for pressures greater than 20 percent of the pre-service hydrostatic test pressure. The regulations in 10 CFR part 50, appendix G, address the metal temperature of the closure head flange and vessel flange regions. The regulation states, in part, that the metal temperature of the closure flange regions must exceed the material un-irradiated nil-ductility reference temperature (RT_{NDT}) by at least 120 °F for normal operation when the pressure exceeds 20 percent of the pre-service hydrostatic test pressure.

Implementing the P–T limit curves that use the K_{Ic} material fracture toughness without eliminating the flange requirement of 10 CFR part 50, appendix G, would place a restricted operating window in the temperature range associated with the flange/closure head (*i.e.,* flange RT_{NDT} + 120 °F). In accordance with WCAP–17444–P, the K_{Ic} toughness has been shown to provide significant margin between the applied stress intensity factor and the fracture toughness of the flange/closure head. Applying the WCAP–17444–P methodology for eliminating the flange minimum temperature requirement in the P–T limits, for pressures greater than 20 percent of the pre-service hydrostatic test pressure, will enhance overall plant safety by expanding the P–T operating window, especially in the region of low temperature operations.

The two primary safety benefits that would be realized are a reduction in the potential challenges to the cold overpressure mitigation system, and a reduction in the risk of damaging the reactor coolant pump seals. This will produce a significant improvement in plant safety by reducing the probability of an inadvertent reduction in reactor coolant inventory and in easing the burden on the operators. WCAP–17444–P concludes that the integrity of the closure head/flange is not a concern for safe unit operation and testing. Therefore, the proposed exemption does not present an undue risk to the public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The licensee requested an exemption to use WCAP–17444–P in lieu of the

minimum temperature requirement that is based on the highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload, for pressures greater than 20 percent of the pre-service hydrostatic test pressure, as required by 10 CFR part 50, appendix G, Table 1. This exemption request is not related to, and does not impact, any security issues at Seabrook. Therefore, the NRC staff determined that this exemption does not impact, and is consistent with, the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.60 and 10 CFR part 50, appendix G, is to protect the integrity of the reactor coolant pressure boundary. The regulations in 10 CFR part 50, appendix G, establish the requirements for the P–T limits for pressure retaining components of the reactor coolant pressure boundary and requirements for the minimum metal temperature of the RPV closure head flange and reactor vessel flange regions. The P–T limits are determined using the methodology of the ASME Code, Section Xl, Appendix G, with additional, more restrictive, flange temperature requirements specified in 10 CFR part 50, appendix G.

The NRC staff examined the licensee's rationale to support the exemption request. Based on its consideration of the information provided in WCAP–17444–P and the information provided in the licensee's letters dated April 24 and June 24, 2015, an acceptable technical basis has been established to exempt Seabrook from the requirements related to Footnote 2 to Table 1 of 10 CFR part 50, appendix G, for RCS pressures greater than 20 percent of the pre-service hydrostatic test pressure. The technical basis provided by the licensee has established that an adequate margin of safety against brittle failure would continue to be maintained for the Seabrook RPV without the application of those requirements related to Footnote 2 to Table 1 of 10 CFR part 50, appendix G, for normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions, for RCS pressures greater than 20 percent of the pre-service hydrostatic test pressure.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9), because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR part 20, and issuance of this exemption involves (i) no significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared in connection with the NRC staff's consideration of this exemption request. The basis for the NRC staff's determination is discussed as follows, with an evaluation against each of the requirements in 10 CFR 51.22(c)(9)(i)–(iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated whether the exemption involves no significant hazards consideration using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. Operation in accordance with the proposed WCAP–17444 will ensure that all analyzed accidents will continue to be mitigated by the SSCs as previously analyzed. The proposed exemption does not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within assumed acceptance limits. The proposed exemption neither adversely affects accident initiators or precursors, nor alter design assumptions.

Therefore, this exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed exemption does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), does not create new failure modes for existing equipment, or create any new limiting single failures. The exemption will continue to ensure that appropriate fracture toughness margins are maintained to protect against reactor vessel failure, during both normal and low temperature operation. The proposed exemption is consistent with the applicable NRC approved methodologies (*i.e.,* WCAP–17444–P, Revision 0). Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, this exemption does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed exemption will not adversely affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The proposed exemption was developed using NRC-approved methodologies and will continue to ensure an acceptable margin of safety is maintained. The safety analysis acceptance criteria are not affected by this exemption. The proposed exemption will not result in plant operation in a configuration outside the design basis. The proposed exemption does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, this exemption does not involve a significant reduction in a margin of safety.

Based on the above evaluation of the standards set forth in 10 CFR 50.92(c), the NRC staff concludes that the proposed exemption involves no significant hazards consideration. Accordingly, the requirements of 10 CFR 51.22(c)(9)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow the use of WCAP–17444–P, Revision 0, in lieu of the highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload required by 10 CFR part 50, appendix G, Table 1. WCAP–17444 demonstrates that the flange region can tolerate assumed flaws of 0.1 T (thickness) during the heat-up, cool-down, and bolt-up conditions. Additionally, it can be concluded that flaws are unlikely to initiate in the flange region, since there is no known degradation mechanism for the flange region and the fatigue usage in the flange region is less than 0.1 T. Furthermore, based on WCAP–17444,

the alternative flange temperature requirement of 46 °F is less than the minimum bolt-up temperature of 60 °F for Seabrook. Therefore, the proposed exemption will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(9)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow the use of WCAP–17444–P, Revision 0, in lieu of the methodology required by 10 CFR part 50, appendix G, Footnote (2), to Table 1. Therefore, the proposed exemption will not significantly increase individual occupational radiation exposure or significantly increase cumulative occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(9)(iii) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from 10 CFR 50.60 to permit the use of WCAP–17444–P in lieu of the highest reference temperature of the material in the closure flange region that is highly stressed by the bolt preload required by 10 CFR 50, Appendix G, Table 1 for Seabrook. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of July 2015.

For the Nuclear Regulatory Commission.

George Wilson,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–19003 Filed 7–31–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–74 and CP2015–112; Order No. 2616]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 138 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 138 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Request of the United States Postal Service to Add Priority Mail Contract 138 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 27, 2015 (Request).

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–74 and CP2015–112 to consider the Request pertaining to the proposed Priority Mail Contract 138 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 4, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–74 and CP2015–112 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than August 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–18861 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–73 and CP2015–111; Order No. 2615]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 137 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://*

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 137 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–73 and CP2015–111 to consider the Request pertaining to the proposed Priority Mail Contract 137 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 4, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John P. Klingenberg to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–73 and CP2015–111 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than August 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–18860 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 137 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 27, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–113; Order No. 2620]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On July 27, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–113 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 4, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–113 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than August 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–18901 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 27, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–75 and CP2015–114; Order No. 2619]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail & First-Class Package Service Contract 7 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 4, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail & First-Class Package Service Contract 7 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–75 and CP2015–114 to consider the Request pertaining to the proposed Priority Mail & First-Class Package Service Contract 7 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 4, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

[1] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 7 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 27, 2015 (Request).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–75 and CP2015–114 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than August 4, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–18900 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–72 and CP2015–110; Order No. 2617]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 136 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 7, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 136 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–72 and CP2015–110 to consider the Request pertaining to the proposed Priority Mail Contract 136 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than August 7, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–72 and CP2015–110 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than August 7, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Request of the United States Postal Service to Add Priority Mail Contract 136 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 27, 2015 (Request).

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–18862 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 6 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–75, CP2015–114.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–18889 Filed 7–31–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75541; File No. SR–NSCC–2015–802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Establish a Prefunded Liquidity Program as Part of NSCC's Liquidity Risk Management

July 28, 2015.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 [1] (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934, notice is hereby given that on June 26, 2015, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice SR–NSCC–2015–802 (''Advance Notice'') as described in Items I and II, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice is filed by NSCC in connection with a proposed liquidity program to raise prefunded liquidity through the issuance and private placement of short-term, unsecured notes (''Prefunded Liquidity Program''), which will consist of a combination of commercial paper notes and extendible notes. The Prefunded Liquidity Program would supplement NSCC's existing default liquidity risk management resources.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments on the Advance Notice have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of Change

NSCC proposes to establish the Prefunded Liquidity Program in order to raise prefunded liquidity and diversify its liquidity resources through the private placement of unsecured debt, consisting of a combination of short-term promissory notes (''Commercial Paper Notes''), and extendible-term promissory notes (''Extendible Notes'', together with the Commercial Paper Notes, ''Notes''), to institutional investors in an aggregate amount not to exceed $5 billion. The proceeds from the Prefunded Liquidity Program would supplement NSCC's existing liquidity resources, which collectively provide NSCC with liquidity to complete end-of-day settlement in the event of the default of an NSCC Member.[3]

Terms of the Prefunded Liquidity Program. NSCC has engaged an issuing and paying agent, as well as certain placement agent dealers, to develop a program to issue the Notes. The Notes would be issued to institutional investors through a private placement and offered in reliance on an exemption from registration under Section 4(a)(2) of the Securities Act of 1933.[4] NSCC would be party to certain transaction documents required to establish the Prefunded Liquidity Program, including an issuing and paying agent agreement, and a dealer agreement with each of the placement agent dealers. The dealer agreements would each be based on the standard form of dealer agreement for commercial paper programs, which is published by the Securities Industry and Financial Markets Association. The material terms and conditions of the Prefunded Liquidity Program are summarized below.

The Prefunded Liquidity Program would be established as a combination of both Commercial Paper Notes, which typically have shorter maturities, and Extendible Notes, which typically have longer maturities, in order to facilitate the staggering of the maturities of the issued Notes. NSCC intends to structure the Prefunded Liquidity Program such that the maturities of the issued Notes are staggered to avoid concentrations of maturing liabilities. The average maturity of the aggregate Notes outstanding issued under the Prefunded Liquidity Program is broadly estimated to range between three and six months. The Commercial Paper Notes and the Extendible Notes would be represented by one or more master notes issued in the name of The Depository Trust Company (''DTC''), or its nominee. The Notes would be issued only through the

[3] Terms not defined herein are defined in NSCC's Rules and Procedures (''Rules'') *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.* The events that constitute a Member default are specified in NSCC's Rule 46 (Restrictions on Access to Services), which provides that NSCC's Board of Directors may suspend a Member or prohibit or limit a Member's access to NSCC's services in enumerated circumstances; this includes default in delivering funds or securities to NSCC, or a Member's experiencing such financial or operational difficulties that NSCC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its membership.

[4] 15 U.S.C. 77d(4)(a)(2) [sic].

book-entry system of DTC and would not be certificated.

The Commercial Paper Notes would either be interest bearing or be sold at a discount from their face amount, and the Extendible Notes would be interest bearing. Interest payable on the Notes would be at market rates customary for such type of debt and reflective of the creditworthiness of NSCC. The Commercial Paper Notes would have a maturity not to exceed 397 calendar days from the date of issue, and would not be redeemable by NSCC prior to maturity, nor would they contain any provision for extension, renewal, automatic rollover or voluntary prepayment. The Extendible Notes would have an initial maturity of 397 calendar days from the date of issue. However, each month following the date of issue, the holder of an Extendible Note would be permitted to elect to extend the maturity of all or a portion of the principal amount of such Extendible Note for an additional 30 calendar days. A holder of an Extendible Note would be permitted to continue to extend its Extendible Note up to the final maturity date, which is expected to be a maximum of six years from the date of issue. If a holder of an Extendible Note fails to exercise its right to extend the maturity of all or a portion of the Extendible Note, such portion of the Extendible Note would be deemed to be represented by a new note (''Non-Extended Note''), and NSCC would have the option to redeem any Non-Extended Note in whole, but not in part, at any time prior to the maturity date of that Non-Extended Note, which would be 12 months from the date on which they opted not to extend.

NSCC would hold the proceeds from the issuance of the Notes in a cash deposit account at the Federal Reserve Bank of New York (''FRBNY'').[5] Pending the establishment of NSCC's account at the FRBNY, however, such proceeds would be maintained in accounts with creditworthy financial institutions in accordance with DTCC's Investment Policy.[6] NSCC currently invests its Clearing Fund deposits in the same manner, and acceptable investments under DTCC's Investment Policy include reverse repurchase agreements, money market mutual fund investments, bank deposits and commercial paper bank sweep deposits. In all cases, these amounts would be available to draw to complete settlement as needed.

NSCC Liquidity Risk Management. As a central counterparty (''CCP''), NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing the risk faced by its Members and contributing to global financial stability. NSCC's liquidity risk management framework plays an integral part in NSCC's ability to perform this role, and is designed to ensure that NSCC maintains sufficient liquid resources to timely meet its payment (principally settlement) obligations with a high degree of confidence.

NSCC's liquidity needs are driven by the requirement to complete end-of-day settlement, on an ongoing basis, in the event of Member default. If an NSCC Member defaults, as a CCP for the cash markets, NSCC will need to complete settlement of guaranteed transactions on the failing Member's behalf from the date of default through the remainder of the settlement cycle (currently three days for securities that settle on a regular way basis in the U.S. equities markets).

NSCC measures and manages its liquidity risk by performing daily simulations that measure the amount of liquidity that would be required by NSCC in a number of scenarios, including amounts required over the settlement cycle in the event that the Member or Member family to which NSCC has the largest aggregate liquidity exposure defaults. NSCC seeks to maintain qualified liquidity resources in an amount sufficient to meet this requirement. NSCC's existing liquidity resources include: (1) The cash in NSCC's Clearing Fund; (2) the cash that would be obtained by drawing upon NSCC's committed 364-day credit facility with a consortium of banks; and (3) additional cash deposits, known as ''Supplemental Liquidity Deposits'', designed to cover the heightened liquidity exposure arising around monthly option expiry periods, required from those Members whose activity would pose the largest liquidity exposure to NSCC.[7] The proceeds from the Prefunded Liquidity Program would supplement these liquidity resources. Further, NSCC would consider the proceeds from the Prefunded Liquidity Program to be qualifying liquidity resources under NSCC's Rule 4A.

By providing NSCC with additional, prefunded, and readily available liquidity resources to be used to complete end-of-day settlement as needed in the event of a Member default, the proposed Prefunded Liquidity Program would provide additional certainty, stability, and safety to NSCC, its Members, and the U.S. equities market that it serves. The Prefunded Liquidity Program is also designed to reduce NSCC's concentration risk with respect to its liquidity resources since it is anticipated that many of the potential institutional investors who would be purchasers of the Notes are not currently providing liquidity resources to NSCC.

The Prefunded Liquidity Program was developed in coordination with a standing advisory group, the Clearing Agency Liquidity Council (''CALC''), which includes representatives of NSCC's Members and participants of NSCC's affiliate, the Fixed Income Clearing Corporation. The CALC was established in 2013 in order to facilitate dialogue between these clearing agencies and their participants regarding liquidity initiatives.[8]

Anticipated Effect on and Management of Risk

NSCC's consistent ability to timely complete settlement is a key part of NSCC's role as a CCP and allows NSCC to mitigate counterparty risk within the U.S. markets. In order to sufficiently perform this key role in promoting market stability, it is critical that NSCC has access to liquidity resources to enable it to complete end-of-day settlement, notwithstanding the default of a Member. NSCC believes that the overall impact of the Prefunded Liquidity Program on risks presented by NSCC would be to reduce the liquidity risks associated with NSCC's operation as a CCP by providing it with an additional source of liquidity to complete end-of-day settlement in the event of a Member default. NSCC

[5] Pursuant to Section 806(a) under Title VIII of the Clearing Supervision Act, and Section 234.6 of the Federal Reserve Regulation HH promulgated thereunder, NSCC, as a designated systemically important financial market utility (''SIFMU'') under the Clearing Supervision Act, has applied for a cash deposit account at the FRBNY, as well as subscription to ancillary FRBNY services that will facilitate the use of the requested cash deposit account. *See* 12 U.S.C. 5465(a); 12 CFR 234.6. The application is pending with the FRBNY as of the date of this filing.

[6] NSCC manages investment risk, including the custody and overnight investment of Clearing Fund cash, through the corporate Investment Policy, which establishes credit and concentration exposure limits on NSCC's investment counterparties and governs NSCC's investments of cash, including the custody and overnight investment of Clearing Fund cash.

[7] Supplemental Liquidity Deposits are described in NSCC Rule 4A, *supra* Note 1 [sic].

[8] Reference to the establishment of the CALC was made in the Commission's order approving the proposed rule changes implementing the Supplemental Liquidity Deposits. Securities Exchange Act Release No. 70999 (December 5, 2013), 78 FR 75413 (December 11, 2013) (File No. SR–NSCC–2013–02).

further believes that a reduction in its liquidity risk would reduce systemic risk and would have a positive impact on the safety and soundness of the clearing system.

While the Prefunded Liquidity Program, like any liquidity resource, would involve certain risks, most of these risks are standard in any commercial paper or extendible note program. One risk associated with the Prefunded Liquidity Program would be the risk that NSCC does not have sufficient funds to repay issued Notes when they mature. NSCC believes that this risk is extremely remote, as the proceeds of the Prefunded Liquidity Program would be used only in the event of a Member default, and NSCC would replenish that cash, as it would replenish any of its liquidity resources that are used to facilitate settlement in the event of a Member default, with the proceeds of the close out of that defaulted Member's portfolio. This notwithstanding, in the event that proceeds from the close out are insufficient to fully repay a liquidity borrowing, then NSCC would look to its loss waterfall to repay any outstanding liquidity borrowings. NSCC would further mitigate this risk by structuring the Prefunded Liquidity Program so that the maturity dates of the issued Notes are sufficiently staggered, which would provide NSCC with time to complete the close out of a defaulted Member's portfolio. A second risk is that NSCC may be unable to issue new Notes as issued Notes mature. This risk is mitigated by the fact that NSCC maintains a number of different liquidity resources, described above, and would not depend on the Prefunded Liquidity Program as its sole source of liquidity. As such, NSCC believes that the significant systemic risk mitigation benefits of providing NSCC with additional, prefunded liquidity resources outweigh these risks.

Consistency with Clearing Supervision Act. By supplementing NSCC's existing liquidity resources with prefunded liquidity, the proposed Prefunded Liquidity Program would contribute to NSCC's goal of assuring that NSCC has adequate liquidity resources to meet its settlement obligations notwithstanding the default of any of its Members. As such, the proposed Prefunded Liquidity Program is consistent with Section 805(b)(1) of the Clearing Supervision Act, the objectives and principles of which specify the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks and support of the stability of the broader financial system.[9]

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. NSCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing NSCC with prompt written notice of the extension. The proposed change may be implemented in less than 60 days from the date the Advance Notice is filed, or the date further information requested by the Commission is received, if the Commission notifies NSCC in writing that it does not object to the proposed change and authorizes NSCC to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

NSCC shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2015–802 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2015–802. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2015–802 and should be submitted on or before August 18, 2015.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–18905 Filed 7–31–15; 8:45 am]

BILLING CODE 8011–01–P

[9] 12 U.S.C. 5464(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75536; File No. SR–BX–2015–042]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4702 To Introduce a Market Maker Peg Order for Use on BX

July 28, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702 to introduce a Market Maker Peg Order for use on BX.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to introduce a Market Maker Peg Order (''MMPO'') for use on BX by registered BX Market Makers. The MMPO, which is currently available for use on The NASDAQ Stock Market (''NASDAQ'') [3] and NASDAQ OMX Phlx (''PHLX'') PSX System,[4] is an order type that provides a means by which a market maker may comply with its market making obligations under applicable Exchange rules.[5] Although the Exchange has rules allowing market making on BX, it does not currently have any market makers registered with the Exchange. In an effort to attract market makers, BX is proposing to introduce the MMPO, which will facilitate BX market maker compliance with BX quoting obligations.[6] The MMPO is available for use only by BX Market Makers because these obligations are not applicable to other market participants. The MMPO is available only through the Exchange's RASH and FIX connectivity protocols, because these are the only protocols that support continuous pegging functionality.

BX Rule 4613 requires a member firm registered as a Market Maker in a particular security to be willing to buy and sell such security for its own account on a continuous basis during regular market hours and to enter and maintain a two-sided trading interest (''Two-Sided Obligation'') that is identified to the Exchange as the interest meeting the obligation and is displayed in BX's quotation montage at all times. Interest eligible to be considered part of a Market Maker's Two-Sided Obligation must have a displayed quotation size of at least one normal unit of trading.[7] After an execution against its Two-Sided Obligation, a Market Maker must ensure that it has additional trading interest to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the BX book that will satisfy this obligation.

BX Market Makers must also adhere to certain pricing obligations established by Rule 4613, which are premised on entering quotation prices that are not more than a ''Designated Percentage'' [8] away from the National Best Bid or National Best Offer [9] (as applicable), and that must be refreshed if a change in the National Best Bid or National Best Offer causes the quotation price to be more than a ''Defined Limit'' [10] away from the National Best Bid or National Best Offer.[11] The pricing obligations established by the Rule apply during regular trading hours (*i.e.,* 9:30 a.m. to 4:00 p.m.), but do not commence during any trading day until after the first regular way transaction on the primary listing market in the security. Moreover, the obligations are suspended during a trading halt, suspension, or pause, and do not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor. When the halt is lifted, the order will remain on the book unless cancelled by the market maker or if the displayed price is outside the permitted pricing range the order will be cancelled.

For bid quotations, at the time of entry of bid interest satisfying the Two-Sided Obligation, the displayed price of the bid interest may not be more than the applicable Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan securities information processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker must enter new bid interest at a displayed price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation. Similarly, for offer quotations, at the time of entry of offer interest satisfying the Two-Sided Obligation, the displayed price of the offer interest may not be more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan securities information processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than

[3] *See* NASDAQ Rule 4702(b)(7).

[4] *See* PHLX Rule 3301A(b)(5).

[5] *See* Rule 4613. The MMPO is a ''one-sided'' order. Therefore a member firm exclusively employing the order type to comply with its market making obligations must enter both a buy and sell MMPO.

[6] *Id.*

[7] Unless otherwise designated, 100 shares.

[8] The ''Designated Percentage'' is: (i) 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products (''Tier 1 Securities''); 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not Tier 1 Securities with a price equal to or greater than $1 (''Tier 2 Securities''); and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not Tier 1 Securities with a price less than $1 (''Tier 3 Securities''), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for Tier 1 Securities, 28% for all Tier 2 Securities, and 30% for Tier 3 Securities. *See* Rule 4613(a)(2)(D).

[9] As determined by the Exchange in accordance with its procedures for determining Protected Quotations under SEC Rule 600 under Regulation NMS.

[10] The ''Defined Limit'' is 9.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities. *See* Rule 4613(a)(2)(E).

[11] Nothing in Rule 4613 precludes a BX Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by the rule.

the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker must enter new offer interest at a displayed price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

The MMPO is designed to assist Market Makers in complying with these requirements by being repriced in accordance with the parameters required by Rule 4613. Thus, use of the order will allow market makers to make liquidity available at prices reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not themselves quoting at the best price or have more limited liquidity available at the best price. Specifically, the MMPO is a limit order that, upon entry, is automatically priced by the BX System at the Designated Percentage away from the Reference Price to keep the displayed price of the order bounded within a price range, thereby allowing the market maker to comply with the quotation requirements under Rule 4613(a)(2). The Reference Price is the then current National Best Bid (National Best Offer), or if no National Best Bid (National Best Offer), the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. For example, if the National Best Bid was $10 in a Tier 1 Security, the Designated Percentage would be 8%, an MMPO to buy entered between 9:45 a.m. and 3:45 p.m. would be priced at $9.20.[12] Because the order is designed to post to the book at the Designated Percentage, it would not be marketable upon entry and therefore may not be entered with a time-in-force of Immediate-or-Cancel. As a result, an MMPO would provide, rather than access, liquidity. The order may not be assigned any special conditions governing its terms of execution, other than time-in-force, limit price, and the pegging functionality described herein.

Upon reaching the Defined Limit, the displayed price of an MMPO will be repriced by the System to the Designated Percentage away from the then current Reference Price. Thus, if the National Best Bid in the above example increased to $10.17, the MMPO priced at $9.20 would now be more than 9.5%, the Defined Limit, away from the National Best Bid, and would be repriced to $9.35, the Designated Percentage away from $10.17.

An MMPO order could execute in the circumstances shown below. The best bid in a particular security is currently $10.00 and all MMPO's in the security are currently priced at $9.50 with no other bids resting between those two prices. If the $10.00 bid were cancelled or executed, the MMPO's resting at $9.50 would become the inside market and would then be available for execution against any order willing to sell at $9.50 or lower. Alternatively, assume there is a bid for 100 shares at $10.00 and the next order on the book is the MMPO resting at $9.50 for 100 shares. If a 200 share order to sell at $9.50 is received, it would execute 100 shares against the $10.00 bid and 100 shares against the MMPO that is posted at $9.50.

If as a result of a change to the Reference Price, the displayed price of a Market Maker Peg Order to buy (sell) is at least one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be re-priced to the Designated Percentage away from the Reference Price. Thus, if the National Best Bid was initially $10 in a Tier 1 Security, and an MMPO to buy was initially entered at $9.20, if the National Best Bid decreased to $9.57 (such that the displayed price of the MMPO would be at least $0.01 more than a price that is 4% less than the National Best Bid, rounded up (*i.e.,* $9.57 − ($9.57 × 0.04) = $9.1872, rounding up to $9.19), the MMPO would be repriced to $8.81 (8% away from the National Best Bid).[13]

For a given MMPO, a Market Maker may designate a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Thus, for example, the Market Maker could designate an offset of $0.25, in which case the order would be continually repriced to maintain the $0.25 offset as the Reference Price moved. Thus, if the National Best Bid was $10, an MMPO to buy with a $0.25 offset would initially be priced at $9.75, with the price rising or falling continually as the Reference Price moved.[14] If there is no Reference Price, an MMPO with a designated offset amount will be sent back to the Market Maker.

In the absence of a Reference Price, a Market Maker Peg Order will be cancelled (if on the BX Book) or rejected (if it is an incoming Order). If, after entry, a Market Maker Peg Order has a displayed price based on a Reference Price other than the National Best Bid or National Best Offer and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently repriced in accordance with this rule until a new Reference Price is established. Thus, if the last sale price on the consolidated tape was $10 and an MMPO to buy is priced at $9.20 and establishes the National Best Bid, the order will not then be repriced to maintain an offset from itself. Rather, the order will be repriced only once there is an independent basis pricing the order. In the event of an execution against an MMPO that reduces the size of the order below one round lot, the Market Maker would need to enter a new order (after performing required regulatory checks, as discussed below) to satisfy its obligations under Rule 4613.[15] If a Market Maker Peg Order is repriced 1,000 times, it will be cancelled.[16]

MMPOs are not eligible for routing pursuant to Rule 4758 and are always displayed on BX. Notwithstanding the availability of MMPO functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613. A new timestamp is created for an MMPO each time that its displayed price is automatically repriced. At a particular price, the order would be processed in regular price/time priority, with better

[12] As noted above, the MMPO is a limit order and therefore must be assigned a limit priced beyond which it will not execute. If the repricing mechanism of the order would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

[13] If the resulting calculated price is $9.185, the price would round up or down to the compliant price for the entering party, up for a buyer and down for a seller.

[14] An MMPO with an offset operates in a manner similar to a Primary Pegged Order with an offset amount (*see* Rule 4702(b(4)), but an MMPO is always displayed. Note also that if the repricing of an order with an offset amount would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

[15] Rule 4613 generally sets forth BX Market Maker requirements, which include quotation and pricing obligations, and the firm quote obligation.

[16] BX limits the total number of repricings to 1,000 to control message traffic in the System. For example, a MMPO may be affected by a flickering quotation, which is a condition whereby the displayed quotation (off of which the MPPO is pegged) can change multiple times in a single second. The Exchange determined that, if the MMPO repricing was unlimited, the flickering quotation may cause unnecessary System traffic as the MMPO continually reprices in reaction to each rapid change of the quotation.

priced interest being executed prior to the MMPO and with the MMPO being executed behind similarly priced orders entered before the MMPO is repriced.

Although Rule 4613 does not govern the pre-market trading session before 9:30 a.m. and the post-market trading session after 4:00 p.m., a Market Maker may enter an MMPO during such periods. In that case, the Designated Percentage and Defined Limit applicable to the MMPO will be the same as for the periods from 9:30 a.m. through 9:45 a.m., as described in Rule 4613.[17] As BX does not have a special market opening or closing process, an MMPO does not behave differently at 9:30 a.m. or 4:00 p.m. than it does immediately before or after such times.

Use of the MMPO does not frustrate compliance with any broker-dealer risk management obligations required by SEC Rule 15c3–5 (the ''Market Access Rule''), or any Regulation SHO marking and locate requirement prior to order entry. As such, use of the order is not inconsistent with Market Makers fulfilling their obligations under these rules, while also meeting their Exchange market making obligations. It should be noted, however, that use of the order does not ensure that the Market Maker is in compliance with its regulatory obligations under the Market Access Rule or Regulation SHO.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[18] in general, and with section 6(b)(5) of the Act,[19] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the MMPO will aid Market Makers in complying with the requirements of Rule 4613. The Exchange further believes that compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a means by which Market Makers may offer liquidity at prices that are reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where liquidity available at displayed prices closer to the inside than the price of an MMPO is exhausted, the MMPO will nevertheless be available to support executions at prices that are not widely at variance with the prior inside market. Moreover, a Market Maker may elect to set a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage, which would support executions as prices closer to the prior inside market. Because the MMPO is repriced to avoid triggering a limit-up, limit-down restriction or a trading pause, it will not contribute to aberrant volatility in a particular stock.

The methodology for repricing an MMPO is consistent with the requirements of the Act because it will ensure that the displayed price of the order bears a reasonable relationship to the inside market and is less likely to execute at a price that would trigger a limit-up, limit-down restriction or a trading pause. Moreover, because the repricing of an MMPO results in a new timestamp being attached to the order, the MMPO does not provide a means by which an MMPO may achieve an execution priority superior to an order entered at that price earlier in time. In addition, the use of the MMPO would not be inconsistent with Market Makers fulfilling their obligations under the Market Access Rule and Regulation SHO.

The Exchange also believes that although the order may be used only by Market Makers, this restriction is not unfairly discriminatory because only Market Makers are subject to the requirements of Rule 4613; accordingly, the order is not needed to assist other market participants in fulfilling regulatory obligations. To the extent that a market participant wishes to maintain an order at a displayed price that deviates from the inside market by a particular amount, however, it may use the Primary Peg Order to achieve this purpose. Accordingly, an alternative to the MMPO is already available to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposal will enhance BX's competitiveness by providing Market Makers on BX with a means to offer liquidity at prices reasonably related to the inside market. The Exchange believes that this functionality will be appealing to potential Market Makers, and therefore will make it more likely that market participants will choose to become active on BX. This may, in turn, increase the extent of liquidity available on BX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further believes that the introduction of the MMPO will not impair in any manner the ability of market participants or other execution venues to compete.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[17] *Supra* notes 8 and 10.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(a)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–042, and should be submitted on or before August 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18882 Filed 7–31–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75535; File No. SR–NYSEMKT–2015–54]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 500—Equities To Extend the Operation of the Pilot Program that Allows ''UTP Securities'' To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges Until October 31, 2015

July 28, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 17, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows ''UTP Securities'' to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot program is currently scheduled to expire on July 31, 2015; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or October 31, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b 4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows ''UTP Securities'' to be traded on the Exchange pursuant to a grant of unlisted trading privileges.[4] The pilot program is currently scheduled to expire on July 31, 2015; the Exchange proposes to extend it until the earlier of Commission approval to make such pilot permanent or October 31, 2015.

NYSE MKT Rules 500–525—Equities, as a pilot program, govern the trading of any ''UTP Securities'' on the Exchange pursuant to unlisted trading privileges (''UTP Pilot Program'').[5] The Exchange

[4] ''UTP Securities'' is included within the definition of ''security'' as that term is used in the NYSE MKT Equities Rules. *See* NYSE MKT Rule 3—Equities. In accordance with this definition, UTP Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. *See* NYSE MKT Rule 501—Equities.

[5] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31). *See also* Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR–NYSEAmex–2010–124); 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR–NYSEAmex–2011–45); 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011) (SR–NYSEAmex–2011–104); 67497 (July 25, 2012), 77 FR 45404 (July 31, 2012) (SR–NYSEMKT–2012–25); 68561 (January 2, 2013), 78 FR 1290 (January 8, 2013) (SR–NYSEMKT–2012–86); 69814 (June 20, 2013), 78 FR 38762 (June 27, 2013) (SR–NYSEMKT–2013–53); 71363 (January 21, 2014), 79 FR 4373 (January 27, 2014) (SR–NYSEMKT–2014–01); 72624 (July 16, 2014), 79 FR 42595 (July 22, 2014) (SR–NYSEMKT–2014–59); and 73969 (December 31, 2014), 80 FR 914 (January 7, 2015) (SR–NYSEMKT–2014–112). The UTP Pilot Program was originally limited to securities listed on the Nasdaq Stock Market LLC (''Nasdaq Securities''), but the Exchange recently expanded the UTP Pilot Program beyond Nasdaq Securities. *See* Securities Exchange Act Release No. 71952 (April 16, 2014),

hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on July 31, 2015, until the earlier of Commission approval to make such pilot permanent or October 31, 2015.

The UTP Pilot Program includes any security, other than a security that is listed on the Exchange, that (i) is designated as an ''eligible security'' pursuant to the ''UTP Plan,'' [6] (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Act,[7] and (iii) if it is an ''Exchange Traded Product'' (''ETP'') that does not have any component security that is listed or traded on the Exchange or the New York Stock Exchange LLC (''NYSE''); provided, however, that the Invesco PowerShares QQQ™ (the ''QQQ''™) may be admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges although one or more component securities of the QQQ may be listed or traded on the Exchange or the NYSE, subject to the conditions of Rule 504(b)(5)—Equities.

The Exchange notes that its New Market Model Pilot (''NMM Pilot''), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM''),[8] is also scheduled to end on July 31, 2015.[9] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act [10] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits [11]—the Exchange considers the same to be true with respect to all UTP Securities, including for ETPs that are included in the UTP Pilot Program. Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[12] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or October 31, 2015.[13]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from July 31, 2015 until the earlier of Commission approval to make such pilots permanent or October 31, 2015, will provide for the uninterrupted trading of UTP Securities on the Exchange on an unlisted trading privileges basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for UTP Securities.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal to extend the UTP Pilot Program is consistent with (i) Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) Section 11A(a)(1) of the Act,[16] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[17] which governs the trading of securities pursuant to unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

Specifically, the Exchange believes that extending the UTP Pilot Program would provide for the uninterrupted trading of UTP Securities on the Exchange on an unlisted trading privileges basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, thereby providing market participants with additional price discovery, increased liquidity, more competitive quotes and potentially greater price improvement for UTP Securities. Additionally, under the UTP Pilot Program, UTP Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. Accordingly, this proposed rule change would permit the

79 FR 22558 (April 22, 2014) (SR–NYSEMKT–2014–32).

[6] With respect to Nasdaq Securities, the term ''UTP Plan'' means the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended from time to time, filed with and approved by the Commission. *See* Securities Exchange Act Release No. 70953 (November 27, 2013), 78 FR 72932 (December 4, 2013) (File No. S7–24–89). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC, and, in May 2012, the Exchange subsequently changed its name to NYSE MKT LLC. *See* Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32). With respect to all other UTP Securities, the term ''UTP Plan'' means the Consolidated Tape Association Plan for the Dissemination of Last Sale Prices of Transactions in Eligible Securities, as amended from time to time, filed with and approved by the Commission. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective). *See also* Securities Exchange Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05).

[7] 15 U.S.C. 78l.

[8] *See* NYSE MKT Rule 103—Equities.

[9] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR–NYSEAmex–2011–102); 67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR–NYSEMKT–2012–21); 68559 (January 2, 2013), 78 FR 1286 (January 8, 2013) (SR–NYSEMKT–2012–84); 69812 (June 20, 2013), 78 FR 38766 (June 27, 2013) (SR–NYSEMKT–2013–51); 71342 (January 17, 2014), 79 FR 4197 (January 24, 2014) (SR–NYSEMKT–2014–02); 72622 (July 16, 2014). 79 FR 42600 (July 22, 2014) (SR–NYSEMKT–2014–57);); and 73946 (December 24, 2014), 80 FR 60 (January 2, 2015) (SR–NYSEMKT–2014–109) (extending Pilot to July 31, 2015).

[10] 15 U.S.C. 78.

[11] *See* SR–NYSEAmex–2010–31, *supra* note 5, at 41271.

[12] *Id.*

[13] *See* SR–NYSEMKT–2015–52. The New York Stock Exchange LLC (''NYSE'') has submitted a proposed rule change to make the NYSE NMM Pilot permanent. *See* Securities Exchange Act Release No. 75153 (June 11, 2015), 80 FR 34717 (June 17, 2015) (SR–NYSE–2015–26).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78l(f).

Exchange to extend the effectiveness of the UTP Pilot Program in tandem with the NMM Pilot, which the Exchange has similarly proposed to extend until the earlier of Commission approval to make such pilot permanent or October 31, 2015.[18]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the UTP Pilot Program will promote competition in the trading of UTP Securities and thereby provide market participants with opportunities for improved price discovery, increased liquidity, more competitive quotes, and greater price improvement.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will ensure that member organizations and the public can continue to benefit from the pilot program without interruption after July 31, 2015. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NYSEMKT–2015–54, and should be submitted on or before August 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18881 Filed 7–31–15; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note13.

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting

on Wednesday, August 5, 2015 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

• The Commission will consider whether to adopt rules and forms under the Securities Exchange Act of 1934 (''Exchange Act'') providing for the registration of security-based swap dealers and major security-based swap participants.

• The Commission will consider whether to propose a rule of practice to provide a process for a registered security-based swap dealer or major security-based swap participant to make an application to the Commission for an order permitting an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant.

• The Commission will consider whether to adopt a rule requiring public companies to disclose the ratio of the annual total compensation of the chief executive officer to the median of the annual total compensation of the company's employees as required by section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: July 29, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–19077 Filed 7–30–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75534; File No. SR–NYSEMKT–2015–53]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Until October 31, 2015

July 28, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 17, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (*see* Rule 107B—Equities), currently scheduled to expire on July 31, 2015, until the earlier of the Securities and Exchange Commission's (''Commission'') approval to make such Pilot permanent or October 31, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its SLP Pilot,[4] currently scheduled to expire on July 31, 2015, until the earlier of Commission approval to make such Pilot permanent or October 31, 2015.

Background [5]

In October 2008, the New York Stock Exchange LLC (''NYSE'') implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[6] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (*see* NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or ''DMM.'' [7] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[8]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot has been extended several times, most recently to July 31, 2015.[9] The NYSE has filed to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release Nos. 61841 (April 5, 2010), 75 FR 18560 (April 12, 2010) (SR–NYSEAmex–2010–33) (extending the operation of the SLP Pilot to September 30, 2010); 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR–NYSEAmex–2010–88) (extending the operation of the SLP Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123) (extending the operation of the SLP Pilot to August 1, 2011); 64772 (June 29, 2011), 76 FR 39455 (July 6, 2011) (SR–NYSEAmex–2011–44) (extending the operation of the SLP Pilot to January 31, 2012); 66041 (December 23, 2011), 76 FR 82328 (December 30, 2011) (SR–NYSEAmex–2011–103) (extending the operation of the SLP Pilot to July 31, 2012); 67496 (July 25, 2012), 77 FR 45390 (July 31, 2012) (SR–NYSEMKT–2012–22) (extending the operation of the SLP Pilot to January 31, 2013); 68557 (January 2, 2013), 78 FR 1284 (January 8, 2013) (SR–NYSEMKT–2012–85) (extending the operation of the SLP Pilot to July 31, 2013); 69820 (June 21, 2013), 78 FR 38748 (June 27, 2013) (SR–NYSEMKT–2013–52) (extending the operation of the SLP Pilot to January 31, 2014); 71361 (January 21, 2014), 79 FR 4364 (January 27, 2014) (SR–NYSEMKT–2014–03) (extending the operation of the SLP Pilot to July 31, 2014); and 72623 (July 16, 2014), 79 FR 41592 (July 22, 2014) (SR–NYSEMKT–2014–58 (extending the operation of the SLP Pilot to December 31, 2014); and 73947 (December 24, 2014), 80 FR 83 (January 2, 2015) (SR–NYSEMKT–2014–110 (extending the operation of the SLP Pilot to July 31, 2015).

[5] The information contained herein is a summary of the ''New Market Model'' Pilot and the SLP Pilot. *See supra* note 4 and *infra* note 6 for a fuller description of those pilots.

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[7] *See* NYSE Rule 103.

[8] *See* NYSE Rule 107B and NYSE MKT Rule 107B—Equities. NYSE amended the monthly volume requirements to an average daily volume (''ADV'') that is a specified percentage of NYSE consolidated ADV. *See* Securities Exchange Act Release No. 67759 (August 30, 2012), 77 FR 54939 (September 6, 2012) (SR–NYSE–2012–38).

[9] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP Pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP Pilot

Continued

make its NMM and SLP Pilots permanent.[10]

Proposal To Extend the Operation of the NYSE MKT SLP Pilot

The Exchange established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. NYSE MKT Rule 107B—Equities is based on NYSE Rule 107B. NYSE MKT Rule 107B—Equities was filed with the Commission on December 30, 2009, as a ''me too'' filing for immediate effectiveness as a pilot program.[11] The Exchange's SLP Pilot is scheduled to end operation on July 31, 2015 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (NYSE MKT Rule 107B—Equities) should be made permanent.

The Exchange proposes to extend the current operation of the SLP Pilot until October 31, 2015, in order to allow the Exchange to formally submit a filing to the Commission to convert the SLP Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the Exchange's SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before July 31, 2015.[12]

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it seeks to extend a pilot program that has already been approved by the Commission. The Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the SLP Pilot will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which

program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP Pilot program until November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending SLP Pilot program until March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the SLP Pilot until September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the SLP Pilot until January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending the operation of the SLP Pilot to August 1, 2011); 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR–NYSE–2011–30) (extending the operation of the SLP Pilot to January 31, 2012); 66045 (December 23, 2011), 76 FR 82342 (December 30, 2011) (SR–NYSE–2011–66) (extending the operation of the SLP Pilot to July 31, 2012); 67493 (July 25, 2012), 77 FR 45388 (July 31, 2012) (SR–NYSE–2012–27) (extending the operation of the SLP Pilot to January 31, 2013); 68560 (January 2, 2013), 78 FR 1280 (January 8, 2013) (SR–NYSE–2012–76) (extending the operation of the SLP Pilot to July 31, 2013); 69819 (June 21, 2013), 78 FR 38764 (June 27, 2013) (SR–NYSE–2013–44) (extending the operation of the SLP Pilot to January 31, 2014); 71362 (January 21, 2014), 79 FR 4371 (January 27, 2014) (SR–NYSE–2014–03) (extending the operation of the SLP Pilot to July 31, 2014); and 72628 (July 16, 2014), 79 FR 42588 (July 22, 2014) (SR–NYSE–2014–34) (extending the operation of the SLP Pilot to December 31, 2014); and 73945 (December 24, 2014), 80 FR 58 (January 2, 2015) (SR–NYSE–2014–72) (extending the operation of the SLP Pilot to July 31, 2015).

[10] *See* Securities Exchange Act Release No. 75153 (June 11, 2015), 80 FR 34717 (June 17, 2015) (SR–NYSE–2015–26).

[11] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98).

[12] The NMM Pilot was scheduled to expire on July 31, 2015 as well. The Exchange has filed to extend the NMM Pilot until October 31, 2015. *See* SR–NYSEMKT–2015–52.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will ensure that member organizations and the public can continue to benefit from the pilot program without interruption after July 31, 2015. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2015–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NYSEMKT–2015–53, and should be submitted on or before August 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18880 Filed 7–31–15; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75533; File No. SR–NYSEMKT–2015–52]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extend the Operation of Its New Market Model Pilot Until October 31, 2015

July 28, 2015.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 17, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on July 31, 2015, until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or October 31, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot (''NMM Pilot'') that was adopted pursuant to its merger with the New York Stock Exchange LLC (''NYSE'').[4] The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010, September 30, 2010, January 31, 2011, August 1, 2011, January 31, 2012, July 31, 2012, January 31, 2013, July 31, 2013, January 31, 2014, July 31, 2014, December 31, 2014, and July 31, 2015, respectively.[5] The Exchange now seeks to extend the operation of the NMM Pilot, currently scheduled to expire on July 31, 2015, until the earlier of Commission approval to make such pilot permanent or October 31, 2015.

Background [6]

In December 2008, the Exchange implemented significant changes to its equities market rules, execution technology and the rights and obligations of its equities market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, the Exchange eliminated the function of equity specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement [8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[10] CCS provides the Display Book® [11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot, orders or portions thereof that establish priority [12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions [13] in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before July 31, 2015.[14]

Proposal To Extend the Operation of the NMM Pilot

The Exchange established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until October 31, 2015, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

The proposed change is not otherwise intended to address any other issues

[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger); *see also* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (approving adoption of equities rules based on those of NYSE) and 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (amending equity rules to conform to NYSE NMM Pilot rules). Subsequently, NYSE Alternext US LLC was renamed NYSE Amex LLC, which was then renamed NYSE MKT LLC and continues to operate as a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (the ''Act''). *See* Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[5] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83) (extending Pilot to March 30, 2010); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28) (extending Pilot to September 30, 2010); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86) (extending Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123) (extending Pilot to August 1, 2011); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43) (extending Pilot to January 31, 2012); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR–NYSEAmex–2011–102) (extending Pilot to July 31, 2012); 67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR–NYSEMKT–2012–21) (extending the Pilot to January 31, 2013); 68559 (January 2, 2013), 78 FR 1286 (January 8, 2013) (SR–NYSEMKT–2012–84) (extending Pilot to July 31, 2013); 69812 (June 20, 2013), 78 FR 38766 (June 27, 2013) (SR–NYSEMKT–2013–51) (extending Pilot to January 31, 2014); 71342 (January 17, 2014), 79 FR 4197 (January 24, 2014) (SR–NYSEMKT–2014–02) (extending Pilot to July 31, 2014); 72622 (July 16, 2014), 79 FR 42600 (July 22, 2014) (SR–NYSEMKT–2014–57) (extending Pilot to December 31, 2014); and 73946 (December 24, 2014), 80 FR 60 (January 2, 2015) (SR–NYSEMKT–2014–109) (extending Pilot to July 31, 2015).

[6] The information contained herein is a summary of the NMM Pilot. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) for a fuller description.

[7] *See* NYSE MKT Rule 103—Equities.

[8] *See* NYSE MKT Rule 104—Equities.

[9] *See* NYSE MKT Rule 60—Equities; *see also* NYSE MKT Rules 104—Equities and 1000—Equities.

[10] *See* NYSE MKT Rule 1000—Equities.

[11] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE MKT Rule 72(a)(ii)—Equities.

[13] *See supra* note 5.

[14] The NYSE has submitted a proposed rule change to make the NYSE NMM Pilot permanent. *See* Securities Exchange Act Release No. 75153 (June 11, 2015), 80 FR 34717 (June 17, 2015) (SR–NYSE–2015–26).

and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it seeks to extend a pilot program that has already been approved by the Commission. The Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the NMM Pilot will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will ensure that member organizations and the public can continue to benefit from the pilot program without interruption after July 31, 2015. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–52. This file number should be included on the subject line if email is used. To help the Commission process and review your

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

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-NYSEMKT–2015–52, and should be submitted on or before August 24, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–18879 Filed 7–31–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 9210]

Determination Under Section 610 of the Foreign Assistance Act of 1961, As Amended

Pursuant to the authority vested in me by section 610 of the Foreign Assistance Act of 1961, as amended (the ''Act''), and the President's Memorandum of Delegation dated April 16, 2015, I hereby determine it necessary for the purposes of the Act that pursuant to the relevant authorities of the Act, the following funds be transferred to, and consolidated with, funds made available under chapter 4 of part II of the Act, and such funds are hereby so transferred and consolidated:

• $12,150,000 of Fiscal Year 2014 funds from the Nonproliferation, Antiterrorism, Demining and Related Programs account to the Economic Support Fund account.

This determination shall be reported to Congress and published in the **Federal Register**.

John F. Kerry,

Secretary of State.

[FR Doc. 2015–18954 Filed 7–31–15; 8:45 am]

BILLING CODE 4710–AD–P

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2014–0510]

Implementation of Legislative Categorical Exclusion for Environmental Review of Performance Based Navigation Procedures

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Final Notice to Announce Implementation of Section 213(c)(2) CATEX and Disposition of Public Comments.

SUMMARY: On August 19, 2014, the Federal Aviation Administration (FAA) published in the **Federal Register** [79 FR 49141–49144] a notice regarding the FAA's consideration of how to implement Section 213(c)(2) of the FAA Modernization and Reform Act of 2012. Section 213(c)(2) directs the FAA to issue and file a categorical exclusion for any navigation performance or other performance based navigation procedure that would result in measureable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis as compared to aircraft operations that follow existing instrument flight rule procedures in the same airspace. To inform the FAA's consideration of interpretative guidance regarding Section 213(c)(2), the FAA's August 19 notice requested public comment on a Net Noise Reduction Method recommended by the NextGen Advisory Committee (NAC) and possible variations on this method. The FAA has reviewed and considered all comments and has decided to issue interpretative guidance to implement Section 213(c)(2) using the Net Noise Reduction Method with two variations to the NAC's recommendation, as described in this final notice.

DATES: The effective date of this implementation will be the date the FAA issues the interpretative guidance.

FOR FURTHER INFORMATION CONTACT: Lynne S. Pickard, Senior Advisor for Environmental Policy, Office of Environment and Energy (AEE–6), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3577; email *lynne.pickard@faa.gov*

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) establishes a broad national policy to protect the quality of the human environment and to ensure that environmental considerations are given careful attention and appropriate weight in decisions of the Federal Government. Regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) to implement NEPA establish three levels of environmental review for federal actions. An environmental impact statement (EIS) is the detailed written statement as required by section 102(2)(C) of NEPA, and is prepared for those actions when one or more environmental impacts are potentially significant and mitigation measures cannot reduce the impact(s) below significant levels. 40 CFR 1508.11. An environmental assessment (EA) is a more concise document that provides a basis for determining whether to prepare an environmental impact statement or a finding of no significant impact. 40 CFR 1508.9. A categorical exclusion (CATEX) is used for actions which do not individually or cumulatively have a significant effect on the human environment. 40 CFR 1508.4. A CATEX is not an exemption or waiver of NEPA review; it is a level of NEPA review.

CEQ regulations require agency procedures to identify classes of actions which normally require an EIS or an EA, as well as those actions which normally do not require either an EIS or an EA (*i.e.,* a CATEX). 40 CFR 1507.3(b). In addition to identifying actions that normally are CATEXed, an agency's procedures must also provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect which would preclude the use of a CATEX. 40 CFR 1508.4.

The FAA has adopted policy and procedures for compliance with NEPA and CEQ's implementing regulations in Order 1050.1F, Environmental Impacts: Policies and Procedures, dated July 16, 2015 [80 **Federal Register** 44207, July 24, 2015]. Order 1050.1F lists FAA actions subject to a CATEX in accordance with CEQ regulations, including CATEXs for FAA actions involving establishment, modification, or application of airspace and air traffic procedures.

In the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95), Congress created two additional legislative CATEXs for certain air traffic procedures being implemented as part of the Next Generation Air Transportation System (NextGen).[1] Section 213(c) of this Act provides:

(c) COORDINATED AND EXPEDITED REVIEW.

(1) In General.—Navigation performance and area navigation procedures developed, certified, published, or implemented under this section shall be presumed to be covered by a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations) under chapter 3 of FAA Order 1050.1E unless the Administrator determines that extraordinary circumstances exist with respect to the procedure.

(2) NextGen Procedures.—Any navigation performance or other performance based navigation procedure developed, certified, published, or implemented that, in the determination of the Administrator, would result in measurable reductions in fuel consumption, carbon dioxide emissions, and noise, on a per flight basis, as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace, shall be presumed to have no significant affect [sic] on the quality of the human environment and the Administrator shall issue and file a categorical exclusion for the new procedure.

These two new legislative CATEXs have been included in Order 1050.1F. The FAA issued implementing guidance on the CATEX described in Section 213(c)(1) on December 6, 2012. Technical and legal issues have hindered implementing guidance on the CATEX in Section 213(c)(2) because none of the current noise methodologies measure noise on a per flight basis as contemplated by the statute.

The CATEX in Section 213(c)(2) has some unique characteristics. It presumes no significant effect on the quality of the human environment based on a review of three factors—fuel consumption, carbon dioxide emissions, and noise. To apply this CATEX, the FAA is directed to determine that all three factors would be measurably reduced when compared to what is generated by existing instrument flight rules procedures, instead of determining that there would be no potential for significant impacts. It bases the determination of measurable reductions on a per flight basis. It does not provide for extraordinary circumstances to override the CATEX.

Section 213(c)(2) states that this CATEX applies to ''any navigation performance or other performance based navigation procedure. . . .'' The FAA interprets this to mean NextGen performance based navigation (PBN) procedures based on the terminology and because the provision is entitled ''NextGen Procedures'' and is within a more comprehensive Section 213 that is entitled ''Acceleration of NextGen Technologies''. PBN procedures are flight procedures that rely on satellite-based navigation, *i.e.* Area Navigation (RNAV) and Required Navigation Performance (RNP). Accordingly, the FAA finds that the use of this CATEX is limited to PBN procedures. The CATEX cannot be used for conventional procedures (flight procedures that rely on ground-based navigational aids) or for projects involving a mix of conventional and PBN procedures, which is commonly the case for sizeable projects such as an Optimization of the Airspace and Procedures in the Metroplex (Metroplex). In addition, for projects involving only PBN procedures, 95 percent or more already meet the conditions of existing FAA CATEXs. Under these circumstances, the Section 213(c)(2) CATEX would be expected to be used infrequently. It could expedite review of a PBN-only project that would otherwise be subject to an EA or possibly an EIS due to a high level of environmental controversy or potential environmental impacts that would preclude the use of another existing CATEX.

The statutory language of Section 213(c)(2) states that the CATEX cannot be implemented unless the FAA can determine that there are measurable reductions of fuel consumption, carbon dioxide emissions, and noise on a per flight basis. While measurable reductions in fuel consumption and carbon dioxide emissions can be determined on a per flight basis using current methodologies, aircraft noise poses unique challenges for such a determination. Noise depends not only on the varying noise levels of an aircraft as it flies, but also on the position of the aircraft in relation to noise sensitive receivers on the ground. Noise tends to increase at some locations and decrease at other locations as PBN procedures shift and concentrate flight tracks. Total noise in an area of airspace cannot be calculated by adding up the noise levels at various locations on the ground, and noise levels cannot be divided by the number of aircraft to produce noise per flight. The FAA could not find a technically sound way to make the noise determination required by the statute based on an analysis of methodologies currently in use.

In September 2012, the FAA tasked the NextGen Advisory Committee (NAC) for assistance in further exploring how to make use of this legislative CATEX. The NAC, established September 23, 2010, is a 28-member Federal advisory committee formed to provide advice on policy-level issues facing the aviation community in developing and implementing NextGen. In response to FAA's request, the NAC created a Task Group of diverse stakeholders representing airlines, airports, manufacturers, aviation associations, consultants, and community interests. The Task Group agreed with the FAA's technical analysis of current methodologies and went on to develop a Net Noise Reduction Method. The Net Noise Reduction Method received unanimous support from Task Group members and was recommended to FAA by the NAC on June 4, 2013.[2]

Following extensive evaluation of the NAC's recommended Net Noise Reduction Method, the FAA decided to solicit public comment to further inform the FAA's consideration of interpretive guidance to implement Section 213(c)(2) using the Net Noise Reduction Method and possible variations on it. The FAA noted several reasons for seeking public review in addition to the NAC's public forum. One reason is that this CATEX has some unique statutory requirements that have presented challenges to the FAA in determining how to implement the CATEX. In addition, the Net Noise Reduction Method would introduce a new method for assessing noise for certain proposed PBN procedures under NEPA that is different in a number of respects from current noise analysis methodologies. The NAC also suggested an additional test, at the FAA's discretion, involving a determination of significant noise impact; and the FAA wanted input from the public on the use of such a test. Finally, there appears to be substantial public interest and concern regarding this CATEX, as reflected in numerous comments submitted on the inclusion of this CATEX in Order 1050.1F.

FAA's Decision To Implement the Noise Determination in Section 213(c)(2)

The FAA will determine that there is a measurable reduction in noise on a per flight basis under Section 213(c)(2) if proposed PBN procedures, when compared to existing procedures they replace in the same airspace, would

[1] The Next Generation Air Transportation System, referred to as NextGen, is a term used to describe the ongoing transformation of the National Airspace System (NAS). At its most basic level, NextGen represents an evolution from a ground-based system of air traffic control to a satellite-based system of air traffic management.

[2] *http://www.rtca.org/Files/Miscellaneous%20Files/CatEx2%20Report%20NAC%20June%202013final.pdf.*

result in a net noise reduction within that area of airspace and would not significantly increase noise. The FAA will use the Day-Night Average Sound Level (DNL) [3] to determine average changes in noise and whether there is a net noise reduction within an area exposed to noise levels of DNL 45 decibels (dB) and higher.[4] The FAA interprets ''measurable reductions in . . . noise'' to preclude situations where there would be significant increases in noise. Therefore, the FAA will not use this CATEX when proposed PBN procedures would result in a noise increase of DNL 1.5 dB or more over noise sensitive areas at levels of DNL 65 dB and higher, which would constitute a significant noise impact under FAA's long-standing NEPA criterion.[5]

This interpretation uses the NAC's recommended Net Noise Reduction Method with two modifications: (1) FAA will base the determination of measurable reductions in noise on net changes in noise, instead of net changes in the affected population, to be more consistent with the statute; and (2) FAA interprets measurable reductions in noise to preclude use of the CATEX in situations where noise increases would be significant.

The application of the FAA's interpretation is illustrated below in Table 1. Using the same source data used by the NAC in one of its examples,[6] the FAA calculated the average change in the DNL resulting from PBN procedures versus existing procedures at thousands of locations within an area of airspace. The total average change in noise is a decrease, and absent significant noise increases, the required noise reduction determination could be made, enabling the CATEX to be used for the PBN procedures if fuel consumption and carbon dioxide emissions would also be reduced. If there are significant increases in noise, the FAA would not use the CATEX irrespective of the average change in noise.

TABLE 1—AVERAGE CHANGES IN DNL LEVEL PBN PROCEDURES VS EXISTING PROCEDURES

DNL noise exposure band	Average change in DNL
45–60	−0.3 DNL
60–65	0
Above 65	0
Total	
Change	−0.3 DNL

In the August 19, 2014 notice, the FAA calculated net changes in noise in two ways—(1) a straight average of all locations as in Table 1 of this notice and (2) a population weighted average. The FAA decided to use the straight average because it is more consistent with the statutory text as well as easier to understand. In both calculations shown in the previous notice, the total average change in noise was a decrease, which was the same result produced by the NAC method.

The FAA has determined that its interpretation of the statutory language is a reasonable interpretation that enables the agency to fulfill its responsibility to implement enacted legislation. It provides an additional CATEX that may be used for environmental reviews of PBN procedures consistent with legislative intent. It provides a method to quantify measurable noise reductions within a sizeable geographic area [7] using the widely-accepted DNL noise metric. It supports a determination of measureable noise reductions on a per flight basis because, if cumulative noise from multiple flights in a geographic area is lower, noise would also be lower per flight if one could divide the cumulative noise by the number of flights in the area. It is based on a methodology developed by a diverse stakeholder group and recommended by a committee that advises the FAA on NextGen (*i.e.,* the NAC), and it produces the same CATEX results as the NAC's method when applied to the examples used by the NAC.[8] It precludes the use of this CATEX if there are noise increases that would be considered significant based on a recognized standard. This final characteristic places this CATEX within the normal range of NEPA CATEXs and is responsive to community concerns.

The FAA is keenly aware of the general negative community response to this CATEX. The FAA and the NAC realize that community controversy can counterbalance the streamlining effects of any CATEX and result in opposition to PBN procedures. These issues are currently receiving more attention within FAA and by the NAC.

Discussion of Public Comments

The FAA initially provided for a 30-day public comment period and then, upon request, extended the comment period to 60 days. The FAA invited public comment on the entirety of the prospective implementation of the CATEX in Section 213(c)(2) of the FAA Modernization and Reform Act of 2012, and particularly invited comment on the following specific aspects of the Net Noise Reduction Method which were under consideration by the FAA as described in the August 19, 2014 notice:

1. Extent to which the FAA should rely on the Net Noise Reduction Method to determine measurable reductions in noise on a per flight basis.

2. Appropriateness of determining that there is a measurable reduction in noise if people receiving a noise decrease outnumber the people receiving an increase, but the noise decrease is small compared to the noise increase.

3. Different approaches to a net noise reduction methodology (*i.e.,* population change, noise change, population weighted noise change), and whether the selection of one approach over another is preferred and increases public understanding.

4. Extent to which a mix of noise increases and decreases could support a determination of measurable noise reduction, especially when reductions at lower noise levels outweigh increases at higher noise levels, and whether an alternative approach that would require reductions in all three noise exposure bands to support the use of the CATEX should be used.

5. Whether a significant noise impact threshold test should be used; and if so, if it should be used only when there is a net increase in people exposed to noise at DNL 65 dB and above, or if it should be used when there is any increase in the number of people exposed to noise at DNL 65 dB and above—even if there is a net population benefit at that level.

The FAA received 80 comments, including 10 letters of comment from parties representing aviation interests;

[3] DNL, the Day-Night Average Sound Level, is the FAA's primary metric for assessing aircraft noise. DNL accounts for the noise levels of individual aircraft events, the number of times those events occur, and the period of day/night in which they occur.

[4] For NEPA purposes, FAA normally performs noise screening to determine DNL changes at noise levels of DNL 45 dB and higher for air traffic airspace and procedure actions.

[5] The FAA's criterion for a significant noise impact under NEPA is an increase of DNL 1.5 dB or more for a noise sensitive area (*e.g.* homes, schools) that is exposed to noise at or above the DNL 65 dB noise exposure level, or that will be exposed at or above this level due to a 1.5 dB or greater increase, when compared to the no action alternative for the same timeframe. FAA Order 1050.1F.

[6] This example uses noise and population data from an EA for procedural changes at Chicago Midway International Airport. This example was also in the FAA's August 19, 2014 notice.

[7] FAA will evaluate net changes at DNL 45 dB and higher, consistent with FAA's NEPA practice for PBN procedures and also consistent with the NAC's recommendation.

[8] The NAC used procedural changes at Chicago Midway International Airport and Seattle Tacoma International Airport to test the results of its method.

18 letters from Federal and state elected representatives, local governments, organizations and a law firm on behalf of their constituents, members, and community interests; 52 letters from individuals, and a neighborhood petition signed by 140 individuals. In general, aviation interests supported the FAA's adoption of the NAC's recommended Net Noise Reduction Method, while other commenters expressed opposition to or reservations about this methodology, opposition to this legislated CATEX and to CATEXs in general, and noise concerns about the implementation of PBN procedures. The FAA reviewed and considered all comments in reaching its decision. Specific issues that were commented on and FAA's responses are presented in more detail below.

Comment: Aviation commenters supported NextGen and PBN procedures. They viewed the CATEX in Section 213(c)(2) as an advantageous step taken by Congress to expedite the environmental review of PBN procedures that can reduce fuel burn, emissions, and noise. They supported the NAC's recommended Net Noise Reduction Method as technically and legally sound. They emphasized that it was developed by a diverse group of stakeholders including representatives of airlines, airports, manufacturers, aviation associations, consultants, and community interests, and that it received unanimous support from the NAC. They urged FAA to fulfill its responsibility to carry out a legislated mandate by adopting this method without further delay. They provided additional details in support of the above points.

FAA Response: The FAA sought the advice of the NAC and appreciates the efforts of the NAC Task Group that resulted in a recommendation that was unanimously supported by such a broad diversity of interests. Following additional evaluation and consideration of public comments, FAA has decided to use the NAC's recommended Net Noise Reduction Method with two modifications for greater consistency with the statute, as described in this notice.

Comment: An airport supported the benefits of PBN procedures, while noting the importance of local airport operator and community involvement in PBN implementation. This commenter expressed the need to balance airport operations and impacts with community concerns. The commenter asked if a decrease in noise below DNL 65 dB could offset an increase in noise above DNL 65 dB using the Net Noise Reduction Method, and if the residents that are added to the noise exposure area at DNL 65 dB and higher would be entitled to mitigation. The commenter expressed concern that the Net Noise Reduction Method would not adequately account for community annoyance and opposition that can occur when flight operations are concentrated over more narrow corridors as is common with PBN procedures.

FAA Response: The FAA agrees with the importance of local airport operator involvement and community concerns. The FAA and the NAC are currently giving increased attention to improving airport operator and community involvement in PBN implementation. Regarding the question about whether a decrease in noise below DNL 65 dB could offset an increase in noise above DNL 65 dB using the Net Noise Reduction Method, the answer is yes. The statutory text provides for comparison of PBN procedures versus existing procedures in the same airspace. The FAA interprets ''in the same airspace'' to encompass the entire airspace study area under review in relation to the proposed PBN procedures. With respect to the prospect of adding residents to areas exposed to noise at DNL 65 dB and higher, this CATEX will be no different from other existing CATEXs. If the additional noise exposure is a significant noise increase, this CATEX cannot be used. If it is not a significant noise increase, this CATEX may be used with respect to noise just as other CATEXs are currently used. Also, as is currently the case, residents exposed to aircraft noise of DNL 65 dB and higher may be eligible for mitigation such as sound insulation; however, the provision of mitigation depends on whether the airport has a noise mitigation program, which residents are covered by the program, funding availability, and timing. Regarding the commenter's final concern, if the concentration of noise from PBN implementation is sufficient to increase noise to an extent that it would be considered a significant increase, this CATEX would not be used. This same qualification applies to other existing CATEXs.

Comment: A number of elected representatives, local governments, organizations representing community and environmental interests, and individuals commented that the implementation of PBN procedures should require more detailed environmental review than a CATEX and should be subject to public disclosure and review. Some commenters regard a CATEX as an exemption from environmental review under NEPA. Many objected to the use of CATEXs in general for PBN implementation, as well as to the Section 213(c)(2) CATEX. A number of commenters said that PBN procedures should not be expedited with a CATEX. Some commented that a CATEX should not be used if there is any noise increase, as well as that the criteria for a CATEX should require noise reductions in all areas under flight paths. One commenter asserted that a CATEX should not be allowed if newly impacted people are exposed to incompatible conditions, *i.e.,* noise exposure of DNL 65 dB and higher. Another commenter asserted that PBN procedures do not meet CEQ's standard for a CATEX because they have significant negative environmental impacts. Additional details were provided by commenters regarding why a CATEX is not appropriate.

FAA Response: The FAA first wants to clarify that a CATEX is not a NEPA exemption. A CATEX is a recognized category of NEPA review. CEQ regulations define a categorical exclusion, referred to by FAA as a CATEX, as ''a category of actions which do not individually or cumulatively have a significant effect on the human environment. . .'',[9] and, therefore, for which neither an environmental assessment nor an environmental impact statement is required. Each procedure subject to the use of a CATEX is individually reviewed for consistency with CATEX requirements. PBN procedures may qualify for CATEXs just as conventional air navigation procedures have for many years. Most procedures—whether PBN or conventional procedures—do not have significant environmental impacts, in part because of their altitude above ground level. Most CATEXs are established through agency administrative procedures that are reviewed and concurred in by CEQ, as is the case for FAA's CATEXs in Order 1050.1F, Environmental Impacts: Policies and Procedures. The CATEX that is the subject of this notice is in enacted legislation, and within this legislative framework, the U.S. Congress clearly intended for this CATEX to expedite PBN procedures.

CEQ regulations do not require environmental impacts to be reduced in order to determine that a CATEX is appropriate, *i.e.,* a CATEX may still be the appropriate NEPA review if there are noise increases, provided that the noise increases are not significant. In the case of the Section 213(c)(2) CATEX, the FAA's interpretation of the statutory

[9] 40 CFR 1508.4.

language is that noise must actually be reduced on a net basis, and the CATEX would not be used if any noise increases would be significant.

Comment: Many commenters who objected to using a CATEX for PBN procedures also objected to the Net Noise Reduction Method. Some objected to the netting of noise, and said that certain community areas would suffer noise increases with PBN implementation that would be ignored when noise effects are netted or averaged. A number of commenters viewed the Net Noise Reduction Method as a way of masking PBN noise focusing effects. A local government commented that the Net Noise Reduction Method pits one group of citizens against another. One commenter said that the method does not measure adverse effects on public health, student learning, a peaceful environment, property values, or social community costs; and, therefore, doesn't meet the tests for determining the significance of procedural changes. A Community Noise Roundtable commented that the Net Noise Reduction Method would allow new people to be exposed to incompatible noise of DNL 65 dB and higher with no opportunity for mitigation.

FAA Response: Congress legislated a CATEX that is clearly different from other existing CATEXs. Congress used mandatory language in the relevant legislation, and the FAA does not have discretion under the statute to disregard the legislatively created CATEX. However, the FAA cannot directly apply the CATEX as written due to technical challenges associated with the language used by Congress in creating the CATEX. As a result, the FAA has expended substantial effort evaluating how to make the required noise determination and has concluded that the Net Noise Reduction Method with two modifications as described in this notice provides the best methodology. The FAA has not found a methodology that would not involve averaging or netting, as further described in response to the comment below. The FAA's methodology considers significant impacts and precludes use of this CATEX if noise increases would be significant. People newly exposed to noise levels at DNL 65 dB and higher would be in the same position with respect to eligibility for noise mitigation as they would be absent this CATEX, as explained in more detail in response to a previous comment.

Comment: A number of commenters stated that the Net Noise Reduction Method does not measure noise on a per flight basis as the statute directs. Some commented favorably on analyzing noise on a per flight basis, while others opposed such an approach. A local government commented that noise impact cannot be meaningfully measured on a per flight basis. Commenters also objected to averaging noise in this respect, *i.e.,* that an average is not a per flight basis. One commenter said that if ''average'' is read into the statute, it would also apply to fuel consumption and carbon dioxide emissions, but that averaging of these effects is not proposed. Some commenters criticized DNL and said it is inappropriate to use DNL to determine noise on a per flight basis. Several commenters offered alternative methodologies, including single-event noise metrics.

FAA Response: The FAA has been unable to identify a methodology that would not involve averaging for calculating reductions in noise, fuel consumption, or carbon dioxide emissions on a per flight basis for PBN procedures ''as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace. . .'' as the statute requires. Multiple operations in a sizeable geographic area of airspace involving multiple aircraft having different noise, fuel, and emission characteristics must be evaluated to support the determinations required for this CATEX. For fuel consumption and carbon dioxide emissions, FAA will arithmetically total all fuel consumed and all carbon dioxide emitted from aircraft in the area of airspace that comprises the project study area and divide by the number of aircraft in that area to calculate reductions on a per flight basis. However, total noise in an area of airspace cannot be calculated by adding noise levels at various locations on the ground, and noise levels that are expressed in logarithmic decibels cannot arithmetically be divided by the number of aircraft to produce a meaningful calculation of noise per flight. The FAA's methodology announced in this notice supports a determination of measureable noise reductions on a per flight basis because, if cumulative noise from all flights in a geographic area is lower, it is reasonable to conclude that noise would also be lower per flight if one could divide the cumulative noise by the number of flights in the area.

All known noise metrics, including single-event metrics, were examined by FAA experts and by expert consultants advising the NAC Task Group. The single-event noise metrics that were examined in detail were the maximum A-weighted sound level (LAMAX)[10] and the sound exposure level (SEL).[11] LAMAX was determined not to be a good metric for purposes of complying with Section 213(c)(2) because LAMAX is the maximum noise level of an event (*i.e.,* aircraft overflight). LAMAX does not include the total noise of a flight and does not appear to respond to the legislative mandate to determine noise reduction on a per flight basis. SEL was also rejected. SEL does not account for the temporal aspects of noise exposure (*e.g.,* more annoying nighttime noise), and it has drawbacks in accounting for the spatial aspect of noise exposure (*i.e.,* a measurable reduction in SEL for any particular flight does not ensure that community noise would be reduced within the area of airspace being reviewed for potential application of the CATEX). Experts agreed that DNL is the best metric to calculate noise from multiple flights in a geographic area of airspace. The FAA has decided to use reductions in noise (DNL), instead of the NAC's recommended reductions in the number of people at DNL exposure levels, to be more consistent with the statute. The FAA' selected methodology produces the same results as the NAC's methodology when applied to the examples used by the NAC.

Comment: Several commenters supported an approach that would net noise increases and decreases within each noise exposure band, instead of across all bands, and that would require noise to be reduced in each band in order to use the CATEX. Several commenters noted that a total netting of noise across all bands is inconsistent with FAA policy that gives greater importance to changes at higher noise levels.

FAA Response: The FAA considered such an approach and sought comment on it in the August 19 **Federal Register** notice. As indicated throughout this notice, there is no existing methodology that can produce the precise noise comparison required by the statutory text. As a result, the FAA has weighed various approaches and has concluded that the approach recommended in these comments is less consistent with the statutory text than the FAA's selected methodology because the statute requires a comparison of noise, fuel consumption, and carbon dioxide emissions of PBN procedures compared to existing procedures ''in the same airspace. . . .'' The FAA will calculate

[10] LAMAX is the maximum sound level of a particular event.

[11] SEL is the energy averaged A-weighted sound level over a specified period of time or single event, with reference duration of one second.

fuel consumption and carbon dioxide emissions in the entirety of the airspace area under study and believes the same should be done for noise for statutory consistency. A total netting of noise across all noise exposure levels is not current FAA policy or practice; however, it is FAA's best interpretation of this new legislated CATEX. The FAA continues to give greater importance to changes at higher noise levels by precluding the use of this CATEX if increases in noise at DNL 65 dB and higher levels would be considered significant.

Comment: A number of commenters said that the law should be changed to either revise or eliminate the Section 213(c)(2) CATEX. Some opined that the law conflicts with NEPA.

FAA Response: In this notice, the FAA is fulfilling its responsibility to implement existing law. The FAA does not believe that the law conflicts with NEPA; rather, it legislatively establishes a new CATEX under NEPA.

Comment: Some commenters objected to the Net Noise Reduction Method on the basis that it would not preclude a CATEX if there are significant noise impacts. Several commenters advocated lowering FAA's significant noise threshold from DNL 65 dB to DNL 55 dB.

FAA Response: The NAC's recommendation provided for the FAA to exercise discretion not to use this CATEX in certain circumstances, even if PBN procedures would result in an overall net noise reduction, based on an additional test for significant impacts. The FAA has modified this aspect of the NAC's recommendation. The FAA interprets the phrase ''measurable reductions in . . . noise'' in the statutory text to be inconsistent with noise increases that would be considered significant; therefore, the FAA would not use this CATEX if noise increases would be significant. The issue of the FAA's NEPA threshold of significance for aircraft noise is entirely separate from the implementation of this legislated CATEX and is not addressed in this **Federal Register** notice.

Comment: Multiple commenters and the petition signed by 140 people did not comment directly on the CATEX or the Net Noise Reduction Method, but commented generally on adverse effects of aircraft noise over their homes and requested that the FAA undo objectionable flight patterns. Specific objections to the TNNIS procedure in New York and to the CATEX for this procedure were raised.

FAA Response: These comments refer to the implementation of PBN procedures that were supported by other existing CATEXs that were administratively established following public notice and comment and review by CEQ. The FAA understands that these commenters object to aircraft noise in their neighborhoods, even when noise is below significant levels. As part of NextGen, FAA has a robust research program to reduce aircraft noise and is currently giving increased attention to improving FAA's community involvement.

Authority: FAA Modernization and Reform Act of 2012, Sec. 213(c)(2), Pub. L. 112–95, 126 Stat. 11, 49–50.

Issued in Washington, DC on July 27, 2015.

Lourdes Q. Maurice,

Executive Director, Office of Environment and Energy, Federal Aviation Administration.

[FR Doc. 2015–18823 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2015–0018]

Proposed Memorandum of Understanding Revision (MOU) Assigning Certain Federal Environmental Responsibilities to the State of Alaska, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: The FHWA and the State of Alaska, acting by and through its Department of Transportation (State), propose a renewal of the State's participation in the 23 U.S.C. 326 program. This program allows FHWA to assign to States its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed Memorandum of Understanding (MOU), are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act. An amended MOU would renew the State's participation in the program. The MOU will be amended by incorporating the following changes: Projects that include Federal Aid Highway Program funds and other Federal funds would now be assignable; Federal Lands Highway Program (FLHP) projects funded under 23 U.S.C. 204 and designed and constructed by the State would now be assignable; and projects involving Section 7 Endangered Species Act (ESA) formal consultation would now be assignable.

DATES: Comments must be received on or before September 2, 2015.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA–2015–0018], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

Web site: http://www.regulations.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Facsimile (Fax): 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

Hand Delivery: 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For FHWA: Tim Haugh; by email at *tim.haugh@dot.gov* or by telephone at 907–586–7430. The FHWA Alaska Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Alaska Time), Monday–Friday, except for Federal Holidays. For State: Taylor Horne; by email at *taylor.horne@alaska.gov;* by telephone at 907–465–6957. The Alaska Department of Transportation's normal business hours are 8 a.m. to 5 p.m. (Alaska Time), Monday–Friday, except for State and Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's database: *http://www.fdsys.gov.*

An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at *http://www.regulations.gov.*

Background

Section 326 of Title 23 U.S. Code, creates a program that allows the

Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). In addition, this program allows the assignment of other environmental review requirements applicable to these actions. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Through an amended MOU, FHWA would renew Alaska's participation in this program for a second time. The original MOU became effective on September 22, 2009, for an initial term of three (3) years and the first renewal followed on September 20, 2012. The proposed MOU revision is set to supersede the renewed MOU prior to its expiration date on September 20, 2015. Stipulation I(B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c) and those listed as examples in 23 CFR 771.117(d).

In addition to the NEPA CE determination responsibilities, the MOU would assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

1. Clean Air Act (CAA), 42 U.S.C. 7401–7671q (determinations of project-level conformity if required for the project).

2. Compliance with the noise regulations in 23 CFR 772.

3. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536.

4. Marine Mammal Protection Act, 16 U.S.C. 1361.

5. Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g.

6. Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.

7. Migratory Bird Treaty Act, 16 U.S.C. 703–712.

8. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

9. Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 *et seq.*

10. Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774.

11. Archeological and Historic Preservation Act of 1966, as amended, 54 U.S.C. 3201

12. American Indian Religious Freedom Act, 42 U.S.C. 1996.

13. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.

14. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

15. Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.

16. Coastal Zone Management Act, 16 U.S.C. 1451–1465.

17. Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.

18. Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.

19. Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.

20. Emergency Wetlands Resources Act, 16 U.S.C. 3921–3931.

21. TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133 (b)(11).

22. Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

23. Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604 (known as section 6(f)).

24. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.

25. Superfund Amendments and Reauthorization Act of 1986 (SARA).

26. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.

27. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C.

28. Executive Orders Relating to Highway Projects (E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species).

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation. This assignment includes transfer to the State of Alaska the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the proposed MOU but that have not been completed as of the effective date of the MOU.

In addition to proposing a renewal of the State's participation in the program, the proposed MOU would have three changes from the previous version. The MOU will be amended by allowing assignment of projects that include Federal Aid Highway Program funds and other Federal funds. These types of projects were not available for assignment in the previous versions. The MOU would also be amended to allow assignment of Federal Lands Highway Program (FLHP) projects funded under 23 U.S.C. 204 and designed and constructed by ADOT&PF. For example, projects receiving Federal Land Access Program funds would be available for assignment as long as the State is the entity designing and constructing the project. Finally, the MOU would be amended by allowing the State to engage in formal consultation under Section 7 Endangered Species Act (ESA). This responsibility was retained by FHWA in previous versions of the MOU.

The FHWA will consider the comments submitted on the proposed MOU when making its decision on whether to execute this renewal MOU. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: July 27, 2015.

Sandra A. Garcia-Aline,

Division Administrator, Juneau, Alaska.

[FR Doc. 2015–18958 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Section 5307 Urbanized Area Formula Grants; Passenger Ferry Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability (NOFA): Solicitation of Project Proposals for the Passenger Ferry Grant Program.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of Section 5307 Urbanized Area Formula Grant program funds in support of the Discretionary Passenger Ferry Grant program. This grant opportunity will be funded using approximately $20 million in FY 2015 Urbanized Area Formula Grants program funds authorized by the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, July 6, 2012. Although MAP–21 authorized the program at $30 million, the current extension only authorized funds through May 31, 2015, which is approximately $20 million. This notice solicits proposals to compete for Fiscal Year (FY) 2015 funding that is currently available under the Ferry program and may include additional funds made available, subsequent to publication of this notice.

The Passenger Ferry Grant program (Ferry program), authorized by 49 U.S.C. 5307 (h), is a competitive program for which FTA established criteria for rating and ranking applications. Given the limited resources available for this program, FTA is limiting this discretionary opportunity to capital projects. These funds constitute a core investment in the enhancement and revitalization of public ferry systems in the Nation's urbanized areas.

This notice also includes priorities established by FTA for these discretionary funds, criteria FTA will use to identify meritorious projects for funding, and the process to apply for funding. This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* The FTA may announce final selections on the Web site and in the **Federal Register**. Additionally, a synopsis of this funding opportunity will be posted in the FIND module of the government-wide electronic grants (GRANTS.GOV) Web site at *http://www.grants.gov.*

DATES: Complete proposals for Ferry program projects must be submitted by 11:59 p.m. EDT on October 2, 2015. All proposals must be submitted electronically through the GRANTS.GOV APPLY function. Any agency intending to apply should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the submission deadline. Instructions for applying can be found on FTA's Web site at *http://www.fta.dot.gov/grants/15926.html* and in the ''FIND'' module of GRANTS.GOV.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Office found at *http://www.fta.dot.gov* for proposal-specific information and issues. For program-specific questions, please contact Vanessa Williams, Office of Program Management, (202) 366–4818, email: *Vanessa.williams@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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A. FTA Ferry Program Authority

Section 5307(h) of Title 49, United States Code, as amended by MAP–21, authorizes FTA's Passenger Ferry Grant program. The program authorizes FTA to solicit grant applications and make grants for eligible projects on a competitive basis subject to the Section 5307 terms and conditions, unless noted otherwise in the competitive solicitation. Successful applicants will enter into grant agreements with the FTA for the funding to be provided to their projects under this program.

B. Program Description and Purpose

Improving and maintaining the Nation's public ferry systems is a key strategic goal of the U.S. Department of Transportation (DOT) and FTA. The Ferry program is intended to contribute to the improvement of the condition of the public ferry systems by providing financial assistance for capital projects. As part of the program and as evidenced in the criteria established for the program, priority consideration will be given to eligible projects that help to expand ladders of opportunity and improve safety. Examples include but are not limited to enhancing access to work, educational, and other training opportunities, and supporting partnerships that expand access to other governmental, health, medical, education, social, human service, and transportation providers to improve coordinated delivery of services. Safety enhancements include projects that increase the safety of the system including but not limited to lifesaving devices, security cameras, and first aid kits.

C. Program Information

1. Eligible Proposers

Eligible proposers and eventual grant applicants under this initiative must be designated recipients or eligible direct recipients of Section 5307 funds which include public entities engaged in providing a public transportation passenger ferry service. If the recipient is eligible to receive 5307 funds, but does not currently have an active grant with FTA, upon selection, the recipient will be required to work with the FTA regional office to establish its organization as an active grantee. This process may require additional documentation to support technical, financial, and legal capacity. Ferry systems that accommodate cars must also accommodate walk-on passengers in order to be eligible for funding.

2. Eligible Projects

Under this competitive program, eligible projects are capital projects including ferries, terminals, and related infrastructure. A service area can include some portions of rural areas, as long as the Ferry service begins in and services urban areas. Capital projects include, but are not limited to, the purchase, replacement, or rehabilitation of ferries and terminals and related equipment. Funds made available under this Notice of Funding Availability (NOFA) may not be used to fund operating expenses, planning, or preventive maintenance. The FTA's Section 5307 formula funds may be used for those activities.

3. Cost Sharing and Matching

Costs will be shared at the following ratio:

There is an 80 percent Federal share for projects selected under the Ferry Program, unless noted below by one of the exceptions.

i. The Federal share is 85 percent for net project costs for acquiring vehicles (including clean-fuel or alternative fuel) that are compliant with the Clean Air Act (CAA) or compliant with the

Americans with Disabilities Act (ADA) of 1990.

ii. The Federal share is 90 percent for net project costs for vehicle-related equipment or facilities (including clean-fuel or alternative-fuel vehicle-related equipment or facilities) required by the Americans with Disabilities Act (ADA) of 1990, or for purposes of complying with or maintaining compliance with the Clean Air Act.

The FTA considers vehicle-related equipment to be equipment on or attached to the vehicle. The award recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with ADA or CAA.

4. Eligible Sources of Match

After the appropriate Federal share is established, the applicant must provide the local share of the net project cost and must document in its grant application the source of the local match. The local match may include:

i. Cash from non-governmental sources other than revenues from providing public transportation services;

ii. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service that is not farebox revenue;

iii. Monies received under a service agreement with a State or local social service agency or private social service organization;

iv. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

v. Amounts appropriated or otherwise made available to a department or agency of the Government (other than the U.S. Department of Transportation);

vi. In-kind contribution such as the market value of in-kind contributions integral to the project may be counted as a contribution toward local share;

vii. Revenue bond proceeds for a capital project, with prior FTA approval; and

viii. Transportation Development Credits (TDC) (formerly referred to as Toll Revenue Credits).

Note: FTA will not retroactively approve TDCs as match if they are not included in the proposal submitted under this competition.

D. Proposal Submission Process

Project proposals must be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. on October 2, 2015. Mail and fax submissions will not be accepted. A complete proposal submission will consist of at least two files: (1) The SF 424 Mandatory form (downloaded from GRANTS.GOV) and (2) the Applicant and Proposal Profile supplemental form for the Passenger Ferry program (supplemental form) found on the FTA Web site at *http://www.fta.dot.gov/grants/15926.html.* The supplemental form provides guidance and a consistent format for proposers to respond to the criteria outlined in this NOFA. Once completed, the supplemental form must be placed in the attachments section of the SF 424 Mandatory form. Proposers must use the supplemental form designated for the Ferry program and attach it to their submission in GRANTS.GOV to successfully complete the application process. A proposal submission may contain additional supporting documentation as attachments.

Within 24–48 hours after submitting an electronic application, the applicant should receive three email messages from GRANTS.GOV: (1) Confirmation of successful transmission to GRANTS.GOV, (2) confirmation of successful validation by GRANTS.GOV and (3) confirmation of successful validation by FTA. If confirmations of successful validation are not received and a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Complete instructions on the application process can be found at *http://www.fta.dot.gov/grants/15926.html.* Important: FTA urges proposers to submit their applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. The FTA will not accept submissions after the stated submission deadline. GRANTS.GOV scheduled maintenance and outage times are announced on the GRANTS.GOV Web site at *http://www.GRANTS.GOV.* Deadlines will not be extended due to scheduled maintenance or outages.

FTA will not make a ferry discretionary grant award to an applicant until the applicant has complied with all applicable System for Award Management (SAM) requirements. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through Grants.gov, applicants must:

- Obtain unique entity identifier (*e.g.,* provide its Data Universal Numbering System (DUNS) number in each application or proposal it submits to the agency; *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities);
- Be registered in SAM at *www.SAM.gov;*
- Create a Grants.gov username and password; and
- The E-Business Point of Contact (POC) at your organization must respond to the registration email from Grants.gov and login at Grants.gov to authorize you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for an organization.

For information and instructions on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If an applicant is selected for an award, the applicant will be required to maintain an active SAM registration with current information throughout the period of the award.

Proposers may submit one proposal for each project or one proposal containing multiple projects. Proposers submitting multiple projects in one proposal must be sure to clearly define each project by completing a supplemental form for each project. Supplemental forms must be added within the proposal by clicking the ''add project'' button in Section II of the supplemental form.

Information such as proposer name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF 424 form and supplemental form. Proposers must fill in all fields unless stated otherwise on the forms. Proposers should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the federal and local amounts specified are consistent. The following information MUST be included on the SF 424 and supplemental forms for all requests for Ferry program funding:

1. Name of applicant and, if applicable, the specific ferry agency submitting the application.

2. Unique entity identifier.

3. Contact information including: Contact name, title, address,

congressional district, fax and phone number, and email address if available.

4. Description of public transportation services including areas currently served by the ferry system, if any.

5. Name of person(s) authorized to apply on behalf of the system (attach a signed transmittal letter) must accompany the proposal.

E. Proposal Content

For complete and up to date guidance on the project information and project evaluation criteria that must be documented, refer to the applicable program on the FTA Web site: *http://www.fta.dot.gov/grants/15926.html.* At a minimum, every proposal must:

1. Submit an SF 424 with the correct supplemental form attached.
2. State the project title and describe in the executive summary the project scope to be funded.
3. Address whether the project will need a Buy America waiver.
4. Choose the type of service provided, project type and fleet information.
5. Address each evaluation criterion separately, demonstrating how the project responds to each criterion.
6. Provide a line-item budget for the total project, with enough detail to indicate the various key components of the project. As FTA may elect to fund only part of some project proposals, the budget should provide for the minimum amount necessary to fund specific project components of independent utility.
7. Provide the Federal amount requested.
8. Document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project).
9. Provide support documentation, including financial statements, bond-ratings, and documents supporting the commitment of non-federal funding to the project, or a timeframe upon which those commitments would be made.
10. Address whether other Federal funds have been sought for the project.
11. Provide a project timeline, including significant milestones such as the date anticipated to issue a request for proposals for the project components or contract for purchase of ferry(s), and actual or expected delivery date or notice of request for proposal and notice to proceed for capital replacement/rehabilitation projects.
12. Provide congressional district information for the project's place of performance.

F. Evaluation Criteria

The FTA will evaluate projects based on the proposals submitted according to the criteria outlined below. The FTA encourages each proposer to demonstrate the responsiveness of a project to all of the selection criteria with the most relevant information that the proposer can provide, regardless of whether such information has been specifically requested or identified in this notice. The FTA will assess the extent to which a project addresses the following criteria.

1. Demonstration of Need

The FTA will evaluate each project to determine its need for resources. In addition to the project-specific criteria below, FTA will evaluate the project's impact on service delivery and whether the project represents a one-time or periodic need that cannot reasonably be funded from FTA formula program allocations or State and/or local resources. Proposals should include information such as destinations and services not currently accessible by transit, needs for access to jobs, education, or health care, safety enhancements or special needs of seniors and individuals with disabilities, income-based community needs, or other mobility needs.

i. For vessel replacement or rehabilitation projects:

- The age of the asset to be replaced or rehabilitated by the proposed project, relative to its useful life.
- Condition and performance of the asset to be replaced by the proposed project, as ascertained through inspections or otherwise, if available.

ii. For infrastructure (facility) improvements or related-equipment acquisitions:

- The age of the facility or equipment to be rehabilitated or replaced relative to its useful life.
- The degree to which the proposed project will enable the agency to improve the maintenance and condition of the agency's fleet and/or other related ferry assets.

iii. For expansion requests (vessel or facility-related):

- The degree to which the proposed project addresses a current capacity constraint that is limiting the ability of the agency to provide reliable service, meet ridership demands, or maintain vessels and related-equipment.

2. Demonstration of Benefits

In this section, proposals should identify expected project benefits. Applicants should describe how the ferry project will provide greater access to employment opportunities, educational centers, healthcare, or other locations that profoundly impact ladders of opportunity and safety, as described in the program purpose above. Possible examples include increased or sustained ridership and daily trips, increased reliability of service, improved operations or maintenance capabilities, or more mobility options, intermodal connections, or economic benefits to the community. Benefits may be demonstrated quantifiably or qualitatively. Proposers should document, explain or show the benefits in whatever format is reasonable to present them.

3. Planning and Local/Regional Prioritization

In this section, the applicant should describe how the proposed project is consistent with planning documents and local priorities. This will involve assessing whether:

i. The project is consistent with the transit priorities identified in the long-range transportation plan and/or contingency/illustrative projects. Proposers should note if the project could not be included in the financially constrained Transportation Improvement Plan (TIP)/Statewide Transportation Improvement Program (STIP) due to lack of funding (if selected, the project must be in the federally approved STIP before grant award).

ii. Local support is demonstrated by letters of support from State Departments of Transportation, local transit agencies and other relevant stakeholders.

iii. In an area with both ferry and other public transit operators, the proposal demonstrates coordination with and support of other related projects within the proposer's Metropolitan Planning Organization (MPO) or the geographic region within which the proposed project will operate.

4. Project Readiness

In this section, the applicant should describe the extent to which the project is ready to be implemented. This will involve assessing whether:

i. The project is a Categorical Exclusion (CE) or if required environmental work has been initiated or completed for construction projects requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

ii. Project implementation plans are ready, including initial design of facility projects.

iii. The TIP/STIP can be amended (evidenced by MPO/State endorsement).

iv. Local match is available and the project can be implemented within 12 months from time of selection.

v. The project will require a Buy America waiver.

vi. The applicant demonstrates the ability to carry out the proposed project successfully.

5. Technical, Legal, and Financial Capacity To Implement the Particular Project Proposed

In this section, the applicant should address all of the following points:

i. The proposer has the technical capacity to administer the project.

ii. There are no outstanding legal, technical, or financial issues with the proposer that would make this a high-risk project to implement quickly.

iii. The proposer has good financial systems in place that meet generally acceptable accounting standards that can be audited and has identified the source of local match if selected (no deferred local share will be allowed).

6. Connectivity to Other Modes of Transportation

The proposals should include information about transfer connections to other modes of transportation, including but not limited to: Rail, bus, intercity bus, and private transportation providers. Supporting documentation should include data that demonstrates the number of trips (passengers and vehicles), the number of walk-on passengers, and transfers to other modes (if applicable).

G. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will review proposals under the project evaluation criteria. Members of the technical evaluation committee and other involved FTA staff reserve the right to screen and rate the applications received and to seek clarification from any applicant about any statement in its application that FTA finds ambiguous and/or request additional documentation to be considered during the evaluation process to clarify information contained within the proposal.

After consideration of the findings of the technical evaluation committee, the FTA Acting Administrator will determine the final selection and amount of funding for each project.

Geographic diversity and the applicant's receipt of other Federal funding for ferries may be considered in FTA's award decisions.

H. Award Information

Ferry program funds are available to designated recipients or eligible direct recipients of Section 5307 funds. There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, proposers that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

I. Award Administration

1. Award Notices

At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

The FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. The FTA does not provide pre-award authority for discretionary funds until projects are selected and even then there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2015 Apportionment Notice published on February 9, 2015. *http://www.gpo.gov/fdsys/pkg/FR-2015-02-09/pdf/2015-02555.pdf.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's electronic grant management system and adhere to the customary FTA grant requirements of the Section 5307 Urbanized Area Formula Grant program, including those of FTA Circular 9030.1E, Circular 5010.1D, and the labor protections of 49 U.S.C. Section 5333(b). All discretionary grants, regardless of award amount, will be subject to the congressional notification and release process. The FTA emphasizes that third-party procurement applies to all funding awards, as described in FTA.C.4220.1F. Technical assistance regarding these requirements is available from each FTA regional office.

iii. Buy America

The FTA requires that all capital procurements meet FTA's Buy America requirements that require all iron, steel, or manufactured products be produced in the U.S., to help create and protect manufacturing jobs in the U.S. The Ferry program will have a significant economic impact toward meeting the objectives of the Buy America law. The Buy America requirements can be found in 49 CFR part 661. Any proposal that will require a waiver must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

iv. Disadvantaged Business Enterprise

Projects that include ferry acquisitions are subject to the Disadvantaged Business Enterprise (DBE) program regulations at 49 CFR part 26. The rule requires that, prior to bidding on any FTA-assisted vehicle procurement, entities that manufacture ferries must submit a DBE Program plan and annual goal methodology to FTA. The FTA will then issue a transit vehicle manufacturer (TVM) concurrence/certification letter. Grant recipients must verify each entity's compliance before accepting its bid. A list of certified TVMs is posted on FTA's Web page at *http://www.fta.dot.gov/civilrights/12891.html.* Recipients should contact FTA before accepting bids from entities not listed on this web-posting. Recipients may also establish project specific DBE goals for ferry purchases. The FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please contact Britney Berry, Office of Civil Rights, 202–366–1065, email: *britney.berry@dot.gov.*

v. Planning

The FTA encourages proposers to notify the appropriate State Departments of Transportation and MPOs in areas likely to be served by the project funds made available under these initiatives and programs. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding.

vi. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it

does not have current certifications on file.

vii. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Reports in FTA's electronic grants management system on a quarterly basis for all projects.

J. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C. Complete applications must be submitted through GRANTS.GOV by 11:59 p.m. EDT on October 2, 2015. Contact information for FTA's regional offices can be found on FTA's Web site at *www.fta.dot.gov.*

Therese W. McMillan,

Acting Administrator.

Appendix A—Ferry Program Frequently Asked Questions

1. What is a designated recipient?
   Answer: A designated recipient is an entity designated by the governor of a state, responsible local official, and publicly owned operators of public transportation to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population, or a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
2. What is a direct recipient?
   Answer: A direct recipient is an eligible entity authorized by a designated recipient or state to receive Urbanized Area Formula Program funds directly from FTA.
3. Is there a list of designated recipients under Section 5307?
   Answer: Contact the FTA regional office for help with identifying the 5307 designated recipient in your area. The regional office contact information can be found at *www.fta.dot.gov.*
4. How can an entity determine whether it operates within the area of a Census-designated urbanized area?
   Answer: Contact the FTA regional office to determine the designated urbanized area. The regional contact information can be found at *www.fta.dot.gov.*
5. Can I apply if I am not currently a direct recipient?
   Answer: Yes, FTA will accept applications from entities in urbanized areas that are eligible to be direct recipients, even if they are currently not a direct recipient.
6. How can I apply if I am not an eligible direct recipient or designated recipient?
   Answer: Coordinate the project with the designated or eligible direct recipient for that entity to apply on your behalf. However, if your project is selected for an award, the designated or eligible direct recipient would obligate the funds.
7. Can State DOTs apply on behalf of public agencies within the state in which they administer FTA funds?
   Answer: Yes, as long as the service is within an urbanized area.
8. If an agency previously received 5307 funds but now receives 5311 funds, can they still apply?
   Answer: No, Section 5311 rural providers are not eligible to apply for the Passenger Ferry Grant Program. Applicants must be eligible designated or direct recipients of Section 5307.
9. Is a new start eligible under the Ferry program?
   Answer: Capital for new systems is eligible if the project is not in the planning phase. Planning activities are not eligible under this competition.
10. Are public car-ferries eligible?
    Answer: Ferry systems that accommodate cars must also accommodate walk-on passengers in order to be eligible.
11. Is the construction of a ferry maintenance facility an eligible capital project?
    Answer: Yes.
12. Is a new vessel construction funded by FTA grants considered a public work or rolling stock and therefore subject to Davis Bacon?
    Answer: Yes, a new vessel construction is rolling stock. Davis Bacon applies to construction, alteration, or repairs of public buildings or public works, but it does not apply to rolling stock.
13. Does the term ''terminals & related infrastructure'' projects include the floating docks and access ramps where the passengers board?
    Answer: Yes.
14. Is there a difference between the FTA's Passenger Ferry Grant Program and FHWA's Ferry Boat Formula Grant Funding Program?
    Answer: There may be subtle differences between FTA's and FHWA's programs. However, FHWA no longer has a discretionary program. It is now a formula program. Please refer to FHWA's page for more information: *http://www.fhwa.dot.gov/.*
15. What is the grant process after an entity is selected?
    Answer: An agency would work with the FTA regional office to apply for the funds in FTA's electronic management system. The **Federal Register** announcing selection will also provide grant-making instructions.

[FR Doc. 2015–18917 Filed 7–31–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on July 20, 2015.

Ryan Paquet,

Director, Approvals and Permits Division.

Application No.	Applicant	Reason for delay	Estimated date of completion
	MODIFICATION TO SPECIAL PERMITS		
15744–M	Praxair Distribution, Danbury, CT	4	07–25–2015
14779–M	Corrosion Companies Inc., Washougal, WA	4	08–31–2015
10232–M	ITW Sexton, Decatur, AL	4	08–31–2015
15071–M	Orbital Sciences Corporation, Dulles, VA	4	07–30–2015
	NEW SPECIAL PERMIT APPLICATIONS		
15767–N	Union Pacific Railroad Company, Omaha, NE	1	07–20–2015
16001–N	VELTEK ASSOCIATES, INC., Malvern, PA	4	07–30–2015
16190–N	Digital Wave Corporation, Centennial, CO	4	07–29–2015
16198–N	Fleischmann's Vinegar Company, Inc., Cerritos, CA	4	07–15–2015
16212–N	Entegris, Inc., Billerica, MA	4	07–30–2015
16220–N	Americase, Waxahache, TX	4	07–30–2015
16249–N	Optimized Energy Solutions, LLC, Durango, CO	4	07–30–2015
16320–N	Digital Wave Corporation, Centennial, CO	4	07–29–2015
16346–N	FIBA Technologies, Inc., Littleton, MA	4	07–15–2015
16337–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	07–30–2015
16318–N	Technical Chemical Company, Cleburne, TX	4	07–17–2015
16484–N	Rotarex North America, Mount Pleasant, PA	4	07–15–2015
	PARTY TO SPECIAL PERMITS APPLICATION		
16279–P	National Hazard Control, Tempe, AZ	4	07–30–2015
12726–P	Aviation Technical Services, Everett, WA	4	07–31–2015
12412–P	TerraChem Inc., Fellows, CA	4	07–31–2015
	RENEWAL SPECIAL PERMITS APPICATIONS		
11860–R	GATX Corporation, Chicago, IL	1	07–15–2015
13976–R	Osmose Utilities Services, Inc., Tyrone, GA	4	06–30–2015
12412–R	Interstate Chemical Company, Inc., Hermitage, PA	4	07–31–2015
11296–R	Environmental Waste Services, Inc., Elburn, IL	4	07–30–2015
8009–R	NK Co., Ltd., Busan City, KR	4	07–30–2015
11900–R	Osmose Utilities Services Inc., Tyrone, GA	4	07–15–2015

[FR Doc. 2015–18721 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Application for Modification of Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before August 18, 2015.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, July 20, 2015.

Ryan Paquet,

Director, Approvals and Permits Division.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
MODIFICATION SPECIAL PERMITS				
8009–M		FIBA Technologies, Inc. (FIBA) Littleton, MA.	49 CFR 173.301(d) (2); 173.302(a)(3), 178.37–5.	To modify the special permit to remove the requirement to mark the special permit number on small cylinders that are heat treated in a continuous furnace and add railfreight and cargo vessel as additional modes of transportation.
11650–M		Autoliv ASP, Inc. Ogden, UT.	49 CFR 173.301(a) (1), and 173.302a(a).	To modify the special permit to authorize an increase in maximum service pressure.
11924–M		Packgen Corporation Auburn, ME.	49 CFR 173.12(b)(2)(i)	To modify the special permit to allow specific IBCs to be used as outer packaging for lab pack applicants.
14791–M		Heliqwest International Inc. Montrose, CO.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To modify the special permit to remove the requirement for having two pilots aboard any multi-engine aircraft carrying explosives.
15547–M		Southern California Edison (SCE) Chino, CA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1) in that the explosives are forbidden by cargo aircraft.	To modify the special permit by updating certaininformation and adding additional hazardous materials.
15583–M		Northern Air Cargo Inc	49 CFR 172.101 Column (9B).	To modify the special permit by adding the following paragraph in 7(g)(3) ''or alternatively—FAA-assigned Principal Operations or Maintenance Program''.
15628–M		Chemours Company FC, LLC. Wilmington, DE.	49 CFR 179.100–12(c) ...	To modify the special permit to authorize an additional hazardous material.
15793–M		Northern Air Cargo Inc. Anchorage, AK.	49 CFR 172.101 Column (9B).	To modify the special permit by adding the following in paragraph 7.(g)(3) ''or alternatively—FAA-assigned Principal Operations or Maintenance Program''.
16170–M		Hydro Stat LLC Holly, MI	49 CFR 180.213(b)(2)	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.
16219–M		Structural Composites Industries (SCI) Pomona, CA.	49 CFR 173.302a and 173.304a.	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.
16427–M		Washington Department of Transportation, Ferries Division Seattle, WA.	49 CFR 172.101 Hazardous Materials Table Column (10A), stowage categories ''01'', ''02'', ''04'', and ''05''.	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.

[FR Doc. 2015–18719 Filed 7–31–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Special Permit Applications; Office of Hazardous Materials Safety

AGENCY: Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (June to June 2015). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on July 20, 2015.

Ryan Paquet,

Director, Approvals and Permits Division.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
8451–M	Special Devices, Inc. Mesa, AR.	49 CFR 173.320, 173.54(a), 173.56(b), 173.57, 173.58, and 173.60.	To modify the special permit to authorize forbidden explosives (Section 173.56(j)).
10180–M	Fireboy-Xintex, Inc. Grand Rapids, MI.	49 CFR 173.304(a)(2); 180.209.	To modify the special permit to authorize an additional fire extinguisher design.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
14301–M	Gascon (Pty) Ltd Elsied River, South Africa.	49 CFR 178.274(b) and 18.276(b)(1).	To modify the special permit to authorize manufacture of UN portable tanks in accordance with ASME Section VIII Division 2, latest edition
14849–M	Call2Recycle, Inc. Atlanta, GA	49 CFR 172.200, 172.300, 172.400.	To modify the special permit to authorize dry cell alkaline batteries up to 12 volts in combination with any other used or spent batteries rated greater than 9-volts in the same package.
NEW SPECIAL PERMIT GRANTED			
16193–N	CHI Technologies, Inc. Santa Paula, CA.	49 CFR 180.209(a)	To authorize the transportation in commerce of certain DOT 4BW cylinders that are requalified every 10 years instead of every 5 years when used exclusively in non-corrosive service. (mode 1)
16261–N	Dexsil Corporation Hamden, CT.	49 CFR 172.101(c)(2), Special Provisions A3, 173.13(c)(2)(ii), 173.13(c)(1)(iii), 173.13(c)(1)(iv), 5;3.1.1 of the ICAO TI, 4;6.2, Packing Instruction 480 of the ICAO TI.	To authorize the transportation in commerce of small quantities of certain Division 4.3 materials in specially-designed Packing shipped shipped without labels. (modes 1, 2, 4)
16232–N	Linde Gas North America LLC Murray Hill, NJ.	49 CFR 171.23(a)(1), 171.23(a)(2)(ii) 171.23(a)(3), 173.301(f)(3), 173.301(g).	To authorize the transportation in commerce of non-DOT cylinders containing a Division 2.2 compressed gas. (modes 1, 2, 3)
16348–N	Premier Filling Company, Inc. Hoffman Estates, IL.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of Division 2.2 hazardous materials in certain DOT Specification 2Q non-refillable steel inner containers, which have been tested by an alternative method in lieu of the hot water bath test. (mode 1)
16394–N	Cellco Partnership Basking Ridge, NJ.	49 CFR Subparts C through H of Part 172, 173.185(f).	To authorize the transportation in commerce of damaged or defective lithium ion cells and batteries and equipment containing these cells or batteries that originally met the requirements under 49 CFR 173.185(c). (modes 1, 2)
16415–N	Volkswagen Group of America VWGoA) Herndon, VA.	49 CFR 173.302a	To authorize the transportation in commerce of certain Division 2.1 and 2.2 compressed gases innon-DOT specification cylinders manufactured to a foreign specification. (modes 1, 3)
16417–N	CB&I AREVA MOX Services, LLC Aiken, SC.	49 CFR 173.420(a)(2)(i) 173.420(a)(3(i).	To authorize the one-way transportation in commerce of six 48G cylinders containing depleted uranium hexafluoride that do not meet the specifications in ANSI NI4.1. (mode 1)
EMERGENCY SPECIAL PERMIT GRANTED			
16437–M	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives ATF) Washington, DC.	49 CFR 173.56(b), and 172.320.	To modify the special permit to authorize additional sites for the research testing project. (mode 1)
16519–N	Space Exploration Technologies Corp. Hawthorne, CA.	49 CFR 173.62 Packing Instruction 138.	To authorize the transportation in commerce of certain hazardous materials that are components of the Falcon Launch Vehicle Flight Termination System (FTS). (modes 1, 3)
16489–N	Coastal Helicopters Van Nuys, CA.	49 CFR 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations, transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
16507–N	Atlas Air, Inc. Purchase, NY	49 CFR 172.101 Column (8B), 172.204(o)(3).	To authorize the transportation in commerce of certain explosives, by cargo aircraft only, which is otherwise forbidden by the regulations. (mode 4)
16508–N	Kalitta Air, LLC Ypsilanti, MI	49 CFR 172.101 Table Column (9B), 172.204(c)(3), 173.27(b)(2), (3), and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
16509–N	Kalitta Air, LLC Ypsilanti, MI	49 CFR 172.101 Table Column (9B), 172.204(c)(3), 173.27(b)(2), (3), and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
16510–N	Apple, Inc. Cupertino, CA	49 CFR 173.185(f)	To authorize the transportation in commerce of lithium batteries in non-DOT specification packaging. (modes 1, 3)
16502–N	Kalitta Air, LLC Ypsilanti, MI	49 CFR 172.101 Table Column (9B), 172.204(c)(3), 173.27(b)(2), (3), and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
16503–N	Construction Helicopters, Inc. Howell, MI.	49 CFR 172.101 Hazardous Materials Table Column (9B), 172.200, 172.204(c)(3), 172.300, 172.400, 173.315(j).	To authorize the transportation in commerce of propane by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft without being subject to certain hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
MODIFICATION SPECIAL PERMIT WITHDRAWN			
15393–M	Savannah Acid Plant LLC Savannah, GA.	49 CFR 173.31(d)(1)(vi)	To modify the special permit to discontinue tracking 10% of the fleet individual railcars, and instead monitor the annual change out for the entire fleet.
16420–M	Construction Helicopters, Inc. Howell, MI.	49 CFR 172.101 Hazardous Materials Table Column (9B), 172.200, 172.204(c)(3), 172.300, 172.400, 173.315(j).	To modify the special permit originally issued on an emergency basis to authorized an additional two years.
NEW SPECIAL PERMIT WITHDRAWN			
16471–N	CVS Pharmacy, Inc. Woonsocket, RI.	49 CFR 172.312(a)(2), 172.315, 172.316.	To authorize the transportation in commerce of small quantities of ORM–D materials and compatible limited quantity materials in hard plastic packagings (shipping totes) without certain markings when shipped between CVS Pharmacy, Inc. distribution centers. (mode 1)
16499–N	Princeton University Princeton, NJ.	49 CFR 173.199	To authorize the transportation in commerce of live mice infected with the hepatitis B virus in alternative packaging. (mode 1)
16505–N	Gas Cylinder Technologies Inc. Belle River, Canada.	49 CFR 172.301(c), 178.35(f)(1)(ii).	To authorize the manufacture, mark, sale and use of DOT specification 3AA cylinders marked with the lot number in lieu of the serial number. (modes 1, 2, 3, 4, 5)
DENIED			
7945–M	Request by Pacific Scientific Company Simi Valley, CA June 4, 2015. To modify the special permit to exempt sufficient outage when cylinders are full.		
14227–M	Request by Aluminum Tank Industries, Inc. Winter Haven, FL. June 10, 2015. To modify the special permit to authorize a pump and hose to remain attached during transportation when the discharge outlet is below the highest point of the tank and allow the tanks to be marked as UN 31B intermediate bulk containers.		

[FR Doc. 2015–18723 Filed 7–31–15; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 2, 2015.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 20, 2015.

Ryan Paquet,

Director, Approvals and Permits Division.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
16504–N		iDrink Products Inc., Ann Arbor, MI.	49 CFR 171.2(k), 172.202(a)(5) (iii)(B), Subpart H of Part 172.	To authorize the transportation in commerce of certain used DOT 3AL cylinders that contain carbon dioxide, but not necessarily in an amount qualifying as hazardous material. (modes 1, 2)
16511–N		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(f), 173.301(g).	To authorize the transportation in commerce of hydrogen chloride, anhydrous in certain DOT specification cylinders without pressure relief devices. (modes 1, 3)
16514–N		Best Buy Co., Inc., Richfield, MN.	49 CFR 172.301(c), 173.185(c)(1)(iii), 173.185(c)(3)(i).	To authorize the transportation in commerce of packages containing lithium cells and batteries without the markings required in §§ 173.185(c)(1)(iii) and 173.185 (c)(3)(i) when contained in overpacks and transported via motor vehicle between Best Buy Co., Inc. distribution centers and retail stores. (mode 1)
16516–N		Exosent Engineering, LLC, College Station, TX.	49 CFR 178.315	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tanks manufactured to ASME Section XII stamped with a ''T'' Stamp instead of the ''U'' stamp (mode 1)
16518–N		Midwest Helicopter Airways, Inc., Willowbrook, IL.	49 CFR 172.200, 172.301(c), 173.27(b)(3), 175.30(a)(1), 175.33, Part 178.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft and 14 CFR Part 135 operations transporting hazardous materials on board an aircraft. Such transportation is in support of operations whenthe use of cranes or other lifting devices is impracticable or unavailable or when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4)
		NEW SPECIAL PERMITS		
16520–N		Southern Helicopters, Inc., Sunshine, LA.	49 CFR 172.101 Hazardous Materials Table Column (9B), 172.204(c)(3), 172.200, 172.301(c), 173.27(b)(2), 173327(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft. Such transportation occurs when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4)
16521–N		Sentry Equipment Corp., Oconomowoc, WI.	49 CFR 173.201, 173.301(f), 173.302a, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification stainless steel cylinders conforming in part to DOT specification 3A. (modes 1, 2, 3, 4)
		NEW SPECIAL PERMITS		
16523–N		FIBA Technologies, Inc., Littleton, MA.	49 CFR 173.301(f), 173.301(g), 173.312(a)(2).	To authorize the manufacture, mark, sale and use of certain DOT specification cylinders, UN pressure receptacles, and Multi-Element Gas Containers (MEGCs) containing anhydrous hydrogen chloride without pressure relief devices. (modes 1, 2, 3)
16524–N		Quantum Fuel Systems Technologies Worldwide, Inc., Lake Forest, CA.	49 CFR 173.302a	To authorize the manufacture, mark, sale and use of non-DOT specification fully wrapped fiber reinforced composite gas cylinders that meet ISO 11119–3:2013, except as specified. (modes 1, 2, 3)
16525–N		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.187, 173.212, 173.240, 173.242, IMDG Code 6.2.1.1.2.	To authorize the transportation in commerce of certain Division 4.1 and 4.2 hazardous materials in non-DOT specification cylinders. (modes 1, 3)

[FR Doc. 2015–18718 Filed 7–31–15; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0764]

Proposed Information Collection (SURVEY OF HEALTHCARE EXPERIENCES; DENTAL PATIENT SATISFACTION SURVEY) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va,gov.* Please refer to ''OMB Control No. 2900–0764'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

1. SURVEY OF HEALTHCARE EXPERIENCES DENTAL PATIENT SATISFACTION SURVEY.

2. *OMB Control Number:* 2900–0764.

Type of Review: Extension of a currently approved collection.

Abstracts: The mission of the Veterans Health Administration (VHA) is to provide high quality medical and dental care to eligible veterans. Executive Order 12862, dated September 11, 1993, calls for the establishment and implementation of customer service standards, and for agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with current services''. At present, VA does not specifically evaluate patient satisfaction for over 400,000 veterans receiving dental services each year.

The Dental Patient satisfaction survey is comprised primarily of questions taken from two validated and extensively tested surveys. The first survey is the VA Nation-wide Customer Satisfaction Survey: Survey of Health Experience of Patients (SHEP); this has OMB approval under clearance number 2900–0712. The second survey, Dental Consumer Assessment of Healthcare Provider and Systems (DCAHPS), was developed by the Agency for Healthcare Research and Quality (AHRQ). The psychometric properties of this survey are well documented and the survey has been used extensively in measuring patient satisfaction for TRICARE dental services.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Survey of Health Care Experiences Dental Patient Satisfaction Survey, VA Form 10–10070—9,146 hours.

Estimated Average Burden per Respondent:

a. Survey of Health Care Experiences Dental Patient Satisfaction Survey, VA Form 10–10070—15 minutes.

Frequency of Response: Annually.

Estimated Annual Responses:

a. Survey of Health Care Experiences Dental Patient Satisfaction Survey, VA Form 10–10070—36,585.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18928 Filed 7–31–15; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Proposed Information Collection (Direct Deposit Enrollment; International Direct Deposit Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information need to enroll claimants receiving benefit payments into an electronic funds transfer program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0564'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain

approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Direct Deposit Enrollment; International Direct Deposit Enrollment (24–0296 & 24–0296a).

OMB Control Number: 2900–0564.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected on these forms will be used to enroll VA benefit recipients in the electronic funds transfer (EFT) program.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18924 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0648]

Proposed Information Collection (Foreign Medical Program Application and Claim Cover Sheet) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0648'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

1. Foreign Medical Program (FMP) Registration Form.

2. CLAIM COVER SHEET—FOREIGN MEDICAL PROGRAM (FMP).

OMB Control Number: 2900–0648.

Type of Review: Extension of a currently approved collection.

Abstracts: This information collection is needed to carry out the health care benefits allowed by the Foreign Medical Program (FMP). It is a federal health benefits program for Veterans administered by the Department of Veterans Affairs (VA) Veterans Health Administration (VHA). FMP is a Fee for Service (indemnity plan) program. FMP provides reimbursement for VA adjudicated service-connected conditions. Title 38 CFR 17.35 states that the VA will provide coverage for the Veteran's service-connected disability when the Veteran is residing or traveling overseas.

VA Form 10–7959f–1, Foreign Medical Program (FMP) Registration Form, is used to register into the Foreign Medical Program those Veterans with service-connected disabilities that are living or traveling overseas. Title 38 CFR 17.125(d) states that requests for consideration of claim reimbursement from approved health care providers and Veterans are to be mailed to VHA Health Administration Center (HAC). The VA Form 10–7959f–2, Claim Cover Sheet—Foreign Medical Program streamlines the claims submission process for claimants or physicians while also reducing the time spent by VA on processing FMP claims. The cover sheet will allow foreign providers/Veterans with a better understanding of basic information required for the processing and payment of claims.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Foreign Medical Program (FMP) Registration Form—fill, VA Form 10–7959f–1—111 hours.

b. CLAIM COVER SHEET—FOREIGN MEDICAL PROGRAM (FMP)—fill, VA Form 10–7959f–2—3,652 hours.

Estimated Average Burden per Respondent:

a. Foreign Medical Program (FMP) Registration Form—fill, VA Form 10–7959f–1—4 minutes.

b. CLAIM COVER SHEET—FOREIGN MEDICAL PROGRAM (FMP)—fill, VA Form 10–7959f–2—11 minutes.

Frequency of Response:

a. Foreign Medical Program (FMP) Registration Form—fill, VA Form 10–7959f–1—Annually

b. CLAIM COVER SHEET—FOREIGN MEDICAL PROGRAM (FMP)—fill, VA Form 10–7959f–2 —12 times a year.

Estimated Annual Responses:

a. Foreign Medical Program (FMP) Registration Form—fill, VA Form 10–7959f–1—1,660.

b. CLAIM COVER SHEET—FOREIGN MEDICAL PROGRAM (FMP)—fill, VA Form 10–7959f–2—19,920.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18925 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0784]

Proposed Information Collection (NCA PreNeed Burial Planning)

AGENCY: National Cemetery Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0784'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0784.''

SUPPLEMENTARY INFORMATION:

Title: NCA PreNeed Burial Eligibility Planning, VA Form 40–10007.

OMB Control Number: 2900–0784.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form Letter 40–10007 will be used to collect information from Veterans and service members with terminal illnesses and adult dependent children in hospitals and other institutions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 03446 on February 12, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: One-time.

Estimated Number of Respondents: 8,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18930 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Proposed Information Collection (Application for Voluntary Service VA Form 10–7055 and Associated Internet Application) ; Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for Veterans, Veteran Representatives and health care providers to request reimbursement from the federal government for emergency services at a private institution.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0090'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5694.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Application for Voluntary Service VA Form 10–7055 and Associated Internet Application.

OMB Control Number: 2900–0090.

Type of Review: Revision.

Abstract: This application (VA Form 10–7055 and the associated web form) will be here-in-after referred to as the form. The form is used to assist personnel of volunteer organizations, which recruit volunteers from their membership, and the Department of Veterans Affairs (VA) in the selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers. The information is collected under the authority of 38 U.S.C. 7405(a).

Affected Public: Individuals or Households.

Estimated Annual Burden: 8,000 burden hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 32,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18922 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0791]

Agency Information Collection (Notice of Disagreement) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0791'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0791'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice of Disagreement (VA Form 21–0958).

OMB Control Number: 2900–0791.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0958, will be used by the Veteran to initiate an appeal by indicating disagreement with a decision issued by a Regional Office (RO). VA Form 21–0958, is the first step in the appeal process. The respondent may or may not continue with an appeal to the Board of Veterans Appeals (BVA). If the Veteran opts to continue to BVA for an appeal, this form will be included in the claim folder as evidence. VA will provide VA Form 21–0958 to claimants with the notification letter of the decision in paper form, via hyperlink to VA's Web site, or through its electronic claims processing system. The use of VA Form 21–0958 is mandatory when claimants want to initiate an appeal from a decision on disability compensation claims dated on or after March 24, 2015.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 83 on April 30, 2015.

Affected Public: Individuals or Households.

Estimated Annual Burden: 72,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 144,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18929 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0739]

Agency Information Collection: Access to Financial Records, 38 CFR 3.115.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0739'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Access to Financial Records, 38 CFR 3.115.

OMB Control Number: 2900–0739.

Type of Review: Extension of a currently approved collection.

Abstract: Under 38 CFR 3.115, VA is authorized to request access to financial records to obtain the current address of beneficiaries from financial institutions in receipt of a VA direct deposit payment. VA will only request the current address for beneficiaries whose mail as returned to VA.

Affected Public: Business or for Profit.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18927 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection: From War to Home: Improving Patient-Centered Care and Promoting Empathy for ''Operation Enduring Freedom'' and ''Operation Iraqi Freedom'' (OEF/OIF) Veterans in the Veterans Health Administration Patient Aligned Care Team Demo Lab VISN 4

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

ACTIVITY: Under OMB Review.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the project aims to enhance PACT implementation by evaluating the effects of the VA PACT initiative and by test new, innovative strategies for patient care that can be spread if proven effective.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 2, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900—NEW (Audience Feedback Questionnaire—PACT Demo Lab VISN 4)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–NEW (Audience Feedback Questionnaire—PACT Demo Lab VISN 4)'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: From War to Home: Improving Patient-Centered Care and Promoting Empathy for OEF/OIF Veterans in the VHA—PACT Demo Lab VISN 4, VA Form 10–10130.

OMB Control Number: 2900—NEW.

Type of Review: New data collection.

Abstract: This project is being conducted under the auspices of the VISN 4 Demonstration Lab, which was funded by Patient Care Services to assess the Patient Aligned Care Team (PACT) model of care for Veterans. There is considerable interest in and urgency to implement the PACT model—reflecting both a desire to improve health care for Veterans and to sustain the VA's leadership in health care quality. CEPACT aims to contribute to these goals by evaluating the effects of the VA PACT initiative and by testing new, innovative strategies for patient care that can be spread if proven effective.

Affected Public: Individuals or households.

Estimated Annual Burden: 83 burden hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1000.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 4336, January 27, 2015.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18921 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0017]

Proposed Information Collection (VA Forms 21P–4706b, 21–4706c, 21–4718a) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision with extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information provided by VA federal fiduciaries management of beneficiary funds.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits

Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0017'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: (a) VA Fiduciary's Account (VA Form 21P–4706b),

(b) Court Appointed Fiduciary's Account (VA Form 21P–4706c), and

(c) Certificate of Balance on Deposit and Authorization to Disclose Financial Records (VA Form 21–4718a).

OMB Control Number: 2900–0017.

Type of Review: Extension of a currently approved collection and minor changes.

Abstract: VA maintains supervision of the distribution and use of VA benefits paid to fiduciaries on behalf of VA claimants who are incompetent, a minor, or under legal disability. The forms are used to verify beneficiaries' deposit remaining at a financial institution against a fiduciary's accounting. The following forms will be used to ensure claimants' benefits payments are administered properly.

(a) VA Forms 21P–4706b and 4706c are used by estate to determine proper usage of benefits paid to fiduciaries. The 21P–4706b are both necessary to conform to requirement of various State courts.

(b) VA Form 21–4718a—Fiduciaries are required to obtain certifications that the balances remaining on deposit in financial institutions as shown on accountings are correct. Certifying official at a financial institution completing the form must affix the institution's official seal or stamp. The data collected is used to appoint an appropriate fiduciary for a VA beneficiary and to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,850.

(a) 21P–4706b: 12,600.

(b) 21P–4706c: 3,500.

(c) 21–4718a: 1,750.

Estimated Average Burden per Respondent:

(a) 21P–4706b: 27 minutes.

(b) 21P–4706c: 30 minutes.

(c) 21–4718: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 35,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18923 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Agency Information Collection (Interest Rate Reduction Refinancing Loan Worksheet) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0386'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0386.''

SUPPLEMENTARY INFORMATION:

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Revision of a currently approved collection.

Abstract: Lenders are required to complete VA Form 26–8923, Interest Rate Reduction Refinancing Loan Worksheet, on all interest rate reduction refinancing loans and submit the form in the loan file when selected by VA for quality review. The subject form ensures that lenders correctly compute the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 2482 on January 16, 2015.

Affected Public: Private Sector.

Estimated Annual Burden: 23,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once per year.

Estimated Number of Respondents: 140,000.

By direction of the Secretary.

Kathleen M. Manwell

VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18931 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (NCA: Legacy (Historic Resources Education Program Research))

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

ACTIVITY: Comment Request.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information that will increase public access to historic resources in national cemeteries. It will also increase public awareness of the legacy of the sacrifices of our nation's Veterans. NCA is developing a Historic Resources Education Program to serve academic and non-academic stakeholders.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 2, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Willie Lewis, National Cemetery Administration (43D3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *willie.lewis@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Willie Lewis at (202) 461–4242 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: NCA Legacy (Historic Resources Education Program Research), VA Form 40–10166 Online Survey/Focus Groups.

OMB Control Number: 2900—NEW.

Type of Review: New collection.

Abstract: VA Survey Form 40–10166 and Focus Group interviews will be used to collect information from academic and non-academic stakeholders. These audiences include, but are not limited to middle school and high school students and teachers, university students and professors, historic associations, veterans associations, libraries, and organizations that serve amateur genealogists. The program will increase public access to historic resources in national cemeteries and, in doing so, it will also increase public awareness of the legacy of the sacrifices of our nation's veterans.

Affected Public: Individuals or households.

Estimated Annual Burden: 158 hours.

Estimated Average Burden per Respondent: Online Survey—50 hrs., Focus Groups—108 hrs.

Frequency of Response: Annually.

Estimated Number of Respondents: 254.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18926 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection (Survivors' and Dependents' Application for VA Education Benefits) (VA Form 22–5490) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 2, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0098'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0098.''

SUPPLEMENTARY INFORMATION:

Title: Survivors' and Dependents' Application for VA Education Benefits (VA Form 22–5490).

OMB Control Number: 2900–0098.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–5490 is completed by spouses and children of Veterans or servicemembers to apply for Survivors' and Dependents' Educational Assistance (DEA) and Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) mailed to service-connected disabled veterans who submitted an application for vocational rehabilitation benefits. VA will use data collected to determine the types of rehabilitation program the Veteran will need.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 5887 on February 3, 2015.

Affected Public: Individuals.

Estimated Annual Burden: 52,251 hours.

Estimated Average Burden per Respondent: 33,590 (paper copy—45 minutes); 18,661 (electronically—25 minutes).

Frequency of Response: Annually.

Estimated Number of Respondents: 89,574.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–18932 Filed 7–31–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 140211133–5621–01]

RIN 0648–BD69

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Upon application from the U.S. Navy (Navy), we (the National Marine Fisheries Service) are issuing regulations under the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals incidental to training and testing activities conducted in the Mariana Islands Training and Testing (MITT) Study Area from August 2015 through August 2020. These regulations allow us to issue a Letter of Authorization (LOA) for the incidental take of marine mammals during the Navy's specified activities and timeframes, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take.

DATES: Effective August 3, 2015 through August 3, 2020.

ADDRESSES: To obtain an electronic copy of the Navy's application or other referenced documents, visit the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/.* Documents cited in this rule may also be viewed, by appointment, during regular business hours, at 1315 East-West Highway, SSMC III, Silver Spring, MD 20912.

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application, which contains a list of the references used in this document, may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.* The Navy's Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS) for MITT, which also contains a list of the references used in this document, may be viewed at *http://www.mitt-eis.com.* Documents cited in this rule may also be viewed, by appointment, during regular business hours, at the aforementioned address (see **ADDRESSES**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings 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.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On April 22, 2013, NMFS received an application from the Navy requesting an LOA for the take of 26 species of marine mammals incidental to Navy training and testing activities to be conducted in the MITT Study Area over 5 years. The Navy is requesting regulations that would establish a process for authorizing take, via one 5-year LOA, of marine mammals for training and testing activities, proposed to be conducted from 2015 through 2020. The Study Area includes the existing Mariana Islands Range Complex (MIRC) and surrounding seas, a transit corridor between the Mariana Islands and the Navy's Hawaii Range Complex, and Navy pierside locations where sonar maintenance or testing may occur (see Figure 2–1 of the Navy's LOA application for a map of the MITT Study Area). These activities are classified as military readiness activities. Marine mammals present in the Study Area may be exposed to sound from active sonar and underwater detonations. The Navy is requesting authorization to take 26 marine mammal species by Level B harassment (behavioral) and two species by Level A harassment (injury).

The Navy's application and the MITT FEIS/OEIS contain acoustic thresholds that, in some instances, represent changes from what NMFS has used to evaluate the Navy's activities for previous authorizations. The revised thresholds, which the Navy developed in coordination with NMFS, are based on the evaluation and inclusion of new information from recent scientific studies; a detailed explanation of how they were derived is provided in the MITT FEIS/OEIS Criteria and Thresholds Technical Report (available at *http://www.mitt-eis.com*). The revised thresholds are adopted for this rulemaking after providing the public with an opportunity for review and comment via the proposed rule for this action, which published on March 19, 2014 (79 FR 15388).

Further, more generally, NMFS is committed to the use of the best available science. NMFS uses an adaptive transparent process that allows for both timely scientific updates and public input into agency decisions regarding the use of acoustic research and thresholds. NOAA is currently in the process of developing Acoustic Guidance (the Guidance) on thresholds for onset of auditory impacts from exposure to sound, which will be used to support assessments of the effects of anthropogenic sound on marine mammals. To develop this Guidance, NOAA is compiling, interpreting, and synthesizing the best information currently available on the effects of anthropogenic sound on marine mammals, and is committed to

finalizing the Guidance through a systematic, transparent process that involves internal review, external peer review, and public comment. In December 2013, NOAA released for public comment draft Acoustic Guidance that provides acoustic threshold levels for onset of permanent threshold shift (PTS) and temporary threshold shifts (TTS) in marine mammals for all sound sources. NOAA has since been working to incorporate the relevant information received during the public comment period and to make appropriate changes. In January 2015, while NOAA was still working to finalize the Guidance, the U.S. Navy provided NOAA with a technical paper by Finneran (2015) describing Navy's proposed methodology for updating auditory weighting functions and numeric thresholds for predicting onset of auditory effects (TTS/PTS thresholds) on marine animals exposed to active sonars and other active acoustic sources utilized during Navy training and testing activities. NOAA is working to evaluate and incorporate the information in Finneran (2015) into its Acoustic Guidance before it becomes final. Before doing so, NOAA will complete an independent peer review of the Navy's technical paper and provide an additional public comment period for the draft Guidance. After the second peer review and public comment processes are complete, NOAA will determine how best to incorporate the Navy's methodology into its final Acoustic Guidance. The Guidance likely will not be finalized until later this year. Thereafter, any new Navy modeling based on our final Acoustic Guidance would likely take a minimum of several months to complete. Consequently, the results of prior Navy modeling described in this rule represent the best available estimate of the number and type of take that may result from the Navy's use of acoustic sources in the MITT Study Area. NOAA's continued evaluation of all available science for the Acoustic Guidance could result in changes to the acoustic criteria used to model the Navy's activities in the MITT Study Area, and, consequently, the enumerations of ''take'' estimates. However, consideration of the draft Guidance and information contained in Finneran (2015) does not alter our assessment of the likely responses of affected marine mammal species to acoustic sources employed by Navy in the MITT Study Area, or the likely fitness consequences of those responses. Further, while acoustic criteria may also inform mitigation and monitoring decisions, the Navy has a robust adaptive management program that regularly addresses new information and allows for modification of mitigation and/or monitoring measures as appropriate.

Description of the Specified Activity

The proposed rule (79 FR 15388, March 19, 2014) and MITT FEIS/OEIS include a complete description of the Navy's specified activities that are being authorized in this final rule. Sonar use and underwater detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in the MITT FEIS/OEIS and LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/*) and are summarized here.

Overview of Training Activities

The Navy, U.S. Air Force, U.S. Marine Corps, and U.S. Coast Guard routinely train in the MITT Study Area in preparation for national defense missions. Training activities are categorized into eight functional warfare areas (anti-air warfare; amphibious warfare; strike warfare; anti-surface warfare; anti-submarine warfare; electronic warfare; mine warfare; and naval special warfare). The Navy determined that the following stressors used in these warfare areas are most likely to result in impacts on marine mammals:

- Anti-surface warfare (underwater detonations)
- Anti-submarine warfare (active sonar, underwater detonations)
- Mine warfare (active sonar, underwater detonations)
- Naval special warfare (underwater detonations)

Additionally, some activities described as Major Training Activities in the MITT FEIS/OEIS and other activities are included in the analysis. The Navy's activities in amphibious warfare, anti-air warfare, strike warfare, and electronic warfare do not involve stressors that could result in harassment of marine mammals. Therefore, these activities are not discussed further. The analysis and rationale for excluding these warfare areas are contained in the MITT FEIS/OEIS.

Overview of Testing Activities

The Navy researches, develops, tests, and evaluates new platforms, systems, and technologies. Many tests are conducted in realistic conditions at sea, and can range in scale from testing new software to operating portable devices to conducting tests of live weapons to ensure they function as intended. Testing activities may occur independently of or in conjunction with training activities. Many testing activities are conducted similarly to Navy training activities and are also categorized under one of the primary mission areas. Other testing activities are unique and are described within their specific testing categories. The Navy determined that stressors used during the following testing activities are most likely to result in impacts on marine mammals:

- Naval Air Systems Command (NAVAIR) Testing
  - Anti-surface warfare testing (underwater detonations)
  - Anti-submarine warfare testing (active sonar, underwater detonations)
- Naval Sea Systems command (NAVSEA) Testing
  - New ship construction (active sonar, underwater detonations)
  - Life cycle activities (active sonar, underwater detonations)
  - Anti-surface warfare/anti-submarine warfare testing (active sonar, underwater detonations)
  - Ship protection systems and swimmer defense testing (active sonar)
- Office of Naval Research (ONR) and Naval Research Laboratory (NRL) Testing
  - ONR/NRL research, development, test, and evaluation (active sonar)

Other Navy testing activities do not involve stressors that could result in marine mammal harassment. Therefore, these activities are not discussed further.

Classification of Non-Impulsive and Impulsive Sources Analyzed

In order to better organize and facilitate the analysis of about 300 sources of underwater non-impulsive sound or impulsive energy, the Navy developed a series of source classifications, or source bins. This method of analysis provides the following benefits:

- Allows for new sources to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;''
- Simplifies the data collection and reporting requirements anticipated under the MMPA;
- Ensures a conservative approach to all impact analysis because all sources in a single bin are modeled as the loudest source (*e.g.,* lowest frequency, highest source level, longest duty cycle, or largest net explosive weight within that bin);

• Allows analysis to be conducted more efficiently, without compromising the results;

• Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total number and severity of marine mammal takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

A description of each source classification is provided in Tables 1 and 2. Non-impulsive sources are grouped into bins based on the frequency, source level when warranted, and how the source would be used. Impulsive bins are based on the net explosive weight of the munitions or explosive devices. The following factors further describe how non-impulsive sources are divided:

- Frequency of the non-impulsive source:
  - Low-frequency sources operate below 1 kilohertz (kHz)
  - Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz
  - Very high-frequency sources operate above 100, but below 200 kHz
- Source level of the non-impulsive source:
  - Greater than 160 decibels (dB), but less than 180 dB
  - Equal to 180 dB and up to 200 dB
  - Greater than 200 dB

How a sensor is used determines how the sensor's acoustic emissions are analyzed. Factors to consider include pulse length (time source is on); beam pattern (whether sound is emitted as a narrow, focused beam, or, as with most explosives, in all directions); and duty cycle (how often a transmission occurs in a given time period during an event).

There are also non-impulsive sources with characteristics that are not anticipated to result in takes of marine mammals. These sources have low source levels, narrow beam widths, downward directed transmission, short pulse lengths, frequencies beyond known hearing ranges of marine mammals, or some combination of these factors. These sources generally have frequencies greater than 200 kHz and/or source levels less than 160 dB and are qualitatively analyzed in the MITT FEIS/OEIS.

TABLE 1—IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED

Source class	Representative munitions	Net explosive weight (lbs)
E1	Medium-caliber projectiles	0.1–0.25 (45.4–113.4 g)
E2	Medium-caliber projectiles	0.26–0.5 (117.9–226.8 g)
E3	Large-caliber projectiles	>0.5–2.5 (>226.8 g–1.1 kg)
E4	Improved Extended Echo Ranging Sonobuoy	>2.5–5.0 (1.1–2.3 kg)
E5	5 in. (12.7 cm) projectiles	>5–10 (>2.3–4.5 kg)
E6	15 lb. (6.8 kg) shaped charge	>10–20 (>4.5–9.1 kg)
E8	250 lb. (113.4 kg) bomb	>60–100 (>27.2–45.4 kg)
E9	500 lb. (226.8 kg) bomb	>100–250 (>45.4–113.4 kg)
E10	1,000 lb. (453.6 kg) bomb	>250–500 (>113.4–226.8 kg)
E11	650 lb. (294.8 kg) mine	>500–650 (>226.8–294.8 kg)
E12	2,000 lb. (907.2 kg) bomb	>650–1,000 (>294.8–453.6 kg)

TABLE 2—NON-IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED

Source class category	Source class	Description
Low-Frequency (LF): Sources that produce low-frequency (less than 1 kilohertz [kHz]) signals.	LF4	Low-frequency sources equal to 180 dB and up to 200 dB.
	LF5	Low-frequency sources less than 180 dB.
	LF6	Low-frequency sonar currently in development (e.g., anti-submarine warfare sonar associated with the Littoral Combat Ship).
Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals.	MF1	Active hull-mounted surface ship sonar (e.g., AN/SQS–53C and AN/SQS–60).
	MF2	Active hull-mounted surface ship sonar (e.g., AN/SQS–56).
	MF3	Active hull-mounted submarine sonar (e.g., AN/BQQ–10).
	MF4	Active helicopter-deployed dipping sonar (e.g., AN/AQS–22 and AN/AQS–13).
	MF5	Active acoustic sonobuoys (e.g., DICASS).
	MF6	Active underwater sound signal devices (e.g., MK–84).
	MF8	Active sources (greater than 200 dB) not otherwise binned.
	MF9	Active sources (equal to 180 dB and up to 200 dB).
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.
	MF11	Hull-mounted surface ship sonar with an active duty cycle greater than 80%.
	MF12	High duty cycle—variable depth sonar.
High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 200 kHz) signals.	HF1	Active hull-mounted submarine sonar (e.g., AN/BQQ–10).
	HF4	Active mine detection, classification, and neutralization sonar (e.g., AN/SQS–20).
	HF5	Active sources (greater than 200 dB).
	HF6	Active sources (equal to 180 dB and up to 200 dB).
Anti-Submarine Warfare (ASW): Tactical sources such as active sonobuoys and acoustic countermeasures systems used during ASW training and testing activities.	ASW1	MF active Deep Water Active Distributed System (DWADS).
	ASW2	MF active Multistatic Active Coherent (MAC) sonobuoy (e.g., AN/SSQ–125).

TABLE 2—NON-IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED—Continued

Source class category	Source class	Description
	ASW3	MF active towed active acoustic countermeasure systems (e.g., AN/SLQ–25).
Torpedoes (TORP): Source classes associated with active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (e.g., MK–46, MK–54, or Anti-Torpedo Torpedo).
	TORP2	Heavyweight torpedo (e.g., MK–48).
Acoustic Modems (M): Systems used to transmit data acoustically through water.	M3	Mid-frequency acoustic modems (greater than 190 dB).
Swimmer Detection Sonar (SD): Systems used to detect divers and submerged swimmers.	SD1	High-frequency sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security.
Airguns (AG) [1]: Underwater airguns are used during swimmer defense and diver deterrent training and testing activities.	AG	Up to 60 cubic inch airguns (e.g., Sercel Mini-G).

[1] There are no Level A or Level B takes proposed from airguns; therefore, airguns are not discussed further in this rule.

Proposed Action

The Navy proposes to continue conducting training and testing activities within the MITT Study Area. The Navy has been conducting military readiness training and testing activities in the MITT Study Area for decades.

Training and Testing

The Navy proposes to conduct training and testing activities in the Study Area as described in Tables 3 and 4. Detailed information about each proposed activity (stressor, training or testing event, description, sound source, duration, and geographic location) can be found in the MITT FEIS/OEIS. NMFS used the detailed information in the MITT FEIS/OEIS to help analyze the potential impacts to marine mammals. Table 3 describes the annual number of impulsive source detonations during training and testing activities within the Study Area, and Table 4 describes the annual number of hours or items of non-impulsive sources used during training and testing within the Study Area.

TABLE 3—ANNUAL NUMBER OF IMPULSIVE SOURCE DETONATIONS DURING TRAINING AND TESTING ACTIVITIES IN THE STUDY AREA

Explosive class	Net explosive weight (NEW)	Annual in-water detonations
E1	(0.1 lb.–0.25 lb.)	10,140
E2	(0.26 lb.–0.5 lb.)	106
E3	(>0.5 lb.–2.5 lb.)	932
E4	(>2.5 lb.–5 lb.)	420
E5	(>5 lb.–10 lb.)	684
E6	(>10 lb.–20 lb.)	76
E8	(>60 lb.–100 lb.)	16
E9	(>100 lb.–250 lb.) ..	4
E10 ...	(>250 lb.–500 lb.) ..	12
E11 ...	(>500 lb.–650 lb.) ..	6
E12 ...	(>650 lb.–2,000 lb.)	184

TABLE 4—ANNUAL HOURS OR ITEMS OF NON-IMPULSIVE SOURCES USED DURING TRAINING AND TESTING ACTIVITIES WITHIN THE STUDY AREA

Source class category	Source class	Annual use
Low-Frequency (LF): Sources that produce signals less than 1 kHz	LF4	123 hours.
	LF5	11 hours.
	LF6	40 hours.
Mid-Frequency (MF): Tactical and non-tactical sources from 1 to 10 kHz	MF1	1,872 hours.
	MF2	625 hours.
	MF3	192 hours.
	MF4	214 hours.
	MF5	2,588 items.
	MF6	33 items.
	MF8	123 hours.
	MF9	47 hours.
	MF10	231 hours.
	MF11	324 hours.
	MF12	656 hours.
High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce signals greater than 10 kHz but less than 200 kHz.	HF1	113 hours.
	HF4	1,060 hours.
	HF5	336 hours.
	HF6	1,173 hours.
Anti-Submarine Warfare (ASW): Tactical sources used during anti-submarine warfare training and testing activities.	ASW1	144 hours.
	ASW2	660 items.
	ASW3	3,935 hours.
	ASW4	32 items.
Torpedoes (TORP): Source classes associated with active acoustic signals produced by torpedoes.	TORP1	115 items.
	TORP2	62 items.
Acoustic Modems (M): Transmit data acoustically through the water	M3	112 hours.
Swimmer Detection Sonar (SD): Used to detect divers and submerged swimmers	SD1	2,341 hours.

Vessels

Vessels used as part of the proposed action include ships, submarines, and boats ranging in size from small, 5-m Rigid Hull Inflatable Boats to 333-m long aircraft carriers. Representative Navy vessel types, lengths, and speeds used in both training and testing activities are shown in Table 5. While these speeds are representative, some vessels operate outside of these speeds due to unique training or safety requirements for a given event. Examples include increased speeds needed for flight operations, full speed runs to test engineering equipment, time critical positioning needs, etc. Examples of decreased speeds include speeds less than 5 knots or completely stopped for launching small boats, certain tactical maneuvers, target launch or retrievals, etc.

The number of Navy vessels in the Study Area varies based on training and testing schedules. Most activities include either one or two vessels, with an average of one vessel per activity, and last from a few hours up to two weeks. Multiple ships, however, can be involved with major training events, although ships can often operate for extended periods beyond the horizon and out of visual sight from each other.

TABLE 5—TYPICAL NAVY BOAT AND VESSEL TYPES WITH LENGTH GREATER THAN 18 METERS USED WITHIN THE MITT STUDY AREA

Vessel type (>18 m)	Example(s) (specifications in meters (m) for length, metric tons (mt) for mass, and knots for speed)	Typical operating speed (knots)
Aircraft Carrier	Aircraft Carrier (CVN) length: 333 m beam: 41 m draft: 12 m displacement: 81,284 mt max. speed: 30+ knots.	10 to 15.
Surface Combatants	Cruiser (CG) length: 173 m beam: 17 m draft: 10 m displacement: 9,754 mt max. speed: 30+ knots.	10 to 15.
	Destroyer (DDG) length: 155 m beam: 18 m draft: 9 m displacement: 9,648 mt max. speed: 30+ knots.	
	Frigate (FFG) length: 136 m beam: 14 m draft: 7 m displacement: 4,166 mt max. speed: 30+ knots.	
	Littoral Combat Ship (LCS) length: 115 m beam: 18 m draft: 4 m displacement: 3,000 mt max. speed: 40+ knots.	
Amphibious Warfare Ships	Amphibious Assault Ship (LHA, LHD) length: 253 m beam: 32 m draft: 8 m displacement: 42,442 mt max. speed: 20+ knots.	10 to 15.
	Amphibious Transport Dock (LPD) length: 208 m beam: 32 m draft: 7 m displacement: 25,997 mt max. speed: 20+ knots.	
	Dock Landing Ship (LSD) length: 186 m beam: 26 m draft: 6 m displacement: 16,976 mt max. speed: 20+ knots.	
Mine Warship Ship	Mine Countermeasures Ship (MCM) length: 68 m beam: 12 m draft: 4 m displacement: 1,333 max. speed: 14 knots.	5 to 8.
Submarines	Attack Submarine (SSN) length: 115 m beam: 12 m draft: 9 m displacement: 12,353 mt max. speed: 20+ knots.	8 to 13.
	Guided Missile Submarine (SSGN) length: 171 m beam: 13 m draft: 12 m displacement: 19,000 mt max. speed: 20+ knots.	
Combat Logistics Force Ships [1]	Fast Combat Support Ship (T–AOE) length: 230 m beam: 33 m draft: 12 m displacement: 49,583 max. speed: 25 knots.	8 to 12.
	Dry Cargo/Ammunition Ship (T–AKE) length: 210 m beam: 32 m draft: 9 m displacement: 41,658 mt max speed: 20 knots.	
	Fleet Replenishment Oilers (T–AO) length: 206 m beam: 30 m draft: 11 displacement: 42,674 mt max. speed: 20 knots.	
	Fleet Ocean Tugs (T–ATF) length: 69 m beam: 13 m draft: 5 m displacement: 2,297 max. speed: 14 knots.	
	Joint High Speed Vessel (JHSV) [2] length: 103 m beam; 28.5 m draft; 4.57 m displacement; 2,362 mt max speed: 40 knots.	
Support Craft/Other	Landing Craft, Utility (LCU) length: 41 m beam: 9 m draft: 2 m displacement: 381 mt max. speed: 11 knots.	3 to 5.
	Landing Craft, Mechanized (LCM) length: 23 m beam: 6 m draft: 1 m displacement: 107 mt max. speed: 11 knots.	
Support Craft/Other Specialized High Speed.	MK V Special Operations Craft length: 25 m beam: 5 m displacement: 52 mt max. speed: 50 knots.	Variable.

[1] CLF vessels are not permanently homeported in the Marianas, but are used for various fleet support and training support events in the Study Area.

[2] Typical operating speed of the Joint High Speed Vessel is 25–32 knots.

Dates and Location

The description of the location of authorized activities has not changed from what was provided in the proposed rule (79 FR 15388, March 19, 2014; pages 15394–15395) and MITT FEIS/OEIS (*http://www.mitt-eis.com*). For a complete description, please see those documents. Training and testing activities will be conducted in the MITT Study Area for the reasonably foreseeable future. The MITT Study Area is comprised of the established ranges, operating areas, and special use airspace in the region of the Mariana Islands that are part of the Mariana Islands Range Complex (MIRC), its surrounding seas, and a transit corridor between the Mariana Islands and the Hawaii Range Complex. The defined Study Area has expanded beyond the areas included in previous Navy authorizations to include transit routes and pierside locations. This expansion is not an increase in the Navy's training and testing area, but rather an increase in the area to be analyzed (*i.e.,* not previously analyzed) under an incidental take authorization in support of the MITT EIS/OEIS. The MIRC, like

all Navy range complexes, is an organized and designated set of specifically bounded geographic areas, which includes a water component (above and below the surface), airspace, and sometimes a land component. Operating areas (OPAREAs) and special use airspace are established within each range complex. These designations are further described in Chapter 2 of the Navy's LOA application.

Description of Marine Mammals in the Area of the Specified Activity

Twenty-six marine mammal species may occur in the Study Area, including seven mysticetes (baleen whales) and 19 odontocetes (dolphins and toothed whales). The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (79 FR 15388, March 19, 2014; pages 15395–15396). Table 6 of the proposed rule provided a list of marine mammals with possible or confirmed occurrence within the MITT Study Area, including stock, abundance, and status. Since publishing the proposed rule, NMFS released new stock assessment reports for some of the marine mammal species occurring within the MITT Study Area. The new species abundance estimates were considered in making our final determinations. The MITT FEIS/OEIS includes the revised species abundance estimates. Although not repeated in this final rule, we have reviewed these data, determined them to be the best available scientific information for the purposes of the rulemaking, and consider this information part of the administrative record for this action.

The proposed rule, the Navy's LOA application, and the MITT FEIS/OEIS include a complete description of information on the status, distribution, abundance, vocalizations, density estimates, and general biology of marine mammal species in the Study Area. In addition, NMFS publishes annual stock assessment reports for marine mammals, including some stocks that occur within the Study Area (*http://www.nmfs.noaa.gov/pr/species/mammals*).

Potential Effects of Specified Activities on Marine Mammals

The Navy has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the Study Area. The Navy has analyzed potential impacts to marine mammals from impulsive and non-impulsive sound sources and vessel strike.

Other potential impacts to marine mammals from training activities in the Study Area were analyzed in the MITT FEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal harassment. Therefore, the Navy has not requested authorization for take of marine mammals that might occur incidental to other components of their proposed activities. In this document, NMFS analyzes the potential effects on marine mammals from exposure to non-impulsive sound sources (sonar and other active acoustic sources), impulsive sound sources (underwater detonations), and vessel strikes.

For the purpose of MMPA authorizations, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.,* Level B harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.,* mitigation); (2) to determine whether the specified activity would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity would adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and (4) to prescribe requirements pertaining to monitoring and reporting.

This section focuses qualitatively on the different ways that non-impulsive and impulsive sources may affect marine mammals (some of which NMFS would not classify as harassment). In the Estimated Take section, we will relate the potential effects to marine mammals from non-impulsive and impulsive sources to the MMPA definitions of Level A and Level B harassment and will attempt to quantify those effects.

Non-Impulsive Sources

Direct Physiological Effects

Based on the literature, there are two basic ways that non-impulsive sources might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure could lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience TTS or PTS. TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of mid- and high-frequency active sonar (MFAS/HFAS), animals are not expected to be exposed to levels high

enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Acoustically Mediated Bubble Growth—One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings or explosion sounds would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with *ex vivo* supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB referenced to (re) 1 μPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 μPa at 1 m, a whale would need to be within 10 m (33 ft.) of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Houser *et al.,* 2001; Saunders *et al.,* 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings. Both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that in vivo bubble formation, which may be exacerbated by

deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to non-impulsive sources can lead to strandings is included in the Stranding and Mortality section.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.,* surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of toothed whales are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A recent study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

As mentioned previously, the functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater all encompass the frequencies of the sonar sources used in the Navy's MFAS/HFAS training exercises. Additionally, almost all species' vocal repertoires span across the frequencies of these sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. For hull-mounted sonar, which accounts for the largest takes of marine mammals (because of the source strength and number of hours it's conducted), the pulse length and low duty cycle of the MFAS/HFAS signal makes it less likely that masking would occur as a result.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the

exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle, 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; Wright *et al.,* 2008). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Acoustic Disturbance (PCAD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality. The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this very topic (ONR, 2009).

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise, while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source effects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning,

experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in no response or responses including, but not limited to: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson and others in 1995. A more recent review (Nowacek *et al.,* 2007) addresses studies conducted since 1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species, or extrapolated from closely related species when no information exists.

Flight Response—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001).

Response to Predator—Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

Diving—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.,* increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Due to past incidents of beaked whale strandings associated with sonar operations, feedback paths are provided between avoidance and diving and indirect tissue effects. This feedback accounts for the hypothesis that variations in diving behavior and/or avoidance responses can possibly result in nitrogen tissue supersaturation and nitrogen off-gassing, possibly to the point of deleterious vascular bubble formation (Jepson *et al.,* 2003). Although hypothetical, discussions surrounding this potential process are controversial.

Foraging—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.,* 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.,* 2006). However, Miller *et al.* (2009) reported buzz rates (a proxy for feeding) 19 percent lower during exposure to distant signatures of seismic airguns. Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure levels were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Blue whales exposed to simulated mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.,* 2012). However, Melcón *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change

in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.,* 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 µPa (Melcón *et al.,* 2012). Preliminary results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2011). A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.,* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed simulated MFA sonar. Responses varied depending on behavioral context, with deep feeding whales being more significantly affected (*i.e.,* generalized avoidance; cessation of feeding; increased swimming speeds; or directed travel away from the source) compared to surface feeding individuals that typically showed no change in behavior. Non-feeding whales also seemed to be affected by exposure. The authors indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Breathing—Variations in respiration naturally vary with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (Southall *et al.,* 2007; Henderson *et al.,* 2014).

Social Relationships—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors (*e.g.,* caused avoidance, masking, etc.) and no specific overview is provided here. However, social disruptions must be considered in context of the relationships that are affected. Long-term disruptions of mother/calf pairs or mating displays have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

Vocalizations (also see Masking Section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Killer whales off the northwestern coast of the U.S. have been observed to increase the duration of primary calls once a threshold in observing vessel density (*e.g.,* whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004; NOAA, 2014b). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

Avoidance—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007).

Maybaum (1993) conducted sound playback experiments to assess the effects of MFAS on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-

kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring behavior, movement, and underwater vocalizations. The two types of sonar signals (which both contained mid- and low-frequency components) differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.,* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: A 1.0 second upsweep 209 dB @1–2 kHz every 10 seconds for 10 minutes; Source B: With a 1.0 second upsweep 197 dB @6–7 kHz every 10 seconds for 10 minutes). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in a series of behavioral response studies, a collaboration by the Navy, NMFS, and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MFAS playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn.

Tyack *et al.* (2011) also indicates that Blainville's beaked whales appear to be sensitive to noise at levels well below expected TTS (~160 dB re1μPa). This sensitivity is manifest by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MFAS, which suggests that beaked whales may not respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in this frequency range. The response to such stimuli appears to involve maximizing the distance from the sound source.

Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated mid-frequency sonar. Received levels of sonar on the tag increased to a maximum of 138 dB re 1μPa, which occurred during the first exposure dive. Some sonar received levels could not be measured due to flow noise and surface noise on the tag.

Results from a 2007–2008 study conducted near the Bahamas showed a change in diving behavior of an adult Blainville's beaked whale to playback of mid-frequency source and predator sounds (Boyd *et al.,* 2008; Southall *et al.* 2009; Tyack *et al.,* 2011). Reaction to mid-frequency sounds included premature cessation of clicking and termination of a foraging dive, and a slower ascent rate to the surface. Results from a similar behavioral response study in southern California waters have been presented for the 2010–2011 field season (Southall *et al.* 2011; DeRuiter *et al.,* 2013b). DeRuiter *et al.* (2013b) presented results from two Cuvier's beaked whales that were tagged and exposed to simulated mid-frequency active sonar during the 2010 and 2011 field seasons of the southern California behavioral response study. The 2011 whale was also incidentally exposed to mid-frequency active sonar from a distant naval exercise. Received levels from the mid-frequency active sonar signals from the controlled and incidental exposures were calculated as 84–144 and 78–106 dB re 1 μPa root mean square (rms), respectively. Both whales showed responses to the controlled exposures, ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source. However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Similarly, beaked whales exposed to sonar during British training exercises stopped foraging (DSTL, 2007), and preliminary results of controlled playback of sonar may indicate feeding/foraging disruption of killer whales and sperm whales (Miller *et al.,* 2011).

In the 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction, which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area. The authors noted, however, that the magnified reaction to the predator sounds could represent a cumulative effect of exposure to the two sound types since killer whale playback began approximately 2 hours after mid-frequency source playback. Pilot whales and killer whales off Norway also exhibited horizontal avoidance of a transducer with outputs in the mid-frequency range (signals in the 1–2 kHz and 6–7 kHz ranges) (Miller *et al.,* 2011). Additionally, separation of a calf from its group during exposure to mid-frequency sonar playback was observed on one occasion (Miller *et al.,* 2011). In contrast, preliminary analyses suggest that none of the pilot whales or false killer whales in the Bahamas showed an avoidance response to controlled exposure playbacks (Southall *et al.,* 2009).

Through analysis of the behavioral response studies, a preliminary overarching effect of greater sensitivity to all anthropogenic exposures was seen in beaked whales compared to the other odontocetes studied (Southall *et al.,* 2009). Therefore, recent studies have focused specifically on beaked whale responses to active sonar transmissions or controlled exposure playback of simulated sonar on various military ranges (Defence Science and Technology Laboratory, 2007; Claridge and Durban, 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). In the Bahamas, Blainville's beaked whales located on the range will move off-range during sonar use and return only after the sonar transmissions have stopped, sometimes taking several days to do so (Claridge and Durban

2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Moretti *et al.* (2014) used recordings from seafloor-mounted hydrophones at the Atlantic Undersea Test and Evaluation Center (AUTEC) to analyze the probability of Blainsville's beaked whale dives before, during, and after Navy sonar exercises.

Orientation—A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

There are few empirical studies of avoidance responses of free-living cetaceans to MFAS. Much more information is available on the avoidance responses of free-living cetaceans to other acoustic sources, such as seismic airguns and low-frequency tactical sonar, than MFAS.

Behavioral Responses

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS sonar is considered a non-pulse sound. Southall *et al.* (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean and pinniped responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the three paragraphs below).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: Vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, Vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~ 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There is no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises are.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: AHDs, ATOC, various non-pulse sounds used in underwater data communication; underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses in pinnipeds in water, but no data exist at higher received levels.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is limited marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait''

posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese in undisturbed habitat gained body mass and had about a 46-percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17-percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/minute (50.2 x 10^3kJ/minute), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999). Alternately, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Sharks Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer term habitat displacement strategy. For one population tourism only occurred in a part of the home range, however, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in short period). Last, in a study of northern resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to that exercise for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral responses.

In order to understand how the effects of activities may or may not impact stocks and populations of marine mammals, it is necessary to understand not only what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population changes. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics (below). As depicted, behavioral and physiological changes can either have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation, or they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or

increased disease susceptibility affect health, which then affects vital rates (New *et al.,* 2014). In addition to outlining this general framework and compiling the relevant literature that supports it, New *et al.* (2014) have chosen four example species for which extensive long-term monitoring data exist (southern elephant seals, North Atlantic right whales, Ziphidae beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments, they are a critical first step.

NMFS is constantly evaluating new science and how to best incorporate it into our decisions. This process involves careful consideration of new data and how it is best interpreted within the context of a given management framework. Since preparation of the proposed rule, NMFS has considered additional studies regarding behavioral responses that are relevant to the proposed activities and energy sources. A recent study by Moore and Barlow (2013) emphasizes the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources. In addition, Houser *et al.,* 2013 and Claridge, 2013 were recently published.

Houser *et al.* (2013) performed a controlled exposure study involving California sea lions exposed to a simulated mid-frequency sonar signal. The purpose of this Navy-sponsored study was to determine the probability and magnitude of behavioral responses by California sea lions exposed to differing intensities of simulated mid-frequency sonar signals. Houser *et al.*'s findings are consistent with current scientific studies and criteria development concerning marine mammal reactions to mid-frequency sonar sounds.

Claridge's (2013) Ph.D. thesis investigated the potential effects exposure to mid-frequency active sonar could have on beaked whale demographics. In summary, Claridge suggested that lower reproductive rates observed at the Navy's Atlantic Undersea Test and Evaluation Center (AUTEC), when compared to a control site, were due to stressors associated with frequent and repeated use of Navy sonar. However, the author noted that there may be other unknown differences between the sites. It is also important to note that there were some relevant shortcomings of this study. For example, all of the re-sighted whales during the 5-year study at both sites were female, which Claridge acknowledged can lead to a negative bias in the abundance estimation. There was also a reduced effort and shorter overall study period at the AUTEC site that failed to capture some of the emigration/immigration trends identified at the control site. Furthermore, Claridge assumed that the two sites were identical and therefore should have equal potential abundances; when in reality, there were notable physical differences. All of the aforementioned studies were considered in NMFS' determination to issue regulations and associated LOA to the Navy for their proposed activities in the MITT Study Area.

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding within the U.S. is that (A) ''a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004). For reference, between 2001 and 2009, there was an annual average of 1,400 cetacean strandings and 4,300 pinniped strandings along the coasts of the continental U.S. and Alaska (NMFS, 2011).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales had been reported and one mass stranding of four Baird's beaked whale. The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of tactical mid-frequency sonar, one of those seven had been associated with the use of tactical low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the International Whaling Commission involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar.

Between 1960 and 2006, 48 strandings (68 percent) involved beaked whales, three (4 percent) involved dolphins, and 14 (20 percent) involved whale species. Cuvier's beaked whales were involved in the greatest number of these events (48 or 68 percent), followed by sperm whales (seven or 10 percent), and Blainville's and Gervais' beaked whales (four each or 6 percent). Naval activities (not just activities conducted by the U.S. Navy) that might have involved active sonar are reported to have coincided with nine or 10 (13 to 14 percent) of

those stranding events. Between the mid-1980s and 2003 (the period reported by the International Whaling Commission), NMFS identified reports of 44 mass cetacean stranding events of which at least seven were coincident with naval exercises that were using MFAS.

Strandings Associated With Impulse Sound

During a Navy training event on March 4, 2011, at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1-m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately 5 minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011 near Ocean Beach, California (3 days later and approximately 11.8 mi. [19 km] from Silver Strand where the training event occurred), which might also have been related to this event. Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a U.S. Navy training or testing event involving impulse energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy has reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with these and other training and testing events are presented in the Mitigation section.

Strandings Associated With MFAS

Over the past 16 years, there have been five stranding events coincident with military mid-frequency sonar use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the stranding. A number of other stranding events coincident with the operation of mid-frequency sonar, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical mid-frequency active sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

Greece (1996)—Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel *Alliance* was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1µPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found. Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted,

and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

Bahamas (2000)—NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), seven animals died on the beach (five Cuvier's beaked whales, one Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Spain (2000)—From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006, Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)—The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the

remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.,* 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005; Fernández *et al.,* 2012).

Hanalei Bay (2004)—On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hrs. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the U.S. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.,* 2007 suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total between the hours of 1:15 p.m. and 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, NMFS consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative

explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.,* there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley *et al.,* 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota (but was similar to the events at Palmyra), which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples. Since that time there have been two ''out of habitat'' or ''near mass strandings'' of melon-headed whales in the Philippines (Aragones *et al.,* 2010). Pictures of one of these events depict grouping behavior like that displayed at Hanalei Bay in July 2004. No naval sonar activity was noted it the area, although it was suspected by the authors, based on personal communication with a government fisheries representative, that dynamite blasting in the area may have occurred within the days prior to one of the events (Aragones *et al.,* 2010). Although melon-headed whales entering embayments may be infrequent and rare, there is precedent for this type of occurrence on other occasions in the absence of naval activity.

Spain (2006)—The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive (these later died). Two other whales were discovered during the day on January 27, but had already died. The first three animals were located near the town of Mojacar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Association Between Mass Stranding Events and Exposure to MFAS

Several authors have noted similarities between some of these stranding incidents: They occurred in islands or archipelagoes with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting MFAS (Cox *et al.,* 2006, D'Spain *et al.,* 2006). Although Cuvier's beaked whales have been the most common species involved in these stranding events (81 percent of the total number of stranded animals), other beaked whales (including *Mesoplodon europeaus, M. densirostris,* and *Hyperoodon ampullatus*) comprise 14 percent of the total. Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, NMFS cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species; (b) their behavioral responses to sound makes them more likely to strand; or (c) they are more likely to be exposed to MFAS than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a grouping of risk factors probably contribute to these stranding events.

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked

whales were directly injured by sound (*e.g.,* acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006, Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: Gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 2 kilometers) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between 100 and 400 m in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for *Ziphius*), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid ascent rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005; Fernández *et al.,* 2012) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2007). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but ''bounce dives'' are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that ''bounce dives'' are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were

closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (See Behaviorally Mediated Bubble Growth Section)), Southall *et al.,* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Impulsive Sources

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most susceptible to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals compared to MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion are different (in shape and rise time) from MFAS/HFAS, NMFS still anticipates the same sorts of behavioral responses to result from repeated explosive detonations (a smaller range of likely less severe responses (*i.e.,* not rising to the level of MMPA harassment) would be expected to occur as a result of exposure to a single explosive detonation that was not powerful enough or close enough to the animal to cause TTS or injury).

Baleen whales have shown a variety of responses to impulse sound sources, including avoidance, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Southall, 2007). While most bowhead whales did not show active avoidance until within 8 km of seismic vessels (Richardson *et al.,* 1995), some whales avoided vessels by more than 20 km at received levels as low as 120 dB re 1 μPa rms. Additionally, Malme *et al.* (1988) observed clear changes in diving and respiration patterns in bowheads at ranges up to 73 km from seismic vessels, with received levels as low as 125 dB re 1 μPa.

Gray whales migrating along the U.S. west coast showed avoidance responses to seismic vessels by 10 percent of animals at 164 dB re 1 μPa, and by 90 percent of animals at 190 dB re 1 μPa, with similar results for whales in the Bering Sea (Malme 1986, 1988). In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates while resting or diving in western gray whales off the coast of Russia (Yazvenko *et al.,* 2007; Gailey *et al.,* 2007).

Humpback whales showed avoidance behavior at ranges of 5–8 km from a seismic array during observational studies and controlled exposure experiments in western Australia (McCauley, 1998; Todd *et al.,* 1996) found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland, but did see a trend of increased rates of net entanglement and a shift to a higher incidence of net entanglement closer to the noise source.

Seismic pulses at average received levels of 131 dB re 1 micropascal squared second (μPa^2-s) caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the seismic vessel (estimated received level 143 dB re 1 μPa peak-to-peak). These studies demonstrate that even low levels of noise received far from the noise source can induce behavioral responses.

Madsen *et al.* (2006) and Miller *et al.* (2009) tagged and monitored eight sperm whales in the Gulf of Mexico exposed to seismic airgun surveys. Sound sources were from approximately 2 to 7 nm away from the whales and based on multipath propagation received levels were as high as 162 dB SPL re 1 μPa with energy content greatest between 0.3 and 3.0 kHz (Madsen, 2006). The whales showed no horizontal avoidance, although the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing (Miller *et al.,* 2009). The remaining whales continued to

execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods, suggesting subtle effects of noise on foraging behavior (Miller *et al.,* 2009). Captive bottlenose dolphins sometimes vocalized after an exposure to impulse sound from a seismic watergun (Finneran *et al.,* 2010a).

A review of behavioral reactions by pinnipeds to impulse noise can be found in Richardson *et al.* (1995) and Southall *et al.* (2007). Blackwell *et al.* (2004) observed that ringed seals exhibited little or no reaction to pipe-driving noise with mean underwater levels of 157 dB re 1 µPa rms and in air levels of 112 dB re 20 µPa, suggesting that the seals had habituated to the noise. In contrast, captive California sea lions avoided sounds from an impulse source at levels of 165–170 dB re 1 µPa (Finneran *et al.,* 2003b). Experimentally, Götz and Janik (2011) tested underwater, startle responses to a startling sound (sound with a rapid rise time and a 93 dB sensation level [the level above the animal's threshold at that frequency]) and a non-startling sound (sound with the same level, but with a slower rise time) in wild-captured gray seals. The animals exposed to the startling treatment avoided a known food source, whereas animals exposed to the non-startling treatment did not react or habituated during the exposure period. The results of this study highlight the importance of the characteristics of the acoustic signal in an animal's response of habituation.

Vessels

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007). The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79 percent) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. Higher speeds during collisions result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.,* 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.,* hydrodynamic forces are independent of speed).

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentages of Navy traffic relative to overall large shipping traffic are very small (on the order of 2 percent).

There are no records of any Navy vessel strikes to marine mammals during training or testing activities in the MITT Study Area. There have been Navy strikes of large whales in areas outside the Study Area, such as Hawaii and Southern California. However, these areas differ significantly from the Study Area given that both Hawaii and Southern California have a much higher number of Navy vessel activities and much higher densities of large whales.

Other efforts have been undertaken to investigate the impact from vessels (both whale-watching and general vessel traffic noise) and demonstrated impacts do occur (Bain, 2002; Erbe, 2002; Lusseau, 2009; Williams *et al.,* 2006, 2009, 2011b, 2013, 2014a, 2014b; Noren *et al.,* 2009; Read *et al.,* 2014; Rolland *et al.,* 2012; Pirotta *et al.,* 2015). This body of research for the most part has investigated impacts associated with the presence of chronic stressors, which differ significantly from generally intermittent Navy training and testing activities. For example, in an analysis of energy costs to killer whales, Williams *et al.* (2009) suggested that whale-watching in the Johnstone Strait resulted in lost feeding opportunities due to vessel disturbance, which could carry higher costs than other measures of behavioral change might suggest. Ayres *et al.* (2012) recently reported on research in the Salish Sea involving the measurement of southern resident killer whale fecal hormones to assess two potential threats to the species recovery: Lack of prey (salmon) and impacts to behavior from vessel traffic. Ayres *et al.* (2012) suggested that the lack of prey overshadowed any population-level physiological impacts on southern resident killer whales from vessel traffic.

Mitigation

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' NMFS' duty under this ''least practicable adverse impact'' standard is to prescribe mitigation reasonably designed to minimize, to the extent practicable, any adverse population-level impacts, as well as habitat impacts. While population-level

impacts are minimized by reducing impacts on individual marine mammals, not all takes have a reasonable potential for translating to population-level impacts. NMFS' objective under the ''least practicable adverse impact'' standard is to design mitigation targeting those impacts on individual marine mammals that are reasonably likely to contribute to adverse population-level effects.

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training and testing activities described in the Navy's LOA application are considered military readiness activities.

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* No. 1:13–cv–00684 (D. Hawaii March 31, 2015), the court stated that NMFS ''appear[s] to think that [it] satisf[ies] the statutory 'least practicable adverse impact' requirement with a 'negligible impact' finding.'' In light of the court's decision, we take this opportunity to make clear our position that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though the focus of both is on population-level impacts.

A population-level impact is an impact on the population numbers (survival) or growth and reproductive rates (recruitment) of a particular marine mammal species or stock. As we noted in the preamble to our general MMPA implementing regulations, not every population-level impact violates the negligible impact requirement. As we explained, the negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: ''The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs . . . [T]he key factor is the significance of the level of impact on rates of recruitment or survival. Only insignificant impacts on long-term population levels and trends can be treated as negligible.'' See 54 FR 40338, 40341–42 (Sept 29, 1989). Nevertheless, while insignificant impacts on population numbers or growth rates may satisfy the negligible impact requirement, such impacts still must be mitigated, to the extent practicable, under the ''least practicable adverse impact'' requirement. Thus, the negligible impact and least practicable adverse impact requirements are clearly distinct, even though both focus on population-level effects.

As explained in the proposed rule, any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to accomplishing one or more of the general goals listed below:

a. Avoid or minimize injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

b. Reduce the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

c. Reduce the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

d. Reduce the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

e. Avoid or minimize adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

f. For monitoring directly related to mitigation—increase the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Our final evaluation of measures that meet one or more of the above goals includes consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce population-level impacts to marine mammal species and stocks and impacts to their habitat; the proven or likely efficacy of the measures; and the practicability of the suite of measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

NMFS reviewed the proposed activities and the suite of proposed mitigation measures as described in the Navy's LOA application to determine if they would result in the least practicable adverse effect on marine mammals. NMFS described the Navy's proposed mitigation measures in detail in the proposed rule (79 FR 15388, March 19, 2014; pages 15414–15422), and they have not changed. NMFS worked with the Navy in the development of the Navy's initially proposed measures, and they are informed by years of experience and monitoring. As described in the Mitigation Conclusions below and in responses to comments, and in the MITT FEIS/OEIS, additional measures were considered and analyzed, but ultimately not chosen for implementation. Below are the mitigation measures as agreed upon by the Navy and NMFS. For additional details regarding the Navy's mitigation measures, see Chapter 5 in the MITT FEIS/OEIS.

- At least one Lookout during applicable training and testing activities;
- Mitigation zones ranging from 70 yards (yd) (64 m) to 2.5 nautical miles (nm) during applicable activities that involve the use of impulse and non-impulse sources to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range (Tables 6 and 7);
- Mitigation zones of 500 yd (457 m) for whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) during vessel movement, and a mitigation zone of 250 yd (229 m) for marine mammals during use of towed in-water devices being towed from manned platforms; and
- Mitigation zones ranging from 200 yd (183 m) to 1,000 yd (914 m) during activities that involve the use of non-explosive practice munitions.

TABLE 6—PREDICTED RANGES TO TTS, PTS, AND RECOMMENDED MITIGATION ZONES

Activity category	Bin (representative source)*	Predicted average (longest) range to TTS	Predicted average (longest) range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
Non-Impulse Sound					
Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar.	MF1 (SQS–53 ASW hull-mounted sonar).	Page 83 ..... 3,281 yd (3.5 km) for one ping.	Page 83 ..... 100 yd (91 m) for one ping.	Not Applicable	6 dB power down at 1,000 yd. (914 m); 4 dB power down at 500 yd. (457 m); and shutdown at 200 yd. (183 m).
	LF4 (low-frequency sonar) **.	3,821 yd. (3.5 km) for one ping.	100 yd. (91 m) for one ping.	Not Applicable	200 yd. (183 m).**
High-Frequency and Non-Hull Mounted Mid-Frequency Active Sonar.	MF4 (AQS–22 ASW dipping sonar).	230 yd. (210 m) for one ping.	20 yd. (18 m) for one ping.	Not Applicable	200 yd. (183 m).
Explosive and Impulse Sound					
Improved Extended Echo Ranging Sonobuoys.	E4 (Explosive sonobuoy).	434 yd. (397 m)	156 yd. (143 m)	563 yd. (515 m)	600 yd. (549 m).
Explosive Sonobuoys using 0.6–2.5 lb. NEW.	E3 (Explosive sonobuoy).	290 yd. (265 m)	113 yd. (103 m)	309 yd. (283 m)	350 yd. (320 m).
Anti-Swimmer Grenades.	E2 (Up to 0.5 lb. NEW).	190 yd. (174 m)	83 yd. (76 m)	182 yd. (167 m)	200 yd. (183 m).
Mine Countermeasure and Neutralization Activities Using Positive Control Firing Devices.	NEW dependent (see Table 7).				
Mine Neutralization Diver-Placed Mines Using Time-Delay Firing Devices.	E6 (Up to 20 lb. NEW).	407 yd. (372 m)	98 yd. (90 m)	102 yd. (93 m)	1,000 yd. (914 m).
Gunnery Exercises—Small- and Medium-Caliber (Surface Target).	E2 (40 mm projectile)	190 yd. (174 m)	83 yd. (76 m)	182 yd. (167 m)	200 yd. (183 m).
Gunnery Exercises—Large-Caliber (Surface Target).	E5 (5 in. projectiles at the surface ***).	453 yd. (414 m)	186 yd. (170 m)	526 yd. (481 m)	600 yd. (549 m).
Missile Exercises up to 250 lb. NEW (Surface Target).	E9 (Maverick missile)	949 yd. (868 m)	398 yd. (364 m)	699 yd. (639 m)	900 yd. (823 m).
Missile Exercises > 250 to 500 lb. NEW (Surface Target).	E10 (Harpoon missile).	1,832 yd. (1,675 m) ..	731 yd. (668 m)	1,883 yd. (1,721 m) ..	2,000 yd. (1.8 km).
Bombing Exercises	E12 (MK–84 2,000 lb. bomb).	2,513 yd. (2.3 km)	991 yd. (906 m)	2,474 yd. (2.3 km)	2,500 yd. (2.3 km).****
Torpedo (Explosive) Testing.	E11 (MK–48 torpedo)	1,632 yd. (1.5 km)	697 yd. (637 m)	2,021 yd. (1.8 km)	2,100 yd. (1.9 km).\
Sinking Exercises	E12 (Various sources up to the MK–84 2,000 lb. bomb).	2,513 yd. (2.3 km)	991 yd. (906 m)	2,474 yd. (2.3 km)	2.5 nm.****

ASW = anti-submarine warfare, km = kilometers, lb.= pound(s), m = meters, mm = millimeters, NEW = net explosive weight, nm = nautical miles, PTS = Permanent Threshold Shift, TTS = Temporary Threshold Shift, yd. = yards

* This table does not provide an inclusive list of source bins; bins presented here represent the source bin with the largest range to effects within the given activity category.

** The representative source bin and mitigation zone applies to sources that cannot be powered down (*e.g.,* bins LF4 and LF5).

*** The representative source bin E5 has different range to effects depending on the depth of activity occurrence (at the surface or at various depths).

**** Recommended mitigation zones are larger than the modeled injury zones to account for multiple types of sources or charges being used.

TABLE 7—PREDICTED RANGES TO EFFECTS AND MITIGATION ZONE RADIUS FOR MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES USING POSITIVE CONTROL FIRING DEVICES

Charge size net explosive weight (bins)	General mine countermeasure and neutralization activities using positive control firing devices *				Mine countermeasure and neutralization activities using diver placed charges under positive control **			
	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
2.5–5 lb. (1.2–2.3 kg) (E4)	434 yd (474 m)	197 yd (180 m)	563 yd (515 m)	600 yd. (549 m)	545 yd (498 m)	169 yd (155 m)	301 yd (275 m)	350 yd (320 m).
5–10 lb. (2.7–4.5 kg) (E5)	525 yd (480 m)	204 yd (187 m)	649 yd (593 m)	800 yd (732 m)	587 yd (537 m)	203 yd (185 m)	464 yd (424 m)	500 yd (457 m).
>10–20 lb. (5–9.1 kg) (E6)	766 yd (700 m)	288 yd (263 m)	648 yd (593 m)	800 yd (732 m)	647 yd (592 m)	232 yd (212 m)	469 yd (429 m)	500 yd (457 m)

PTS: permanent threshold shift; TTS: temporary threshold shift.

* These mitigation zones are applicable to all mine countermeasure and neutralization activities conducted in all locations specified in Chapter 2 of the Navy's LOA application.

** These mitigation zones are only applicable to mine countermeasure and neutralization activities involving the use of diver placed charges. These activities are conducted in shallow-water and the mitigation zones are based only on the functional hearing groups with species that occur in these areas (mid-frequency cetaceans and sea turtles).

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for MIRC in 2010 as part of the incidental take authorization process. In addition, Regional Stranding Implementation Assistance Plans for MIRC were established in 2011 per a Navy-NMFS MOU. The Stranding Response Plan is specifically intended to outline the applicable requirements in the event that a marine mammal stranding is reported in the MIRC during a major training exercise. NMFS considers all plausible causes within the course of a stranding investigation and these plans in no way presume that any strandings in a Navy range complex are related to, or caused by, Navy training and testing activities, absent a determination made during investigation. The plans are designed to address mitigation, monitoring, and compliance. The Navy worked with NMFS to refine these plans for the new MITT Study Area (to include regionally specific plans that include more logistical detail) and these revised plans are available here: *http://www.nmfs.noaa.gov/pr/permits/incidental/.* Modifications to the Stranding Response Plan may also be made through the adaptive management process.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the first phase of authorizations—and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into consideration (see Adaptive Management, below)) are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

NMFS provided an overview of Navy monitoring and research, highlighted recent findings, and explained the Navy's new approach to monitoring in the proposed rule (79 FR 15388; pages 15422–15426). Below is a summary of the Navy's Integrated Comprehensive Monitoring Program (ICMP) and the Navy's Strategic Planning Process for Marine Species Monitoring.

Integrated Comprehensive Monitoring Program

The Navy's ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. Although the ICMP does not specify actual monitoring field work or projects, it does establish top-level goals that have been developed in coordination with NMFS. As the ICMP is implemented, detailed and specific studies will be developed which support the Navy's top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to contribute towards one or more of the following top-level goals:

- An increase in our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);
- An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* tonal and impulsive sound), through better understanding of one or more of the following: (1) the action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels);

(2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part) associated with specific adverse effects, and/or; (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);

- An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);
- An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: (1) the long-term fitness and survival of an individual; or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);
- An increase in our understanding of the effectiveness of mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the ITA and Incidental Take Statement;
- An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and
- A reduction in the adverse impact of activities to the least practicable level, as defined in the MMPA.

Monitoring addresses the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Quantitative metrics of monitoring effort (*e.g.,* 20 days of aerial surveys) are not a specific requirement. The adaptive management process and reporting requirements serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports, and data. Details of the ICMP and all MIRC monitoring reports are available online (*http://www.navymarinespecies monitoring.us/*).

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around top-level goals, a conceptual framework incorporating a progression of knowledge, and consultation with a Scientific Advisory Group and other regional experts. The Strategic Planning Process for Marine Species Monitoring has been used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. This process would also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navy marinespeciesmonitoring.us/*).

Past Monitoring in the MITT Study Area

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the MIRC and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the proposed training and testing activities within the Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental/* and *http://www.navymarinespeciesmonitoring.us.* NMFS' summary of the Navy's annual monitoring reports was included in the proposed rule (79 FR 15388, March 19, 2014; pages 15423–15424). The Navy has since submitted to NMFS the 5-year Comprehensive Monitoring Report for MIRC, which is available at: *http://www.nmfs.noaa.gov/pr/permits/incidental/.*

Proposed Monitoring for the MITT Study Area

Based on discussions between the Navy and NMFS, future monitoring should address the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Monitoring would follow the strategic planning process and conclusions from adaptive management review by shifting from applying quantitative effort-based metrics, and instead demonstrating progress on the goals of specific scientific monitoring questions. The adaptive management process and reporting requirements would serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports, and data. The strategic planning process would be used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. The strategic planning process would also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible.

The Scientific Advisory Group (SAG) confirmed the Navy/NMFS decision made in 2009 that because so little is known about species occurrence in this area, the priority for the MIRC should be establishing basic marine mammal occurrence. Passive acoustic monitoring, small boat surveys, biopsy sampling, satellite tagging, and photo-identification are all appropriate methods for evaluating marine mammal occurrence and abundance in the MITT Study Area. Fixed acoustic monitoring and development of local expertise ranked highest among the SAG's recommended monitoring methods for the area. There is an especially high level of return for monitoring around the Mariana Islands because so little is currently known about this region. Specific monitoring efforts would result from future Navy/NMFS monitoring program management.

A more detailed description of the Navy's planned projects starting in 2015 (and some continuing from previous years) is available at the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us/.* The Navy will update the status of its monitoring program and funded projects through their Marine Species Monitoring web portal. NMFS will provide one public comment period on the Navy's monitoring program during the 5-year regulations. At this time, the public will have an opportunity (likely in the second or third year) to comment specifically on the Navy's MITT monitoring projects and data collection

to date, as well as planned projects for the remainder of the regulations.

Through the adaptive management process (including annual meetings), the Navy will coordinate with NMFS and the Marine Mammal Commission (Commission) to review and provide input for projects that will meet the scientific objectives that are used to guide development of individual monitoring projects. The adaptive management process will continue to serve as the primary venue for both NMFS and the Commission to provide input on the Navy's monitoring program, including ongoing work, future priorities, and potential new projects. The Navy will continue to submit annual monitoring reports to NMFS as part of the MITT rulemaking and LOA requirements. Each annual report will contain a section describing the adaptive management process and summarize the Navy's anticipated monitoring projects for the next reporting year. Following annual report submission to NMFS, the final rule language mandates a 3-month NMFS review prior to each report being finalized. This will provide ample time for NMFS and the Commission to comment on the next year's planned projects as well as ongoing regional projects or proposed new starts. Comments will be received by the Navy prior to the annual adaptive management meeting to facilitate a meaningful and productive discussion. NMFS and the Commission will also have the opportunity for involvement at the annual monitoring program science review meetings and/or regional Scientific Advisory Group meetings. This will help NMFS and the Commission stay informed and understand the scientific considerations and limitations involved with planning and executing various monitoring projects.

Ongoing Navy Research

The Navy is one of the world's leading organizations in assessing the effects of human activities on the marine environment, and provides a significant amount of funding and support to marine research, outside of the monitoring required by their incidental take authorizations. They also develop approaches to ensure that these resources are minimally impacted by current and future Navy operations. Navy scientists work cooperatively with other government researchers and scientists, universities, industry, and non-governmental conservation organizations in collecting, evaluating, and modeling information on marine resources, including working towards a better understanding of marine mammals and sound. From 2004 to 2014, the Navy has provided over $250 million for marine species research. The Navy sponsors 70 percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. Major topics of Navy-supported marine species research directly applicable to proposed activities within the MITT Study Area include the following:

- Better understanding of marine species distribution and important habitat areas;
- Developing methods to detect and monitor marine species before, during, and after training and testing activities;
- Better understanding the impacts of sound on marine mammals, sea turtles, fish, and birds; and
- Developing tools to model and estimate potential impacts of sound.

It is imperative that the Navy's research and development (R&D) efforts related to marine mammals are conducted in an open, transparent manner with validated study needs and requirements. The goal of the Navy's R&D program is to enable collection and publication of scientifically valid research as well as development of techniques and tools for Navy, academic, and commercial use. The two Navy organizations that account for most funding and oversight of the Navy marine mammal research program are the Office of Naval Research (ONR) Marine Mammals and Biology Program, and the Office of the Chief of Naval Operations (CNO) Energy and Environmental Readiness Division (N45) Living Marine Resources (LMR) Program. The primary focus of these programs has been on understanding the effects of sound on marine mammals, including physiological, behavioral and ecological effects.

The ONR Marine Mammals and Biology Program supports basic and applied research and technology development related to understanding the effects of sound on marine mammals, including physiological, behavioral, ecological, and population-level effects. Current program thrusts include:

- Monitoring and detection;
- Integrated ecosystem research including sensor and tag development;
- Effects of sound on marine life including hearing, behavioral response studies, diving and stress physiology, and Population Consequences of Acoustic Disturbance (PCAD); and
- Models and databases for environmental compliance.

To manage some of the Navy's marine mammal research programmatic elements, OPNAV N45 developed in 2011 a Living Marine Resources (LMR) Research and Development Program (*www.lmr.namy.mil*). The mission of the LMR program is to develop, demonstrate, and assess information and technology solutions to protect living marine resources by minimizing the environmental risks of Navy at-sea training and testing activities while preserving core Navy readiness capabilities. This mission is accomplished by:

- Improving knowledge of the status and trends of marine species of concern and the ecosystems of which they are a part;
- Developing the scientific basis for the criteria and thresholds to measure the effects of Navy generated sound;
- Improving understanding of underwater sound and sound field characterization unique to assessing the biological consequences resulting from underwater sound (as opposed to tactical applications of underwater sound or propagation loss modeling for military communications or tactical applications); and
- Developing technologies and methods to monitor and, where possible, mitigate biologically significant consequences to living marine resources resulting from naval activities, emphasizing those consequences that are most likely to be biologically significant.

The program is focused on three primary objectives that influence program management priorities and directly affect the program's success in accomplishing its mission:

1. Collect, Validate, and Rank R&D Needs: Expand awareness of R&D program opportunities within the Navy marine resource community to encourage and facilitate the submittal of well-defined and appropriate needs statements.

2. Address High Priority Needs: Ensure that program investments and the resulting projects maintain a direct and consistent link to the defined user needs.

3. Transition Solutions and Validate Benefits: Maximize the number of program-derived solutions that are successfully transitioned to the Fleet and system commands.

The LMR program primarily invests in the following areas:

- Developing Data to Support Risk Threshold Criteria;
- Improved Data Collection on Protected Species, Critical Habitat within Navy Ranges;

• New Monitoring and Mitigation Technology Demonstrations;

• Database and Model Development; and

• Education and Outreach, Emergent Opportunities.

LMR currently supports the Marine Mammal Monitoring on Ranges program at the Pacific Missile Range Facility on Kauai and, along with ONR, the multi-year Southern California Behavioral Response Study (*http://www.socal-brs.org*). This type of research helps in understanding the marine environment and the effects that may arise from underwater noise in oceans.

Adaptive Management

Although substantial improvements have been made in our understanding of the effects of Navy training and testing activities (*e.g.,* sonar, underwater detonations) on marine mammals, the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes are appropriate. NMFS and the Navy would meet to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA.

Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. NMFS described the proposed Navy reporting requirements in the proposed rule (79 FR 15388, March 19, 2014; page 15426). Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us* and NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental/*. There are several different reporting requirements that are further detailed in the regulatory text at the end of this document and summarized below.

General Notification of Injured or Dead Marine Mammals

Navy personnel would ensure that NMFS (the appropriate Regional Stranding Coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing mid-frequency active sonar, high-frequency active sonar, or underwater explosive detonations. The Navy would provide NMFS with species identification or a description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photographs or video (if available). The MITT Stranding Response Plan contains further reporting requirements for specific circumstances (*http://www.nmfs.noaa.gov/pr/permits/incidental/*).

Vessel Strike

Since the proposed rule, NMFS has added the following language to address monitoring and reporting measures specific to vessel strike. Most of this language comes directly from the Stranding Response Plan. This section has also been included in the regulatory text at the end of this document. Vessel strike during Navy training and testing activities in the Study Area is not anticipated; however, in the event that a Navy vessel strikes a whale, the Navy shall do the following:

Immediately report to NMFS (pursuant to the established Communication Protocol) the:

• Species identification (if known);

• Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);

• Whether the animal is alive or dead (or unknown); and

• The time of the strike.

As soon as feasible, the Navy shall report to or provide to NMFS, the:

• Size, length, and description (critical if species is not known) of animal;

• An estimate of the injury status (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);

• Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no longer sighted);

• Vessel class/type and operational status;

• Vessel length;

• Vessel speed and heading; and

• To the best extent possible, obtain a photo or video of the struck animal, if the animal is still in view.

Within 2 weeks of the strike, provide NMFS:

• A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (*e.g.,* the speed and changes in speed, the direction and changes in direction, other maneuvers, sonar use, etc., if not classified);

• A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

NMFS and the Navy will coordinate to determine the services the Navy may provide to assist NMFS with the investigation of the strike. The response and support activities to be provided by the Navy are dependent on resource availability, must be consistent with military security, and must be logistically feasible without compromising Navy personnel safety. Assistance requested and provided may vary based on distance of strike from shore, the nature of the vessel that hit the whale, available nearby Navy resources, operational and installation commitments, or other factors.

Annual Monitoring Reports

As noted above, reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the Navy's Marine Species Monitoring web portal and NMFS' Web site as they become available. Progress and results from all monitoring activity conducted within the MITT Study Area, as well as required Major Training Exercise activity, would be summarized in an annual report. A draft report would be submitted either 90 days after the calendar year or 90 days after the conclusion of the monitoring year, date to be determined by the adaptive management review process. In the past, each annual report has summarized data for a single year. At the Navy's suggestion, future annual reports would take a cumulative approach in that each report will compare data from that year to all previous years. For example, the third annual report will include data from the third year and compare it to data from the first and second years. This will provide an ongoing cumulative look at the Navy's annual monitoring and exercise and testing reports and eliminate the need for a separate comprehensive monitoring and exercise summary report at the end of the 5-year period.

Annual Exercise and Testing Reports

The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The detailed annual reports shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described below. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports.

Comments and Responses

On March 19, 2014 (79 FR 15388), NMFS published a proposed rule in response to the Navy's request to take marine mammals incidental to training and testing activities in the MITT Study Area and requested comments, information, and suggestions concerning the request. During the 45-day public comment period, NMFS received comments from the Marine Mammal Commission, private citizens, and an elected official (Senator Vicente (ben) C. Pangelinan, 32nd Guam legislature). Comments specific to section 101(a)(5)(A) of the MMPA and NMFS' analysis of impacts to marine mammals are summarized, sorted into general topic areas, and addressed below and/or throughout the final rule. Comments specific to the MITT EIS/OEIS, which NMFS participated in developing as a cooperating agency and adopted, or that were also submitted to the Navy during the MITT DEIS/OEIS public comment period are addressed in Appendix E (Public Participation) of the FEIS/OEIS. The Natural Resources Defense Council (NRDC) did not submit comments specific to the proposed MITT rulemaking; however, NRDC has indicated their full endorsement of the comments and management recommendations submitted on the MITT DEIS/OEIS by the Commonwealth of the Northern Mariana Islands (Governor Eloy S. Inos). Those comments are addressed in Appendix E of the FEIS/OEIS and are considered by NMFS and the Navy in the context of both this rulemaking and related NEPA compliance. Comments submitted by Governor Inos that are most applicable to this rulemaking include recommended mitigation areas and are addressed below. Last, some commenters presented technical comments on the general behavioral risk function that are largely identical to those posed during the comment period for proposed rules for the Hawaii Range Complex (HRC), Atlantic Fleet Active Sonar Training (AFAST), Atlantic Fleet Training and Testing (AFTT), and Hawaii-Southern California Training and Testing (HSTT) study areas, predecessors to the MITT rule. The behavioral risk function remains unchanged since then, and here we incorporate our responses to those initial technical comments (74 FR 1455, Acoustic Threshold for Behavioral Harassment section, page 1473; 74 FR 4844, Behavioral Harassment Threshold section, page 4865; 78 FR 73010, Acoustic Thresholds section, page 73038; 78 FR 78106, Acoustic Thresholds section, page 78129). Full copies of the comment letters may be accessed at *http://www.regulations.gov.*

Marine Mammal Density Estimates

Comment 1: The Commission recommended that NMFS require the Navy to (1) account for uncertainty in extrapolated density estimates for all species by using the upper limit of the 95% confidence interval or the arithmetic mean plus two standard deviations and (2) then re-estimate the numbers of takes accordingly.

Response 1: The Navy coordinated with both NMFS' Pacific Islands Fisheries Science Center (PIFSC) and Southwest Fisheries Science Center (SWFSC) to identify the best available density estimates for marine mammals occurring in the Study Area. In all cases, a conservative (*i.e.,* greater) estimate was selected. The Navy's use of a mean density estimate is consistent with the approach taken by NMFS to estimate and report the populations of marine mammals in their Stock Assessment Reports and the estimated mean is thus considered the ''best available data.'' Adjusting the mean estimates as suggested would result in unreasonable measures, particularly given the very high coefficient of variation (CV) associated with most marine mammal density estimates. Further, the Navy's acoustic model includes conservative estimates of all parameters (*e.g.,* assumes that the animals do not move horizontally, assumes animals are always head-on to the sound source so that they receive the maximum amount of energy, etc.) resulting in a more conservative (*i.e.,* greater) assessment of potential impacts.

Mitigation, Monitoring, and Reporting

Comment 2: Governor Eloy S. Inos (Commonwealth of the Northern Mariana Islands [CNMI]) recommended (via comments submitted on the MITT DEIS/OEIS) specific geographic marine mammal mitigation areas—or habitat protection areas—to be avoided by all Navy sonar and explosives training and testing activities. These include near-island habitat in the vicinity of the islands of the CNMI, landward of the 3,500 m isobath (based on concentrations of insular populations of odontocetes within the 3,500 m isobath around the Hawaiian Islands); and from the West Mariana Ridge (a chain of conical seamounts paralleling 145 to 170 km west of the Mariana Islands) to the 3,500 m isobaths around the ridge, between roughly 13° and 18° N where two beaked whale sightings were made during a Navy line-transect survey in 2007, passive acoustic data acquired during that same survey showed multiple detections of short-finned pilot whales around the ridgeline, and satellite tagging efforts showed use of the ridge by at least one false killer whale tagged off Rota (Hill *et al.,* 2013).

Response 2: Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''means of effecting the least practical adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The NDAA amended the

MMPA as it relates to military-readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' Therefore, as discussed earlier in the Mitigation section, in making a determination of ''least practicable adverse impact,'' NMFS considers the likely benefits of a mitigation measures being considered to affected species or stocks and their habitat, as well as the likely effect of those measures on personnel safety, practicality of implementation, and the impact on the effectiveness of the military readiness activity.

With respect to the effectiveness of area limitations, temporal (*e.g.,* seasonal) or geographic limitations (time/area limitations) are a direct and effective means of reducing adverse impacts to marine mammals. By reducing the overlap in time and space of the known concentrations of marine mammals and the acoustic footprint associated with the thresholds for the different types of take (either at all times and places where animals are concentrated, or times and places where they are concentrated for specifically important behaviors (such as reproduction or feeding)), the amount of take can be reduced. It is most effective when these measures are used carefully at times and places where their effects are relatively well known. For example, if there is credible evidence that concentrations of marine mammals are known to be high at a specific place or during a specific time of the year (such as the high densities of humpback whales delineated on the Mobley map in the HRC, or North Atlantic right whale critical habitat on the east coast), then these seasonal or geographic exclusions or limitations may be appropriate. However, if marine mammals are known to *prefer* certain *types* of areas (as opposed to specific areas) for certain functions, such as beaked whale use of seamounts or marine mammal use of productive areas like cyclonic eddies, which means that they may or may not be present at any specific time, it is less effective to require avoidance or limited use of the area because they may not be present.

The Governor's recommendation that the Navy exclude sonar and explosives training and testing in the vicinity of the islands of the CNMI landward of the 3,500 m isobaths is based on the fact that in Hawaii insular populations of odontocetes are generally concentrated on important near-island habitat within the 3,500 m isobaths. However, there is nothing to suggest that a similar isobath represents the delineation of important near-island habitat for concentrations of marine mammals around the islands of the CNMI. In fact, satellite tag deployment data from cetacean (short-finned pilot whales, false killer whales, rough-toothed dolphins, bottlenose dolphins, and melon-headed whales) surveys in the waters surrounding Guam and the CNMI during 2010–2014, conducted by the Pacific Islands Fisheries Science Center (PIFSC) in partnership with the Navy, showed that multiple tagged species utilized the areas far offshore beyond the 3,500 m isobath (Hill *et al.,* 2014). These findings are corroborated by line transect surveys conducted by Fulling *et al.* (2011), which document multiple encounters and wide distribution of bottlenose dolphins, rough-toothed dolphins, pantropical spotted dolphins, false killer whales, and sperm whales far offshore of Guam and the CNMI at depths up to 9,874 m. NMFS, therefore, does not consider the near-island waters landward of the 3,500 m isobaths around the islands of the CNMI an appropriate time/area limitation for training and testing activities in the Study Area.

Regarding the Governor's recommendation that the Navy not conduct sonar and explosives training and testing from the West Mariana Ridge to the 3,500 m isobath around the ridge, the relatively limited data cited by the Governor is not suggestive of high concentrations of marine mammals or marine mammal species (*i.e.,* two beaked whales, three short-finned pilot whales, one false killer whale) specific to this ridge. In fact, satellite tagging efforts by PIFSC indicated the vast majority of tagged false killer whales occurred well beyond, and east of, the West Mariana Ridge ridgeline (Hill *et al.,* 2014 and 2015). And while the Navy's line-transect survey and passive acoustic monitoring conducted in 2007 noted the presence of a few individuals of short-finned pilot whales (and beaked whales) along portions of the West Mariana Ridge, PIFSC telemetry data analyzed by Hill *et al.* (2015) indicate a preference away from the ridge and closer to the near-island waters around Guam (though not exclusively so). NMFS recognizes the generally biologically productive nature of some ridges and seamounts; however, there are no data to suggest that important or species-specific habitat (rookeries, reproductive, feeding) exists along the West Mariana Ridge or within the 3,500 m isobath around the ridge.

In addition to NMFS' consideration of the effectiveness of the time/area restrictions recommended by Governor Eloy S. Inos, the Navy has provided in the MITT FEIS/OEIS the following specific reasons explaining why these types of geographic restrictions or limitations are considered impracticable for the Navy:

- Broad Coastal Restrictions (*e.g.,* around entire islands) Based on Distances from Isobaths or Shorelines—Avoiding locations for training and testing activities within the Study Area based on wide-scale distances from isobaths or the shoreline for the purpose of mitigation would be impractical with regard to implementation of military readiness activities, result in unacceptable impact on readiness, and would not be an effective means of mitigation, and would increase safety risks to personnel. Training in shallower water is an essential component to maintaining military readiness. Sound propagates differently in shallower water and operators must learn to train in this environment. Additionally, submarines have become quieter through the use of improved technology and have learned to hide in the higher ambient noise levels of the shallow waters of coastal environments. In real world events, it is highly likely Sailors would be working in, and therefore must train in, these types of areas. The littoral waterspace is also the most challenging area to operate in due to a diverse acoustic environment. It is not realistic or practicable to refrain from training in the areas that are the most challenging and operationally important. Operating in shallow water is essential in order to provide realistic training on real world combat conditions with regard to shallow water sound propagation.
- Avoiding Locations Based on Bathymetry—Requiring training and testing to avoid large areas that encompass a large portion of a particular bathymetric conditions (*e.g.,* high-relief seamounts such as those that comprise the West Mariana Ridge) within a designated Range Complex or study area for the purpose of mitigation would increase safety risks to personnel and result in unacceptable impact on readiness. Limiting training and testing (including the use of sonar and other active acoustic sources or explosives) to avoid steep or complex bathymetric features (*e.g.,* seamounts) would reduce the realism of the military readiness activity. Systems must be tested in a variety of bathymetric conditions to ensure functionality and accuracy in a variety of environments. Sonar operators need to train as they would

operate during real world combat situations. Because real world combat situations include diverse bathymetric conditions, Sailors must be trained to handle bottom bounce, sound passing through changing currents, eddies, or across changes in ocean temperature, pressure, or salinity. Training with reduced realism would alter Sailors' abilities to effectively operate in a real world combat situation, thereby resulting in an unacceptable increased risk to personnel safety and the sonar operator's ability to achieve mission success.

A more detailed discussion can be found in Section 5.3.4.1 of the MITT FEIS/OEIS.

In conclusion, NMFS has considered the time/area restrictions recommended by Governor Eloy S. Inos and has determined that requiring those measures would not reduce adverse effects to marine mammal populations or stocks or provide additional protection of marine mammal populations or stocks in the Study Area beyond those mitigation measures already proposed in the MITT EIS/OEIS and in this final rule (see Mitigation section above). Further, NMFS has considered the Navy's conclusion that such limitations would impose an increased safety risk to personnel, an unacceptable impact on the effectiveness of training and testing activities that would affect military readiness, and an impractical burden with regard to implementation (This process is further detailed in Section 5.2.3 of the MITT FEIS/OEIS).

Comment 3: Senator Vicente (ben) C. Pangelinan (32nd Guam Legislature) expressed concerns with the effectiveness of the mitigation measures (*e.g.,* Lookouts) outlined in the proposed rule. The Senator also questioned whether or not animals exposed to Navy sound sources will return to their usual locations.

Response 3: NMFS has carefully evaluated the Navy's proposed suite of mitigation measures and considered a broad range of other measures (including those recommended during the proposed rule public comment period) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into consideration (see Adaptive Management, below)), along with the additions detailed in the Mitigation section above, are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Regarding Navy Lookouts, Lookouts are a vital aspect of the strategy for limiting potential impacts from Navy activities. Lookouts are qualified and experienced observers of the marine environment. All Lookouts take part in Marine Species Awareness Training so that they are better prepared to spot marine mammals. Detailed information on the Navy's Marine Species Awareness Training program, which speaks to qualifications and training, is also provided in Chapter 5 of the MITT FEIS/OEIS. Their primary duty is to detect objects in the water, estimate the distance from the ship, and identify them as any number of inanimate or animate objects that are significant to a Navy activity or as a marine mammal so that the mitigation measure can be implemented. Lookouts are on duty at all times, day and night, when a ship or surfaced submarine is moving through the water. Lookouts are used continuously, throughout the duration of activities that involve the following: Active sonar, Improved Extended Echo Ranging (IEER) sonobuoys, anti-swimmer grenades, positive control firing devices, timedelay firing devices, gunnery exercises (surface target), missile exercises (surface target), bombing exercises, torpedo (explosive) testing, sinking exercises, at-sea explosives testing, vessels underway, towed in-water devices (from manned platforms), and non-explosive practice munitions. Visual detections of marine mammals would be communicated immediately to a watch station for information disseminations and appropriate mitigation action. The Navy will use passive acoustic monitoring to supplement visual observations by Lookouts during IEER sonobuoy activities, explosive sonobuoys using 0.6–2.5 pound (lb) net explosive weight, torpedo (explosive) testing, and sinking exercises, to detect marine mammal vocalizations. Passive acoustic detections will be reported to Lookouts to increase vigilance of the visual observation. NMFS has carefully considered Navy's use of Lookouts and determined that in combination with the Stranding Response Plans, and the other mitigation measures identified, the Navy's mitigation plan will effect the least practicable adverse impacts on marine mammal species or stocks and their habitat.

There are numerous studies which document the return of marine mammals (both odontocetes and mysticetes) following displacement of an individual (*i.e.,* short-term avoidance) from an area as a result of the presence of a sound (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007; Claridge and Durban 2009; Moretti *et al.,* 2009; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). These studies are referenced and discussed in both the Navy's LOA application (Chapter 6) and the proposed rule (79 FR 15403, March 19, 2014), as well as in the Analysis and Negligible Impact Determination section of this final rule.

Comment 4: Senator Vicente (ben) C. Pangelinan (32nd Guam Legislature) expressed concerns with the Navy's inability to mitigate for onset of TTS during every activity. Other commenters (*e.g.,* Governor Eloy S. Inos, CNMI) on the MITT DEIS/OEIS expressed similar concerns regarding the size of recommended mitigation zones, particularly those proposed for MF1 sonar system activities in which the Governor recommended the Navy ''establish a wider buffer, to the maximum extent practicable.''

Response 4: As discussed in the proposed rule (79 FR 15388, March 19, 2014), TTS is a type of Level B harassment. In the Estimated Take of Marine Mammal section, we quantify the effects that might occur from the specific training and testing activities that the Navy proposes in the MITT Study Area, which includes the number of takes by Level B harassment (behavioral harassment, acoustic masking and communication impairment, and TTS). Through this rulemaking, NMFS has authorized the Navy to take marine mammals by Level B harassment incidental to Navy training and testing activities in the MITT Study Area. In order to issue an ITA, we must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practical adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' We have determined that the mitigation measures implemented under this rule effect the least practical adverse impact on marine mammal species and stocks and their habitat.

The Navy developed activity-specific mitigation zones based on the Navy's acoustic propagation model. Each recommended mitigation zone is intended to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. Mitigating to the predicted maximum range to PTS consequently also mitigates to the predicted maximum range to onset mortality (1 percent mortality), onset slight lung injury, and onset slight gastrointestinal tract injury, since the maximum range to effects for these criteria are shorter than for PTS. Furthermore, in most cases, the mitigation zone actually covers the TTS zone. In some instances, the Navy recommended mitigation zones are larger or smaller than the predicted maximum range to PTS based on the associated effectiveness and operational assessments presented in Section 5.2.3 of the MITT FEIS/OEIS. NMFS worked closely with the Navy in the development of the recommendations and carefully considered them prior to adopting them in this final rule. The mitigation zones contained in this final rule represent the maximum area the Navy can effectively observe based on the platform of observation, number of personnel that will be involved, and the number and type of assets and resources available. As mitigation zone sizes increase, the potential for reducing impacts decreases. For instance, if a mitigation zone increases from 1,000 to 4,000 yd. (914 to 3,658 m), the area that must be observed increases sixteen-fold, which is not practicable. The mitigation measures contained in this final rule balance the need to reduce potential impacts with the Navy's ability to provide effective observations throughout a given mitigation zone. Implementation of mitigation zones is most effective when the zone is appropriately sized to be realistically observed. The Navy does not have the resources to maintain additional Lookouts or observer platforms that would be needed to effectively observe mitigation zones of increased size.

Comment 5: The Commission recommended that NMFS require the Navy to provide the predicted average and maximum ranges for all impact criteria (*i.e.,* behavioral response, TTS, PTS, onset slight lung injury, onset slight gastrointestinal injury, and onset mortality), for all activities (*i.e.,* based on the activity category and representative source bins and include ranges for more than 1 ping), and for all functional hearing groups of marine mammals within MITT representative environments (including shallow-water nearshore areas).

Response 5: The Navy discusses range to effects in Sections 3.4.4.1.1 and 3.4.4.2.1 of the MITT FEIS/OEIS. The active acoustic tables in Section 3.4.4.1.1 illustrate the ranges to PTS, TTS, and behavioral response. The active acoustic tables for PTS and TTS show ranges for all functional hearing groups and the tables for behavioral response show ranges for low-, mid-, and high-frequency cetaceans. The active acoustic source class bins used to assess range to effects represent some of the most powerful sonar sources and are often the dominant source in an activity. The explosives table in Section 3.4.4.2.1 illustrates the range to effects for onset mortality, onset slight lung injury, onset slight gastrointestinal tract injury, PTS, TTS, and behavioral response. The explosives table shows ranges for all functional hearing groups. The source class bins used for explosives range from the smallest to largest amount of net explosive weight. These ranges represent conservative estimates (*i.e.,* longer ranges) based on the assumption that all impulses are 1-second in duration. In fact, most impulses are much shorter and contain less energy. Therefore, these ranges provide realistic maximum distances over which the specific effects would be possible.

NMFS believes that these representative sources provide adequate information to analyze potential effects on marine mammals. Because the Navy conducts training and testing in a variety of environments having variable acoustic propagation conditions, variations in acoustic propagation conditions are considered in the Navy's acoustic modeling and the quantitative analysis of acoustic impacts.

Average ranges to effect are provided in the MITT FEIS/OEIS to show the reader typical zones of impact around *representative* sources. As noted in the LOA application and MITT FEIS/OEIS, the ranges provided in the analysis sections (Section 6 of the LOA and Chapter 3 of the MITT FEIS/OEIS) are the average range to all effects for representative sources in a variety of environments (shallow and deep water). These are not nominal values for deep-water environments, as repeatedly asserted by the Commission.

Comment 6: The Commission recommended that NMFS require the Navy to use passive and active acoustics to supplement visual monitoring during implementation of mitigation measures for all activities that could cause Level A harassment or mortality beyond those explosive activities for which passive acoustic monitoring was already proposed. Specifically, the Commission questioned why passive and active acoustic monitoring used during the Navy's Surveillance Towed Array Sensory System Low Frequency Active (SURTASS LFA) activities is not applied here.

Response 6: The Navy requested Level A (injury) take of marine mammals for impulse and non-impulse sources during training and testing based on its acoustic analysis. While it is impractical for the Navy to conduct passive acoustic monitoring during all training and testing activities (due to lack of resources), the Navy has engineered the use of passive acoustic detection for monitoring purposes, taking into consideration where the largest impacts could potentially occur, and the effectiveness and practicability of installing or using these devices. The Navy will use passive acoustic monitoring to supplement visual observations during Improved Extended Echo Ranging (IEER) sonobuoy activities, explosive sonobuoys using 0.6–2.5 pound (lb) net explosive weight, torpedo (explosive) testing, and sinking exercises, to detect marine mammal vocalizations. However, it is important to note that passive acoustic detections do not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections will be reported to lookouts to increase vigilance of the visual observation.

The active sonar system used by SURTASS LFA is unique to the platforms that use SURTASS LFA. Moreover, this system requires the platforms that carry SURTASS LFA to travel at very slow speeds for the system to be effective. For both of these reasons it is not possible for the Navy to use this system for the platforms analyzed in the MITT FEIS/OEIS.

NMFS believes that the Navy's suite of mitigation measures (which include mitigation zones that exceed or meet the predicted maximum distance to PTS) will typically ensure that animals will not be exposed to injurious levels of sound. To date, the monitoring reports submitted by the Navy for MIRC (or the AFTT and HSTT Study Areas), do not show any evidence of injured marine mammals.

Comment 7: The Commission recommended that NMFS require the Navy to use a second clearance category of 60 minutes for deep-diving species (*i.e.,* beaked whales and sperm whales) if the animal has not been observed exiting the mitigation zone following shutdown of acoustic activities due to a marine mammal sighting.

Response 7: NMFS does not concur with the Commission's recommendation that the Navy should use a second clearance category of 60 minutes for deep-diving species for the following reasons:

- As described in the MITT FEIS/OEIS in Chapter 5 (Standard Operating Procedures, Mitigation, and Monitoring), a 30-minute wait period more than covers the average dive times of most marine mammals.
- The ability of an animal to dive longer than 30 minutes does not mean that it will always do so. Therefore, the 60-minute delay would only potentially add value in instances when animals had remained under water for more than 30 minutes.
- Navy vessels typically move at 10–12 knots (5–6 m/sec) when operating active sonar and potentially much faster when not. Fish *et al.* (2006) measured speeds of seven species of odontocetes and found that they ranged from 1.4–7.30 m/sec. Even if a vessel was moving at the slower typical speed associated with active sonar use, an animal would need to be swimming near sustained maximum speed for an hour in the direction of the vessel's course to stay within the safety zone of the vessel. Increasing the typical speed associated with active sonar use would further narrow the circumstances in which the 60-minute delay would add value.
- Additionally, the times when marine mammals are deep-diving (*i.e.,* the times when they are under the water for longer periods of time) are the same times that a large portion of their motion is in the vertical direction, which means that they are far less likely to keep pace with a horizontally moving vessel.
- Given that, the animal would need to have stayed in the immediate vicinity of the sound source for an hour, and considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the source.

In summary, NMFS believes that it is unlikely that a single cetacean would remain in the safety zone of a Navy sound source for more than 30 minutes, and therefore disagrees with the Commission that a second clearance category of 60 minutes for deep-diving species is necessary.

Comment 8: The Commission recommended that NMFS require the Navy to (1) provide the range to effects for all impact criteria (*i.e.,* behavioral response, TTS, PTS, onset slight lung injury, onset slight gastrointestinal injury, and onset mortality) for underwater detonations that involve time-delay firing devices based on sound propagation in shallow-water nearshore environments for the associated marine mammal functional hearing groups and (2) use those data coupled with the maximum charge weight and average swim speed of the fastest group of marine mammals as the basis for the mitigation zone for underwater detonations that involve time-delay firing devices. If NMFS does not require the Navy to adjust its mitigation zones, then it should authorize the numbers of takes for Level A harassment and mortality based on the possibility that marine mammals could be present in the mitigation zone when the explosives detonate and based on updated, more realistic swim speeds.

Response 8: As shown in the LOA application (Table 11–1) and MITT FEIS/OEIS (Table 5.3–2), which provide ranges to effects for explosive sources used in the MITT Study Area, the maximum range to PTS effects for a 20 lb. NEW charge used with this activity is 102 yd. (93 m), and the average range to TTS effects is 407 yd. (372 m). A 20 lb. NEW charge is the largest used in Mine Neutralization Activities Using Diver-Placed Time-Delay Firing Devices. These ranges to effects for explosive sources represent conservative estimates assuming all impulses (*i.e.,* explosions) are 1 second in duration. In fact, most impulses from explosions are much less than 1 second in duration and therefore contain much less energy than the amount of energy used to produce the estimated ranges to effects.

The proposed mitigation zone of 1,000 yd. (914 m) is well beyond the estimated range to effects and is overprotective for mine neutralization activities using diver-placed time-delay firing devices. The ranges to onset mortality, onset slight lung injury, and onset gastrointestinal injury are all less than the range to PTS level effects and would be well within the mitigation zone. As described in Chapter 5, Section 5.3.1.2.2.5 (Mine Neutralization Activities Using Diver-Placed Time-Delay Firing Devices) of the MITT FEIS/OEIS, four Lookouts and two small boats represent the maximum level of effort that the Navy can commit for observing the mitigation zone for this activity given the number of personnel and assets available. In addition to the four lookouts, divers and aircrew (if aircraft are involved in the activity) would also serve as lookouts in addition to conducting their regular duties to support the activity. As noted by Navy in previous responses to comments on other Navy training and testing EIS/OEISs, the mitigation zone is sufficiently large to account for a portion of the distance that a marine mammal could potentially travel during the time delay based on a reasonable assumption of marine mammal swim speeds.

The supplemental information presented by the Commission to support the comment points out that Table 6–12 in the LOA application does not present ranges to effects for Bin E6 (up to a 20 lb. NEW). As stated in the table heading, the table is intended to be representative and is not specific to the MITT Study Area; therefore not all bins are included. However, the table shows that the proposed mitigation zone of 1,000 yd. (914 m) would also be protective against injury exposures from explosives in Bin E7 (21 lb. to 60 lb. NEW).

Furthermore, as a result of essential fish habitat consultations with NMFS, the Navy has agreed to maintain the maximum NEW charge used at the Outer Apra Harbor Underwater Detonation Site at 10 lb. NEW and not to increase the maximum NEW to 20 lb., as proposed under Alternatives 1 and 2 of the FEIS/OEIS and in the Navy's LOA application. A maximum charge of 20 lb. NEW is still proposed for use at the Agat Bay Mine Neutralization Site, which is farther from shore and in deeper water. The maximum charge at the Piti Floating Mine Neutralization Site will also remain at 10 lb. NEW.

Comment 9: The Commission recommended that NMFS require the Navy to submit a proposed monitoring plan for the MITT Study Area for public review and comment prior to issuance of final regulations.

Response 9: NMFS provided an overview of the Navy's Integrated Comprehensive Monitoring Program (ICMP) in the proposed rule (79 FR 15388, March 19, 2014). While the ICMP does not specify actual monitoring field work or projects, it does establish top level goals that have been developed by the Navy and NMFS. As explained in the proposed rule, detailed and specific studies will be developed as the ICMP is implemented and funding is allocated.

Since the proposed rule was published, the Navy has provided a more detailed short-term plan for the first year of the rule. Monitoring in 2015 will be a combination of previously funded FY–14 ''carry-over'' projects from Phase I and new FY–15 project starts under the vision for Phase II monitoring. A more detailed description of the Navy's planned projects starting

in 2015 (and some continuing from previous years) are available on NMFS' Web site (*www.nmfs.noaa.gov/pr/permits/incidental/*).

Additionally, NMFS will provide one public comment period on the Navy's monitoring program during the 5-year regulations. At this time, the public will have an opportunity (likely in the second year) to comment specifically on the Navy's MITT monitoring projects and data collection to date, as well as planned projects for the remainder of the regulations. The public also has the opportunity to review the Navy's monitoring reports, which are posted and available for download every year from the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/*. Details of already funded MITT monitoring projects and new start projects are available through the Navy's marine species monitoring Web site: *http://www.navymarinespeciesmonitoring.us/*. The Navy will update the status of their monitoring projects through the marine species monitoring site, which serves as a public portal for information regarding all aspects of the Navy's monitoring program, including background and guidance documents, access to reports, and specific information on current monitoring projects.

Through the adaptive management process (including annual meetings), the Navy will coordinate with NMFS and the Commission to review and revise, if required, the list of intermediate scientific objectives that are used to guide development of individual monitoring projects. As described previously in the Monitoring section of this document, NMFS and the Commission will also have the opportunity to attend annual monitoring program science review meetings and/or regional Scientific Advisory Group meetings.

The Navy will continue to submit annual monitoring reports to NMFS, which describe the results of the adaptive management process and summarize the Navy's anticipated monitoring projects for the next reporting year. NMFS will have a three-month review period to comment on the next year's planned projects, ongoing regional projects, and proposed new project starts. NMFS' comments will be submitted to the Navy prior to the annual adaptive management meeting to facilitate a meaningful and productive discussion between NMFS, the Navy, and the Commission.

Effects Analysis/Takes

Comment 10: The Commission recommended that NMFS authorize the total numbers of model-estimated Level A harassment and mortality takes rather than allowing the Navy to reduce the estimated numbers of Level A harassment and mortality takes based on the Navy's proposed post-model analysis.

Response 10: NMFS believes that the post-modeling analysis is an effective method for quantifying the implementation of mitigation measures to reduce impacts on marine mammals, and that the resulting exposure estimates are, nevertheless, a conservative estimate of impacts on marine mammals.

See Section 3.4.3.2 (Marine Mammal Avoidance of Sound Exposures) as presented in the MITT FEIS/OEIS for the discussion of the science regarding the avoidance of sound sources by marine mammals. In addition, the Technical Report, Post-Model Quantitative Analysis of Animal Avoidance Behavior and Mitigation Effectiveness for the Mariana Islands Training and Testing (*http://www.mitt-eis.com*), goes into detail on how the avoidance and mitigation factors were used and provides scientific support from peer-reviewed research. The Navy analysis does not indicate nor is it expected that marine mammals would abandon important habitat on a long-term or even permanent basis. As presented in Section 3.4.5.2 (Summary of Observations During Previous Navy Activities) of the MITT FEIS/OEIS, the information gathered to date including research, monitoring before, during, and after training and testing events across the Navy since 2006, has resulted in the assessment that it is unlikely there will be impacts on populations of marine mammals (such as whales, dolphins and porpoise) having any long-term consequences as a result of the proposed continuation of training and testing in the ocean areas historically used by the Navy including the Study Area.

As part of the post-modeling analysis, the Navy reduced some predicted PTS exposures and mortality based on the potential for marine mammals to be detected and mitigation implemented. Given this potential, not taking into account some possible reduction in Level A exposures and mortality would result in a less realistic, overestimation of possible Level A and mortality takes, as if there were no mitigation measures implemented. The period of time between clearing the impact area of any non-participants or marine mammals and weapons release is on the order of minutes, making it highly unlikely that a marine mammal would enter the mitigation zone.

The assignment of mitigation effectiveness scores and the appropriateness of consideration of sightability using detection probability, g(O), when assessing the mitigation in the quantitative analysis of acoustic impacts is discussed in the MITI FEIS/OEIS (Section 3.4.3.3, Implementing Mitigation to Reduce Sound Exposures). Additionally, the activity category, mitigation zone size, and number of Lookouts are provided in the proposed rule (FR 79 15388) and MITT FEIS/OEIS (Section 5, Tables 5.3–2 and 5.4–1). In addition to the information already contained within the MITT FEIS/OEIS, the Post-Model Quantitative Analysis of Animal Avoidance Behavior and Mitigation Effectiveness for the Mariana Islands Training and Testing Technical Report (*http://www.mitt-eis.com*) describes the process for the post-modeling analysis in further detail. There is also information on visual detection leading to the implementation of mitigation in the annual exercise reports provided to NMFS and briefed annually to NMFS and the Commission. These annual exercise reports have been made available and can be found at *http://www.navymarinespeciesmonitoring.us/* in addition to *http://www.nmfs.noaa/pr/permits/incidental.*

In summary, NMFS and the Navy believe consideration of marine mammal sightability and activity-specific mitigation effectiveness is appropriate in the Navy's quantitative analysis in order to provide decision makers a reasonable assessment of potential impacts under each alternative. A comprehensive discussion of the Navy's quantitative analysis of acoustic impacts, including the post-model analysis to account for mitigation and avoidance, is presented in Chapter 6 of the LOA application.

Comment 11: The Commission recommended that NMFS require the Navy to round its takes, based on those takes in the MITT FEIS/OEIS Criteria and Thresholds Technical Report tables, to the nearest whole number or zero in all of its take tables and then authorize those numbers of takes.

Response 11: The exposure numbers presented in the MITT FEIS/OEIS Criteria and Thresholds Technical Report are raw model output that have not been adjusted by post-processing to account for likely marine mammal behavior or the effect from implementation of mitigation measures. All fractional post-processed exposures for a species across all events within

each category subtotal (Training, Testing, Impulse, and Non-Impulse) are summed to provide an annual total predicted number of effects. The final exposure numbers presented in the LOA application and the MITT FEIS/OEIS incorporate post-processed exposures numbers that have been rounded down to the nearest integer so that subtotals correctly sum to total annual effects rather than exceed the already overly conservative total exposure numbers.

Comment 12: Senator Vicente (ben) C. Pangelinan (32nd Guam Legislature) expressed concerns with the purported lack of data or supporting studies in the proposed rule on how anthropogenic sound will affect reproduction and survival of marine mammals in the Study Area. The Senator cites studies by Claridge (2013) and others (*e.g.,* International Whaling Commission, 2005) that suggest stressors associated with Navy sonar use and impulse sound may lead to strandings and lower reproductive rates in some species. The Senator also points out that several authors have established that long-term and intense disturbance stimuli can cause population declines in some (terrestrial) species.

Response 12: NMFS fully considers impacts to recruitment and survival (population-level effects) when making a negligible impact determination and when prescribing the means of effecting the least practicable impact on species and stocks. NMFS is constantly evaluating new science and how to best incorporate it into our decisions. This process involves careful consideration of new data and how it is best interpreted within the context of a given management framework. Recent studies have been published regarding behavioral responses that are relevant to the proposed activities and energy sources: Moore and Barlow, 2013; DeRuiter *et al.,* 2013; and Goldbogen *et al.,* 2013, among others. Each of these articles emphasizes the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source, etc.) in evaluating behavioral responses of marine mammals to acoustic sources. In addition, New *et al.,* 2013 and 2014; Houser *et al.,* 2013; and Claridge, 2013 were recently published. These and other relevant studies are discussed in both the Potential Effects of Specified Activities on Marine Mammals section and the Analysis and Negligible Impact Determination section of this final rule.

The Analysis and Negligible Impact Determination section of this final rule includes a species or group-specific analysis (see Group and Species-Specific Analysis) of potential effects on marine mammal in the Study Area, as well as a discussion on long-term consequences (see Long-Term Consequences) for individuals or populations resulting from Navy training and testing activities in the Study Area. As discussed later in this document, populations of beaked whales and other odontocetes in the Bahamas, and in other Navy fixed ranges that have been operating for tens of years, appear to be stable. Range complexes where intensive training and testing have been occurring for decades have populations of multiple species with strong site fidelity (including highly sensitive resident beaked whales at some locations) and increases in the number of some species.

There is no direct evidence that routine Navy training and testing spanning decades has negatively impacted marine mammal populations at any Navy range complex. In at least three decades of similar activities, only one instance of injury to marine mammals (March 4, 2011; three long-beaked common dolphin) has been documented as a result of training or testing using an impulse source (underwater explosion). Years of monitoring of Navy-wide activities (since 2006) have documented hundreds of thousands of marine mammals on the range complexes and there are only two instances of overt behavioral change that have been observed. Years of monitoring of Navy-wide activities on the range complexes have documented no demonstrable instances of injury to marine mammals as a direct result of non-impulsive acoustic sources.

Stranding events coincident with Navy MFAS use in which exposure to sonar is believed to have been a contributing factor were detailed in the Stranding and Mortality section of the proposed rule. However, for some of these stranding events, a causal relationship between sonar exposure and the stranding could not be clearly established (Cox *et al.,* 2006). In other instances, sonar was considered only one of several factors that, in their aggregate, may have contributed to the stranding event (Freitas, 2004; Cox *et al.,* 2006). NMFS and the Navy have identified certain circumstances/factors (including the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars) that have been present in some instances where strandings are associated with active Navy sonar (*e.g.,* Bahamas, 2000). Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present. In addition, the Navy has developed specific planning and monitoring measures to use when that suite of factors is present. These circumstances/factors do not exist in their aggregate in the MITT Study Area.

Because of the association between tactical MFA sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

Based on the best available science NMFS concludes that exposures to marine mammal species and stocks due to MITT activities would result in only short-term effects to most individuals exposed and are not expected to affect annual rates of recruitment or survival (population-level impacts having any long-term consequences). Results of the Navy's acoustic analysis and NMFS' analysis, as well as the relevant studies supporting this conclusion, are referenced and summarized in the Analysis and Negligible Impact Determination section of this final rule.

Criteria and Thresholds

Comment 13: The Commission recommended that NMFS require the Navy to (1) use 157 rather than 152 dB re 1 μPa^2-sec as the temporary threshold shift (TTS) threshold for high-frequency cetaceans exposed to acoustic sources, (2) use 169 rather than 172 dB re 1 μPa^2-sec as the TTS thresholds for mid- and low-frequency cetaceans exposed to explosive sources, (3) use 145 rather than 146 dB re 1 μPa^2-sec as the TTS threshold for high-frequency cetaceans for explosive sources, and (4)(a) based on these changes to the TTS thresholds, adjust the permanent threshold shift (PTS) thresholds for high-frequency

cetaceans exposed to acoustic sources by increasing the amended TTS threshold by 20 dB, and for low-, mid-, and high-frequency cetaceans exposed to explosive sources, by increasing the amended TTS thresholds by 15 dB and (b) adjust the behavioral thresholds for low-, mid-, and high-frequency cetaceans exposed to explosive sources by decreasing the amended TTS thresholds by 5 dB.

Response 13: NMFS does not concur with the Commissions' recommendations for similar reasons to those provided in prior responses to Comission comments on the HSTT and AFTT proposed rulemakings. The values derived for impulsive and non-impulsive TTS are based on data from peer-reviewed scientific studies. The development of these thresholds and criteria is detailed in the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report (Finneran and Jenkins, 2012) that is referenced in the MITT FEIS/OEIS (see Section 3.4.3.1.4 [Thresholds and Criteria for Predicting Acoustic and Explosive Impacts on marine mammals]) and available at *http://www.mitt-eis.com.*

As presented in Finneran and Jenkins (2012) the thresholds incorporate new findings since the publication of Southall *et al.* (2007) and the evolution of scientific understanding since that time. Note that Dr. Finneran was one of the authors for Southall *et al.* (2007) and so is completely familiar with the older conclusions presented in the 2007 publication and, therefore, was able to integrate knowledge into development of the refined approach presented in Finneran and Jenkins (2012) based on evolving science since 2007.

Briefly, the original experimental data is weighted using the prescribed weighting function to determine the numerical threshold value. The Commission did not consider the appropriate weighting schemes when comparing thresholds presented in Southall *et al.* (2007) and those presented in Finneran and Jenkins (2012). TTS thresholds presented in Finneran and Jenkins (2012) are appropriate when the applicable weighting function (Type II) is applied to the original TTS data; TTS thresholds in Southall *et al.* (2007) were based on M-weighting.

For example, while it is true that there is an unweighted 12-dB difference for onset-TTS between beluga watergun (Finneran *et al.,* 2002) and tonal exposures (Schlundt *et al.,* 2000), the difference after weighting with the Type II MF-cet weighting function (from Finneran and Jenkins, 2012), is 6-dB. The Commission has confused (a) the 6 dB difference in PTS and TTS thresholds based on peak pressure described in Southall *et al.* 2007 with (b) the difference between impulsive and non-impulsive thresholds in Finneran and Jenkins (2012), which is coincidentally 6 dB.

The same offset between impulsive and non-impulsive temporary threshold shift, for the only species where both types of sound were tested (beluga), was used to convert the Kastak *et al.* (2005) data (which used non-impulsive tones) to an impulsive threshold. This method is explained in Finneran and Jenkins (2012) and Southall *et al.* (2007).

The thresholds and criteria used in the MITT analysis have already incorporated the correct balance of conservative assumptions that tend towards overestimation in the face of uncertainty. Additional details regarding the process are provided in Section 3.4.3.1.5 (Quantitative Analysis) of the MITT FEIS/OEIS. In addition, the summary of the thresholds used in the analysis are presented in Section 3.4.3.1.4 (Thresholds and Criteria for Predicting Acoustic and Explosive Impacts on Marine Mammals) of the MITT FEIS/OEIS. NMFS was included in the development of the current thresholds. The thresholds used in the current analysis remain the best available estimate of the number and type of take that may result from the Navy's use of acoustic sources in the MITT Study Area, although NMFS and the Navy will continue to revise those thresholds based on emergent research.

Comment 14: The Commission recommended that NMFS require the Navy to (1) describe what it used as the upper limit of behavioral response function for low-frequency cetaceans (BRF_1) and the upper limits of BRF_2 for both mid- and high-frequency cetaceans, including if it assumed a 1-sec ping for all sources and (2) if the upper limits of the BRFs were based on weighted thresholds, use the unweighted or M-weighted thresholds of 195 dB re 1 μPa^2-sec for low- and mid-frequency cetaceans and 176 dB re 1 μPa^2-sec for high-frequency cetaceans to revise its behavior take estimates for all marine mammals exposed to acoustic sources.

Response 14: The behavioral response functions (BRFs) used to define criteria for assessing behavioral responses to underwater sound sources are discussed in Section 3.4.3.1.4 (Thresholds and Criteria for Predicting Acoustic and Explosive Impacts on Marine Mammals) of the FEIS/OEIS and in the Technical Report, Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Finneran and Jenkins, 2012). The BRFs have been used by the Navy to assess behavioral reactions in marine mammals for several years and are described in greater detail in the Atlantic Fleet Active Sonar Training EIS/OEIS (see Section 4.4.5.3.2 Development of the Risk Function), as well as in the Southern California Range Complex EIS/OEIS and the Hawaii Range Complex EIS/OEIS.

Harassment under the BRF and harassment under the TTS criteria are both considered Level B takes under MMPA, and NMFS has determined that animals whose exposure both exceeds TTS threshold and results in behavioral response under the BRF should not be double counted or counted as taken twice by the same acoustic exposure. Although behavioral responses (non-TTS) and TTS are both considered as Level B under the MMPA for military readiness, they are two separate criteria based on different metrics and different frequency weighting systems. Sound exposure level (SEL) is the most appropriate metric to predict TTS, because it accounts for signal duration. Sound pressure level (SPL) is independent of signal duration and is the metric that best correlates with potential behavioral response. Furthermore, to predict TTS, SEL is weighted with a Type II function for cetaceans, whereas to predict a behavioral response, SPL is weighted with a Type I function. Mathematically, SEL (for TTS) and SPL (for behavior) are not on the same linear scale, and their relationship to one another changes based on the frequency and duration of the sounds being analyzed.

Based on the model-estimated exposure results, an animat (virtual representation of an animal) exposed to sound that exceeds both the TTS (SEL) threshold and Behavioral (SPL) threshold is reported as a TTS (higher level) effect. It is important to note that TTS is a step function, so 100 percent of animals predicted to equal or surpass the TTS threshold would be counted as TTS effects. Behavioral effects are estimated as the percentage of animals (*i.e.* between 0 and 100 percent) that may be affected based on the highest received SPL on a BRF.

Vessel Strikes

Comment 15: The Commission recommended that NMFS require the Navy to use its spatially and temporally dynamic simulation models rather than simple probability calculations to estimate strike probabilities for specific activities (*i.e.,* movement of vessels, torpedoes, unmanned underwater vehicles and use of expended

munitions, ordnance, and other devices).

Response 15: The Navy considered using a dynamic simulation model to estimate strike probability. However, the Navy determined, and NMFS concurs, that the use of historical data was a more appropriate way to analyze the potential for strike. The Navy's strike probability analysis in the MITT FEIS/OEIS is based upon actual data collected from historical use of vessels, in-water devices, and military expended materials, and the likelihood that these items may have the potential to strike an animal. This data accounts for real world variables over the course of many years, and any model would be expected to be less accurate than the use of actual data. There is no available science regarding the necessary functional parameters for a complex dynamic whale strike simulation model; there are large unknowns regarding the data that would be necessary such as the density, age classes, and behavior of large whales in the MITT Study Area; and there are no means to validate the output of a model given there is no empirical data (not strikes) to ''seed the dynamic simulation.'' Therefore, use of historical data from identical activities elsewhere and additional use of a probability analysis remain a more reasonable analytical approach.

The Commission's disagreement over the method the Navy has used to estimate strike probability is noted. Any increase in vessel movement, as discussed in Section 3.4.4.4.1 (Impacts from Vessels) of the MITT FEIS/OEIS, over the No Action is still well below areas such as the Southern California Range Complex (SOCAL) where the density of large whales and the number of Navy Activities is much higher than any of the MITT alternatives and yet strikes to large whales are still relatively rare in SOCAL. Additionally, while the number of training and testing activities is likely to increase, it is not expected to result in an appreciable increase in vessel use or transits since multiple activities usually occur from the same vessel. The Navy is not proposing substantive changes in the locations where vessels have been used over the last decade.

There has never been a vessel strike to a whale during any active training or testing activities in the Study Area. A detailed analysis of strike data is also contained in Chapter 6 (Section 6.3.4, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy does not anticipate vessel strikes to marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Therefore, NMFS is not authorizing mysticete takes (by injury or mortality) from vessel strikes during the 5-year period of the MITT regulations.

General Opposition

Comment 16: One commenter expressed general opposition to Navy activities and NMFS' issuance of an MMPA authorization.

Response 16: NMFS appreciates the commenter's concern for the marine environment. However, the MMPA directs NMFS to issue an incidental take authorization if certain findings can be made. NMFS has determined that the Navy's training and testing activities will have a negligible impact on the affected species or stocks and, therefore, we plan to issue the requested MMPA authorization.

Other

Comment 17: One commenter asked about the effects of Navy activities on marine habitat and other resources not addressed in the proposed rule.

Response 17: The MITT FEIS/OEIS addresses all potential impacts to the human environment, and is available online at *http://www.mitt-eis.com*. The MITT DEIS/OEIS was made available to the public on September 13, 2013 and was referenced in the proposed rule (79 FR 15388, March 19, 2014).

Comment 18: One commenter requested additional details or elaboration regarding specific Navy training and testing activities (*e.g.,* vessel type and speed, inwater detonations, Pierside Location maintenance, etc.).

Response 18: Detailed information about each proposed activity (stressor, training or testing event, description, sound source, duration, and gepgraphic location) can be found in the MITT FEIS/OEIS.

Comment 19: One commenter had several questions regarding information (*e.g.,* species presence, distribution, stock abundance, ESA/MMPA status) presented in Table 6 (Marine Mammals with Possible or Confirmed Presence within the Study Area) and the Description of Marine Mammals in the Area of the Specified Activity section of the proposed rule.

Response 19: As stated in the proposed rule, information on the status, occurrence and distribution, abundance, derivation of density estimates, and vocalizations of marine mammal species in the Study Area may be viewed in Chapters 3 and 4 of the LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/*). This information was compiled by the Navy from peer-reviewed literature, NMFS annual stock assessment reports (SARs) for marine mammals (*http://www.nmfs.noaa.gov/pr/species/mammals;* Carretta *et al.,* 2014; Allen and Angliss, 2014), and marine mammal surveys using acoustic and visual observations from aircraft and ships. Further information on the general biology and ecology of marine mammals is included in the MITT FEIS/OEIS (*http://www.mitt-eis.com*.).

Comment 20: One commenter questioned NMFS' proposed authorization of take through issuance of a single 5-year LOA (multi-year LOA) rather than issuance of annual LOAs.

Response 20: The ability to issue a multi-year LOA reduces administrative burdens on both NMFS and the Navy. In addition, a multi-year LOA would avoid situations where the last minute issuance of LOAs necessitates the commitment of extensive resources by the Navy for contingency planning.

The regulations still: (1) Require the Navy to submit annual monitoring and exercise reports; (2) require that NMFS and the Navy hold annual monitoring and adaptive management meetings that ensure NMFS is able to evaluate the Navy's compliance and marine mammal impacts with the same attention and frequency; and (3) allow for a LOA to be changed at any time, as appropriate, to incorporate any needed mitigation or monitoring measures developed through adaptive management, based on the availability of new information regarding military readiness activities or the marine mammals affected. If, through adaptive management, proposed modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

Estimated Take

In the Estimated Take section of the proposed rule, NMFS described the potential effects to marine mammals from active sonar and underwater detonations in relation to the MMPA regulatory definitions of Level A and Level B harassment (79 FR 15388, pages 15426–15430). That information has not changed and is not repeated here. It is important to note that, as Level B Harassment is interpreted here and quantified by the behavioral thresholds described below, the fact that a single behavioral pattern (of unspecified duration) is abandoned or significantly altered and classified as a Level B take does not mean, necessarily, that the

fitness of the harassed individual is affected either at all or significantly, or that, for example, a preferred habitat area is abandoned. Further analysis of context and duration of likely exposures and effects is necessary to determine the impacts of the estimated effects on individuals and how those may translate to population-level impacts, and is included in the Analysis and Negligible Impact Determination.

Tables 8 and 9 provide a summary of non-impulsive and impulsive thresholds to TTS and PTS for marine mammals. A detailed explanation of how these thresholds were derived is provided in the MITT FEIS/OEIS Criteria and Thresholds Technical Report (*http://www.mitt-eis.com*) and summarized in Chapter 6 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/*).

TABLE 8—ONSET TTS AND PTS THRESHOLDS FOR NON-IMPULSE SOUND

Group	Species	Onset TTS	Onset PTS
Low-Frequency Cetaceans	All mysticetes	178 dB re 1μPa²-sec(LF_{II})	198 dB re 1μPa²-sec(LF_{II}).
Mid-Frequency Cetaceans	Most delphinids, beaked whales, medium and large toothed whales.	178 dB re 1μPa²-sec(MF_{II})	198 dB re 1μPa²-sec(MF_{II}).
High-Frequency Cetaceans	Porpoises, *Kogia* spp.	152 dB re 1μPa²-sec(HF_{II})	172 dB re 1μPa²-secSEL (HF_{II}).

LF_{II}, MF_{II}, HF_{II}: New compound Type II weighting functions.

TABLE 9—IMPULSIVE SOUND EXPLOSIVE THRESHOLDS FOR PREDICTING INJURY AND MORTALITY

Group	Species	Slight Injury			Mortality
		PTS	GI Tract	Lung	
Low-frequency Cetaceans	All mysticetes	187 dB SEL (LF_{II}) or 230 dB Peak SPL.	237 dB SPL	Equation 1	Equation 2.
Mid-frequency Cetaceans	Most delphinids, medium and large toothed whales.	187 dB SEL (MF_{II}) or 230 dB Peak SPL.			
High-frequency Cetaceans	Porpoises and *Kogia* spp	161 dB SEL (HF_{II}) or 201 dB Peak SPL.			

$$\text{Equation 1:} \quad = 39.1M^{1/3}\,(1+[D_{Rm}/10.081])^{1/2}\,\text{Pa - sec}$$

$$\text{Equation 2:} \quad = 91.4M^{1/3}\,(1+[D_{Rm}/10.081])^{1/2}\,\text{Pa – sec}$$

Where:

M = mass of the animals in kg

D_{Rm} = depth of the receiver (animal) in meters

$$R = \frac{1-\left(\frac{L-B}{K}\right)^{-A}}{1-\left(\frac{L-B}{K}\right)^{-2A}}$$

Where:

R = Risk (0–1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50-percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

Take Request

The MITT FEIS/OEIS considered all training and testing activities proposed to occur in the Study Area that have the potential to result in the MMPA defined take of marine mammals. The potential stressors associated with these activities included the following:

- Acoustic (sonar and other active acoustic sources, explosives, weapons firing, launch and impact noise, vessel noise, aircraft noise);
- Energy (electromagnetic devices);
- Physical disturbance or strikes (vessels, in-water devices, military expended materials, seafloor devices);
- Entanglement (fiber optic cables, guidance wires, parachutes);
- Ingestion (munitions, military expended materials other than munitions);
- Indirect stressors (impacts to habitat [sediment and water quality, air quality] or prey availability).

NMFS has determined that two stressors could potentially result in the incidental taking of marine mammals from training and testing activities within the Study Area: (1) Non-impulse acoustic stressors (sonar and other active acoustic sources) and (2) impulse acoustic stressors (explosives). Non-impulse and impulse stressors have the potential to result in incidental takes of marine mammals by Level A (injury) or Level B (behavioral) harassment. NMFS also considered the potential for vessel strikes to impact marine mammals, and that assessment is presented below. Lethal takes of large whales and beaked whales, while not anticipated or predicted in the Navy's acoustic analysis, were originally conservatively requested by the Navy for MITT training

and testing activities over the 5-year period of NMFS' final authorization. That request was included in NMFS' proposed rule (79 FR 15388, Take Request); however, NMFS has since made the decision not to authorize any lethal takes for MITT activities for reasons discussed below.

Training and Testing Activities—Based on the Navy's modeling and post-model analysis (*i.e.,* the acoustic analysis) (described in detail in Chapter 6 of their LOA application), Table 10 summarizes the authorized takes for training and testing activities for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur) and the summation over a 5-year period (annual events occurring five times and non-annual events occurring three times). Table 11 summarizes the authorized takes for training and testing activities by species from the modeling estimates.

Predicted effects on marine mammals result from exposures to sonar and other active acoustic sources and explosions during annual training and testing activities. The acoustic analysis predicts the majority of marine mammal species in the Study Area would not be exposed to explosive (impulse) sources associated with training and testing activities that would exceed the current impact thresholds.

No beaked whales are predicted in the acoustic analysis to be exposed to sound levels associated with PTS, other injury, or mortality. The Navy had originally conservatively requested authorization for beaked whale mortality (no more than 10 mortalities over 5 years) that might potentially result from exposure to active sonar, based on the few instances where sonar has been associated with strandings in other areas. That request was included in NMFS' proposed rule (79 FR 15388, Take Request). However, after decades of the Navy conducting similar activities in the MITT Study Area without incident, neither the Navy nor NMFS expect stranding, injury, or mortality of beaked whales to occur as a result of Navy activities, and therefore, following consultation with the Navy, NMFS is not authorizing any Level A (injury or mortality) takes for beaked whales. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan (described in the Mitigation section of this final rule and available at *http://www.nmfs.noaa.gov/pr/permits/incidental/*) that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

Vessel Strike—There has never been a vessel strike to a marine mammal during any active training or testing activities in the Study Area. A detailed analysis of strike data is contained in Chapter 6 (Section 6.3.4, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. There have been Navy strikes of large whales in areas outside the Study Area, such as Hawaii and Southern California. However, these areas differ significantly from the Study Area given that both Hawaii and Southern California have a much higher number of Navy vessel activities and much higher densities of large whales. The Navy does not anticipate vessel strikes to marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Vessel strike to marine mammals is not associated with any specific training or testing activity but rather a limited, sporadic, and accidental result of Navy vessel movement. In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the MITT Study Area, the Navy had originally conservatively requested authorization for large whale mortalities (no more than 5 mortalities over 5 years) that might potentially result from vessel strike during MITT training and testing activities over the 5-year period of NMFS' final authorization. That request was included in NMFS' proposed rule (79 FR 15388, Take Request). However, after further consideration of the Navy's ship strike analysis, the unlikelihood of a ship strike to occur and the fact that there has never been a ship strike to marine mammals in the Study Area, and following consultation with the Navy, NMFS is not authorizing takes (by injury or mortality) from vessel strikes during the 5-year period of the MITT regulations. The Navy has proposed measures (see Mitigation) to mitigate potential impacts to marine mammals from vessel strikes during training and testing activities in the Study Area.

TABLE 10—SUMMARY OF AUTHORIZED ANNUAL AND 5-YEAR TAKES FOR TRAINING AND TESTING ACTIVITIES

MMPA Category	Source	Training and testing activities	
		Annual authorization [1]	5-Year authorization [2]
Level A	Impulse and Non-Impulse	56–Species specific data shown in Table 11.	280–Species specific data shown in Table 11
Level B	Impulse and Non-Impulse	81,906–Species specific data shown in Table 11.	409,530–Species specific data shown in Table 11

[1] These numbers constitute the total for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur).

[2] These numbers constitute the summation over a 5-year period with annual events occurring five times and non-annual events occurring three times.

TABLE 11—AUTHORIZED SPECIES-SPECIFIC TAKES FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING AND TESTING ACTIVITIES

Species	Annually [1]			Total over 5-year rule [2]		
	Level B	Level A	Mortality	Level B	Level A	Mortality
Blue whale	28	0	0	140	0	0
Fin whale	28	0	0	140	0	0
Humpback whale	860	0	0	4,300	0	0
Sei whale	319	0	0	1,595	0	0
Sperm whale	506	0	0	2,530	0	0

TABLE 11—AUTHORIZED SPECIES-SPECIFIC TAKES FROM MODELING AND POST-MODEL ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING AND TESTING ACTIVITIES—Continued

Species	Annually [1]			Total over 5-year rule [2]		
	Level B	Level A	Mortality	Level B	Level A	Mortality
Bryde's whale	398	0	0	1,990	0	0
Minke whale	101	0	0	505	0	0
Omura's whale	103	0	0	515	0	0
Pygmy sperm whale	5,579	15	0	27,895	75	0
Dwarf sperm whale	14,217	41	0	71,085	205	0
Killer whale	84	0	0	420	0	0
False killer whale	555	0	0	2,775	0	0
Pygmy killer whale	105	0	0	525	0	0
Short-finned pilot whale	1,815	0	0	9,075	0	0
Melon-headed whale	2,085	0	0	10,425	0	0
Bottlenose dolphin	741	0	0	3,705	0	0
Pantropical spotted dolphin	12,811	0	0	64,055	0	0
Striped dolphin	3,298	0	0	16,490	0	0
Spinner dolphin	589	0	0	2,945	0	0
Rough toothed dolphin	1,819	0	0	9,095	0	0
Fraser's dolphin	2,572	0	0	12,860	0	0
Risso's dolphin	505	0	0	2,525	0	0
Cuvier's beaked whale	22,541	0	0	112,705	0	0
Blainville's beaked whale	4,426	0	0	22,130	0	0
Longman's beaked whale	1,924	0	0	9,620	0	0
Ginkgo-toothed beaked whale	3,897	0	0	19,485	0	0

[1] These numbers constitute the total for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur).

[2] These numbers constitute the summation over a 5-year period with annual events occurring five times and non-annual events occurring three times.

Marine Mammal Habitat

The Navy's proposed training and testing activities could potentially affect marine mammal habitat through the introduction of sound into the water column, impacts to the prey species of marine mammals, bottom disturbance, or changes in water quality. Each of these components was considered in Chapter 3 of the MITT FEIS/OEIS. Based on the information in the Marine Mammal Habitat section of the proposed rule (79 FR 15388, March 19, 2014; pages 15412–15414) and the supporting information included in the MITT FEIS/OEIS, NMFS has determined that training and testing activities would not have adverse or long-term impacts on marine mammal habitat. In summary, expected effects to marine mammal habitat will include elevated levels of anthropogenic sound in the water column; short-term physical alteration of the water column or bottom topography; brief disturbances to marine invertebrates; localized and infrequent disturbance to fish; a limited number of fish mortalities; and temporary marine mammal avoidance.

Analysis and Negligible Impact Determination

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination, as the severity of harassment may vary greatly depending on the context and duration of the behavioral response, many of which would not be expected to have deleterious impacts on the fitness of any individuals. In determining whether the expected takes will have a negligible impact, in addition to considering estimates of the number of marine mammals that might be ''taken'', NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature (*e.g.,* severity) of estimated Level A harassment takes, the number of estimated mortalities, and the status of the species.

The Navy's specified activities have been described based on best estimates of the maximum amount of sonar and other acoustic source use or detonations that the Navy would conduct. There may be some flexibility in that the exact number of hours, items, or detonations may vary from year to year, but take totals are not authorized to exceed the 5-year totals indicated in Table 11. We base our analysis and NID on the maximum number of takes authorized.

To avoid repetition, we provide some general analysis immediately below that applies to all the species listed in Table 11, given that some of the anticipated effects (or lack thereof) of the Navy's training and testing activities on marine mammals are expected to be relatively similar in nature. However, below that, we break our analysis into species, or groups of species where relevant similarities exist, to provide more specific information related to the anticipated effects on individuals or where there is information about the status or structure of any species that would lead to a differing assessment of the effects on the population.

The Navy's take request is based on its model and post-model analysis. In the discussions below, the ''acoustic analysis'' refers to the Navy's modeling results and post-model analysis. The model calculates sound energy propagation from sonars, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. The model estimates are then further analyzed to consider animal

avoidance and implementation of highly effective mitigation measures to prevent Level A harassment, resulting in final estimates of effects due to Navy training and testing. NMFS provided input to the Navy on this process and the Navy's qualitative analysis is described in detail in Chapter 6 of their LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental/*).

Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. It is important to note that the requested and authorized number of takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level B or Level A harassment threshold) that would occur. Additionally, these instances may represent either a very brief exposure (seconds) or, in some cases, longer durations of exposure within a day. Depending on the location, duration, and frequency of activities, along with the distribution and movement of marine mammals, individual animals may be exposed to impulse or non-impulse sounds at or above the harassment thresholds on multiple days. However, the Navy is currently unable to estimate the number of individuals that may be taken during training and testing activities. The model results estimate the total number of takes that may occur to a smaller number of individuals. While the model shows that an increased number of exposures may take place due to an increase in events/activities and ordnance, the types and severity of individual responses to training and testing activities are not expected to change.

Behavioral Harassment

As discussed previously in the proposed rule, marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualifies as harassment (see Behavioral Harassment section of proposed rule). One thing that the Level B harassment take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 12) estimating the percentage of behavioral harassment that would occur within the 6-dB bins (without considering mitigation or avoidance). As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal. As illustrated below, the majority (about 80 percent, at least for hull-mounted sonar, which is responsible for most of the sonar takes) of calculated takes from MFAS result from exposures between 150 dB and 162 dB. Less than one percent of the takes are expected to result from exposures above 174 dB.

Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a small percentage of the anticipated Level B harassment from Navy activities might necessarily be expected to potentially result in more severe responses, especially when the distance from the source at which the levels below are received is considered (see Table 12). Marine mammals are able to discern the distance of a given sound source, and given other equal factors (including received level), they have been reported to respond more to sounds that are closer (DeRuiter *et al.,* 2013). Further, the estimated number of responses do not reflect either the duration or context of those anticipated responses, some of which will be of very short duration, and other factors should be considered when predicting how the estimated takes may affect individual fitness.

TABLE 12—NON-IMPULSIVE RANGES IN 6-DB BINS AND PERCENTAGE OF BEHAVIORAL HARASSMENTS

Received level	Sonar bin MF1 (e.g., SQS–53; ASW hull mounted sonar)		Sonar bin MF4 (e.g., AQS–22; ASW dipping sonar)		Sonar bin MF5 (e.g., SSQ–62; ASW sonobuoy)		Sonar bin HF4 (e.g., SQQ–32; MIW sonar)	
	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels
Low Frequency Cetaceans								
120 ≤SPL <126	183,000–133,000	<1	71,000–65,000	<1	18,000–13,000	<1	2,300–1,700	<1
126 ≤SPL <132	133,000–126,000	<1	65,000–60,000	<1	13,000–7,600	<1	1,700–1,200	<1
132 ≤SPL <138	126,000–73,000	<3	60,000–8,200	42	7,600–2,800	12	1,200–750	<1
138 ≤SPL <144	73,000–67,000	<1	8,200–3,500	10	2,800–900	26	750–500	5
144 ≤SPL <150	67,000–61,000	3	3,500–1,800	12	900–500	15	500–300	17
150 ≤SPL <156	61,000–17,000	68	1,800–950	15	500–250	21	300–150	34
156 ≤SPL <162	17,000–10,300	12	950–450	13	250–100	20	150–100	20
162 ≤SPL <168	10,200 5,600	9	450–200	6	100–<50	6	100–<50	24
168 ≤SPL <174	5,600–1,600	6	200–100	2	<50	<1	<50	<1
174 ≤SPL <180	1,600–800	<1	100–<50	<1	<50	<1	<50	<1
180 ≤SPL <186	800–400	<1	<50	<1	<50	<1	<50	<1
186 ≤SPL <192	400–200	<1	<50	<1	<50	<1	<50	<1
192 ≤ SPL <198	200–100	<1	<50	<1	<50	<1	<50	<1
Mid-Frequency Cetaceans								
120 ≤ SPL <126	184,000–133,000	<1	72,000–66,000	<1	19,000–15,000	<1	3,600–2,800	<1
126 ≤ SPL <132	133,000–126,000	<1	66,000–60,000	<1	15,000–8,500	<1	2,800–2,100	<1
132 ≤ SPL <138	126,000–73,000	<1	60,000–8,300	41	8,500–3,300	3	2,100–1,500	<1
138 ≤ SPL <144	73,000–67,000	<1	8,300–3,600	10	3,300–1,000	12	1,500–1,000	3
144 ≤ SPL <150	67,000–61,000	3	3,600–1,900	12	1,000–500	10	1,00–700	10

TABLE 12—NON-IMPULSIVE RANGES IN 6-DB BINS AND PERCENTAGE OF BEHAVIORAL HARASSMENTS—Continued

Received level	Sonar bin MF1 (e.g., SQS–53; ASW hull mounted sonar)		Sonar bin MF4 (e.g., AQS–22; ASW dipping sonar)		Sonar bin MF5 (e.g., SSQ–62; ASW sonobuoy)		Sonar bin HF4 (e.g., SQQ–32; MIW sonar)	
	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels	Distance at which levels occur within radius of source (m)	Percentage of behavioral harassments occurring at given levels
150 ≤ SPL <156	61,000–18,000	68	1,900–950	15	500–300	22	700–450	21
156 ≤ SPL <162	18,000–10,300	13	950–480	12	300–150	27	450–250	32
162 ≤ SPL <168	10,300–5,700	9	480–200	7	150–<50	25	250–150	19
168 ≤ SPL <174	5,700–1,700	6	200–100	2	<50	<1	150–100	9
174 ≤ SPL <180	1,700–900	<1	100–<50	<1	<50	<1	100–<50	6
180 ≤ SPL <186	900–400	<1	<50	<1	<50	<1	<50	<1
186 ≤ SPL <192	400–200	<1	<50	<1	<50	<1	<50	<1
192 ≤ SPL <198	200–100	<1	<50	<1	<50	<1	<50	<1

Although the Navy has been monitoring the effects of MFAS/HFAS on marine mammals since 2006, and research on the effects of MFAS is advancing, our understanding of exactly how marine mammals in the Study Area will respond to MFAS/HFAS is still growing. The Navy has submitted reports from more than 60 major exercises across Navy range complexes that indicate no behavioral disturbance was observed. One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as a portion of animals within the area of concern were not seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* spp.), the full series of behaviors that would more accurately show an important change is not typically seen (*i.e.,* only the surface behaviors are observed), and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed did not respond in any of the obviously more severe ways, such as panic, aggression, or anti-predator response.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral reactions and multiple-day anthropogenic activities. For example, just because at-sea exercises last for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises typically include assets that travel at high speeds (typically 10–15 knots, or higher) and likely cover large areas that are relatively far from shore, in addition to the fact that marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Additionally, the Navy does not necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered not to be likely for the majority of takes, does not mean that a behavioral response is necessarily sustained for multiple days, and still necessitates the consideration of likely duration and context to assess any effects on the individual's fitness.

Durations for non-impulsive activities utilizing tactical sonar sources vary and are fully described in Appendix A of the FEIS/OEIS. ASW training and testing exercises using MFAS/HFAS generally last for 2–16 hours, and may have intervals of non-activity in between. Because of the need to train in a large variety of situations, the Navy does not typically conduct successive MTEs or other ASW exercises in the same locations. Given the average length of ASW exercises (times of continuous sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans in the Study Area would not likely remain in an area for successive days, it is unlikely that an animal would be exposed to MFAS/HFAS at levels likely to result in a substantive response that would then be carried on for more than one day or on successive days.

Most planned explosive exercises are of a short duration (1–6 hours). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time.

TTS

As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The more powerful MF sources used have center frequencies between 3.5 and 8 kHz and the other unidentified MF sources are, by definition, less than 10 kHz, which suggests that TTS induced by any of these MF sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 20 and 100 kHz, which means that TTS could range up to 200 kHz; however, HF

systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from these sources is even less likely). TTS from explosives would be broadband. Vocalization data for each species, which would inform how TTS might specifically interfere with communications with conspecifics, was provided in the LOA application.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this document. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the Lookouts and the nominal speed of an active sonar vessel (10–15 knots). In the TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, MFAS emits a nominal ping every 50 seconds, and incurring those levels of TTS is highly unlikely.

3. Duration of TTS (recovery time)—In the TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.,* 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises in the Study Area, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and any incident of TTS would likely be far less severe due to the short duration of the majority of the exercises and the speed of a typical vessel). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would most likely be sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher received level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues. If impaired, marine mammals would typically be aware of their impairment and are sometimes able to implement behaviors to compensate (see Acoustic Masking or Communication Impairment section), though these compensations may incur energetic costs.

Acoustic Masking or Communication Impairment

Masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which continues beyond the duration of the signal. Standard MFAS nominally pings every 50 seconds for hull-mounted sources. For the sources for which we know the pulse length, most are significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 50 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (*i.e.,* shutdown/powerdown zones for MFAS/HFAS) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during all ASW exercises) in addition to watchstanders on vessels to detect marine mammals for mitigation implementation.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs.

As discussed previously, marine mammals (especially beaked whales) could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanism of this potential response, behavioral or physiological, is not known. When naval exercises have been associated with strandings in the past, it has typically been when three or more vessels are operating simultaneously, in the presence of a strong surface duct, and in areas of constricted channels, semi-enclosed areas, and/or steep bathymetry. A combination of these environmental and operational parameters is not present in the MITT action. When this is combined with consideration of the number of hours of active sonar training that will be conducted and the nature of the exercises—which do not typically include the use of multiple hull-mounted sonar sources—we believe that the probability is small that this will occur. Furthermore, given that there has never been a stranding in the Study Area associated with sonar use and based on the number of occurrences where strandings have been definitively associated with military sonar versus the number of hours of active sonar training that have been conducted, we believe that the probability is small that this will occur as a result of the Navy's proposed training and testing activities.

Lastly, an active sonar shutdown protocol for strandings involving live animals milling in the water minimizes the chances that these types of events turn into mortalities.

As stated previously, there have been no recorded Navy vessel strikes of any marine mammals during training or testing in the MITT Study Area to date, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis.

Important Marine Mammal Habitat

No critical habitat for marine mammals species protected under the ESA has been designated in the MITT Study Area. There are also no known specific breeding or calving areas for marine mammals within the MITT Study Area.

Group and Species-Specific Analysis

Predicted harassment of marine mammals from exposures to sonar and other active acoustic sources and explosions during annual training and testing activities are shown in Table 11. The vast majority of predicted exposures are expected to be Level B harassment (non-injurious TTS and behavioral reactions) from sonar and other active acoustic sources at relatively low received levels (less than 156 dB) (Table 22). As mentioned earlier in the Analysis and Negligible Impact Determination section, an animal's exposure to a higher received level is more likely to adversely affect the health of the animal. The acoustic analysis predicts the majority of marine mammal species in the Study Area would not be exposed to explosive (impulse) sources associated with training and testing activities that exceed the impulsive sound thresholds for injury (Table 9). Only dwarf sperm whale, pygmy sperm whale, Fraser's dolphin, and pantropical spotted dolphin are predicted to have Level B (TTS) exposures resulting from explosives, and only small numbers of dwarf sperm whales and pygmy sperm whales are expected to have injurious take (PTS or minor tissue damage from explosives) resulting from sonar and other active acoustic sources and explosions. There are no lethal takes predicted for any marine mammal species for the MITT activities.

The analysis below may in some cases (*e.g.,* mysticetes, dolphins) address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), have similar hearing capabilities, and/or are known to generally behaviorally respond similarly to acoustic stressors. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they will either be described within the section or the species will be included as a separate sub-section. See the Brief Background on Sound section in the proposed rule for a description of marine mammal functional hearing groups as originally designated by Southall *et al.* (2007).

Mysticetes—The Navy's acoustic analysis predicts 1,837 takes (Level B harassment) may occur from sonar and other active acoustic stressors associated with mostly training and some testing activities in the Study Area each year. The acoustic analysis indicates up to 28 annual instances of Level B harassment (24 TTS and 4 behavioral reactions) of fin whales, up to 28 annual instances of Level B harassment (25 TTS and 3 behavioral reactions) of blue whales, up to 319 annual instances of Level B harassment (258 TTS and 61 behavioral reactions) of sei whales, up to 860 annual instances of Level B harassment (679 TTS and 181 behavioral reactions) of humpback whales, up to 398 annual instances of Level B harassment (219 TTS and 79 behavioral reactions) of Bryde's whales, up to 101 annual instances of Level B harassment (81 TTS and 20 behavioral reactions of minke whales, and up to 103 annual instances of Level B harassment (84 TTS and 19 behavioral reactions) of Omura's whales.

Of these species, humpback, blue, fin, and sei whales are listed as endangered under the ESA and depleted under the MMPA. NMFS has designated two Pacific stocks for blue whales (Eastern North Pacific and Central North Pacific) (Carretta *et al.,* 2014), with blue whales in the Study Area most likely part of the Central North Pacific stock. NMFS has designated four Pacific stocks for humpback whales (Western North Pacific, Central North Pacific, California/Oregon/Washington, and American Samoa) (Carretta *et al.,* 2014; Allen and Angliss, 2014), and while stock structure is not completely known for the Study Area, it is most likely that humpback whales here are part of the Western North Pacific and/or Central North Pacific stock. Although NMFS has designated Pacific stocks for fin, sei, Bryde's, minke, and Omura's whales (Carretta *et al.,* 2014; Allen and Angliss, 2014), little is known about the stock structure for these species in the MITT Study Area and NMFS currently has not designated any stocks specific to the MITT Study Area for these species.

The estimates given above represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. In the ocean, the use of sonar and other active acoustic sources is transient and is unlikely to repeatedly expose the same population of animals over a short period. Around heavily trafficked Navy ports and on fixed ranges, the possibility is greater for animals that are resident during all or part of the year to be exposed multiple times to sonar and other active acoustic sources. However, as discussed in the proposed rule, because neither the vessels nor the animals are stationary, significant long-term effects from repeated exposure are not expected.

Level B harassment is anticipated to be in the form of non-TTS behavioral responses and TTS, and no injurious (Level A harassment) takes of mysticete whales from sonar and other active acoustic stressors or explosives are expected. The majority of acoustic effects to mysticetes from sonar and other active sound sources during training and testing activitites would be primarily from anti-submarine warfare events involving surface ships and hull mounted (mid-frequency) sonar. Research and observations show that if mysticetes are exposed to sonar or other active acoustic sources they may react in a number of ways depending on the characteristics of the sound source, their experience with the sound source, and whether they are migrating or on seasonal grounds (*i.e.,* breeding or feeding). Reactions may include alerting, breaking off feeding dives and surfacing, diving or swimming away, or no response at all (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Richardson *et al.* (1995) noted that avoidance (temporary displacement of an individual from an area) reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the startle or flight response, but also differs in the magnitude of the response (*i.e.,* directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Additionally, migrating animals may ignore a sound source, or divert around the source if it is in their path.

Specific to U.S. Navy systems using low frequency sound, studies were undertaken in 1997–98 pursuant to the Navy's Low Frequency Sound Scientific Research Program. These studies found only short-term responses to low frequency sound by mysticetes (fin, blue, and humpback whales) including

changes in vocal activity and avoidance of the source vessel (Clark, 2001; Miller *et al.,* 2000; Croll *et al.,* 2001; Fristrup *et al.,* 2003; Nowacek *et al.,* 2007). Baleen whales exposed to moderate low-frequency signals demonstrated no variation in foraging activity (Croll *et al.,* 2001). Low-frequency signals of the Acoustic Thermometry of Ocean Climate sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000).

Specific to mid-frequency sound, studies by Melcón *et al.* (2012) in the Southern California Bight found that the likelihood of blue whale low-frequency calling (usually associated with feeding behavior) decreased with an increased level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB re 1 μPa. However, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. Preliminary results from the 2010–2011 field season of an ongoing behavioral response study in Southern California waters indicated that in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.,* 2012b). Blue whales responded to a mid-frequency sound source, with a source level between 160 and 210 dB re 1 μPa at 1 m and a received sound level up to 160 dB re 1 μPa, by exhibiting generalized avoidance responses and changes to dive behavior during controlled exposure experiments (CEE) (Goldbogen *et al.,* 2013). However, reactions were not consistent across individuals based on received sound levels alone, and likely were the result of a complex interaction between sound exposure factors such as proximity to sound source and sound type (mid-frequency sonar simulation vs. pseudo-random noise), environmental conditions, and behavioral state. Surface feeding whales did not show a change in behavior during CEEs, but deep feeding and non-feeding whales showed temporary reactions that quickly abated after sound exposure. Distances of the sound source from the whales during CEEs were sometimes less than a mile. Furthermore, the more dramatic reactions reported by Goldbogen *et al.* (2013) were from non-sonar like signals, a pseudorandom noise that could likely have been a novel signal to blue whales. The preliminary findings from Goldbogen *et al.* (2013) and Melcón *et al.* (2012) are generally consistent with the Navy's criteria and thresholds for predicting behavioral effects to mysticetes from sonar and other active acoustic sources used in the quantitative acoustic effects analysis for MITT. The behavioral response function predicts a probability of a substantive behavioral reaction for individuals exposed to a received SPL of 120 dB re 1 μPa or greater, with an increasing probability of reaction with increased received level as demonstrated in Melcón *et al.* (2012).

High-frequency systems are not within mysticetes' ideal hearing range and it is unlikely that they would cause a significant behavioral reaction.

Most Level B harassments to mysticetes from sonar would result from received levels less than 156 dB SPL. Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take, but would likely be less severe in the range of responses that qualify as take) of a generally short duration. As mentioned earlier in the Analysis and Negligible Impact Determination section, we anticipate more severe effects from takes when animals are exposed to higher received levels. Most low-frequency (mysticetes) cetaceans observed in studies usually avoided sound sources at levels of less than or equal to 160 dB re 1μPa. Occasional behavioral reactions are unlikely to cause long-term consequences for individual animals or populations. Even if sound exposure were to be concentrated in a relatively small geographic area over a long period of time (*e.g.,* days or weeks during major training exercises), we would expect that some individual whales would avoid areas where exposures to acoustic stressors are at higher levels. For example, Goldbogen *et al.* (2013) indicated some horizontal displacement of deep foraging blue whales in response to simulated MFA sonar. Given these animal's mobility and large ranges, we would expect these individuals to temporarily select alternative foraging sites nearby until the exposure levels in their initially selected foraging area have decreased. Therefore, even temporary displacement from initially selected foraging habitat is not expected to impact the fitness of any individual animals because we would expect equivalent foraging to be available in close proximity. Because we do not expect any fitness consequences from any individual animals, we do not expect any population level effects from these behavioral responses.

As explained above, recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Finneran and Schlundt, 2010; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b). However, large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds. Furthermore, the implementation of mitigation and the sightability of mysticetes (due to their large size) reduces the potential for a significant behavioral reaction or a threshold shift to occur.

There has never been a vessel strike to a whale during any active training or testing activities in the Study Area. A detailed analysis of strike data is contained in Chapter 6 (Section 6.3.4, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy does not anticipate vessel strikes to marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Therefore, NMFS is not authorizing mysticete takes (by injury or mortality) from vessel strikes during the 5-year period of the MITT regulations.

There is no designated critical habitat for mysticetes in the Study Area. There are also no areas of specific importance for reproduction, calving, or feeding for mysticetes in the Study Area.

Sperm Whales—The Navy's acoustic analysis indicates that 506 instances of Level B harassment of sperm whales may occur each year from sonar or other active acoustic stressors during training and testing activities. These Level B takes are anticipated to be in the form of TTS (54) and behavioral reactions (452) and no injurious takes of sperm whales from sonar and other active acoustic stressors or explosives are requested or proposed for authorization. Although NMFS has designated Pacific stocks for sperm whales (Carretta *et al.,* 2014; Allen and Angliss, 2014), little is known about the stock structure for this species in the MITT Study Area and NMFS currently has not designated any

sperm whale stocks specific to the MITT Study Area.

Sperm whales have shown resilience to acoustic and human disturbance, although they may react to sound sources and activities within a few kilometers. Sperm whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, avoid the area by swimming away or diving, or display aggressive behavior (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007). Some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range, which could temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Finneran and Schlundt, 2010; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b). However, large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises and the speed of the vessels) at high levels for the duration necessary to induce larger threshold shifts. Also, because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds. No sperm whales are predicted to be exposed to MFAS/HFAS sound levels associated with PTS or injury.

The majority of Level B takes are expected to be in the form of milder responses (low-level exposures) and of a generally short duration. Overall, the number of predicted behavioral reactions are unlikely to cause long-term consequences for individual animals or populations. The MITT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for sperm whales. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of sperm whales. Sperm whales are listed as endangered under the ESA (and depleted under the MMPA); however, there is no designated critical habitat in the Study Area.

There has never been a vessel strike to a sperm whale during any active training or testing activities in the Study Area. A detailed analysis of strike data is contained in Chapter 6 (Section 6.3.4, Estimated Take of Large Whales by Navy Vessel Strike) of the LOA application. The Navy does not anticipate vessel strikes to marine mammals during training or testing activities within the Study Area, nor were takes by injury or mortality resulting from vessel strike predicted in the Navy's analysis. Therefore, NMFS is not authorizing sperm whale takes (by injury or mortality) from vessel strikes during the 5-year period of the MITT regulations.

Pygmy and Dwarf Sperm Whale—The Navy's acoustic analysis predicts Level B harassment (non-TTS behavioral responses and TTS) of 5,579 pygmy sperm whales and 14,217 dwarf sperm whales may occur annually from sonar and other active acoustic stressors and explosives associated with training and testing activities in the Study Area. These estimates represents the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. Of the Level B takes, 5,467 pygmy sperm whale and 13,901 dwarf sperm whale takes are predicted to be in the form of TTS from mainly MFAS/HFAS. The Navy's acoustic analysis (factoring in the post-model correction for avoidance and mitigation) also indicates that 15 injurious (Level A harassment) takes of pygmy sperm whale and 41 injurious (Level A harassment) takes of dwarf sperm whale may occur annually from active sonar.

Although NMFS has designated Pacific stocks for pygmy and dwarf sperm whales (Carretta *et al.,* 2014), little is known about the stock structure for these species in the MITT Study Area and NMFS currently has not designated any pygmy and dwarf sperm whale stocks specific to the MITT Study Area.

Recovery from a threshold shift (TTS; partial hearing loss) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b; Finneran and Schlundt, 2010). An animal incurring PTS would not fully recover. However, large degrees of threshold shifts (PTS or TTS) are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal hearing biologically relevant sounds. The likely consequences to the health of an individual that incurs PTS can range from mild to more serious, depending upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs. Furthermore, likely avoidance of intense activity and sound coupled with mitigation measures would further reduce the potential for more-severe PTS exposures to occur. If a pygmy or dwarf sperm whale is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. Some *Kogia* spp. vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), but the limited information for *Kogia* spp. indicates that their clicks are at a much higher frequency and that their maximum hearing sensitivity is between 90 and 150 kHz.

Research and observations on *Kogia* spp. are limited. These species tend to avoid human activity and presumably anthropogenic sounds. Pygmy and dwarf sperm whales may startle and leave the immediate area of activity, reducing potential impacts. Pygmy and dwarf sperm whales have been observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). Based on their tendency to avoid acoustic stressors (*e.g.,* quick diving and other vertical avoidance maneuvers) coupled with the short duration and intermittent nature (*e.g.,* sonar pings during ASW activities occur about every 50 seconds) of the majority of training and testing exercises and the speed of the Navy vessels

involved, it is unlikely that animals would receive multiple exposures over a short period of time, allowing animals to recover lost resources (*e.g.,* food) or opportunities (*e.g.,* mating).

It is worth noting that the amount of explosive and acoustic energy entering the water may be overestimated, as many explosions actually occur upon impact with above-water targets. However, sources such as these were modeled as exploding at 1-meter depth.

The predicted effects to *Kogia* spp. are expected to be mostly temporary and unlikely to cause long-term consequences for individual animals or populations. The MITT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors. Pacific stocks of *Kogia* are not depleted under the MMPA. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of pygmy and dwarf sperm whales.

Beaked Whales—The Navy's acoustic analysis predicts Level B harassment of four species of beaked whale annually: 22,541 Cuvier's beaked whales; 4,426 Blainville's beaked whale; 1,924 Longman's beaked whale; and 3,897 ginko-toothed beaked whales. These estimates represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. These takes are anticipated to be in the form of mainly non-TTS behavioral harassment and some TTS, and no injurious takes of beaked whales from sonar and active acoustic stressors or explosives were predicted. Of the Level B takes, 308 Cuvier's beaked whale, 73 Blainville's beaked whale, 29 Longman's beaked whale, and 62 ginko-toothed beaked whale takes are predicted to be in the form of TTS from sonar and other active acoustic sources. Although NMFS has designated Pacific stocks for Cuvier's, Blainville's, and Longman's beaked whales (Carretta *et al.,* 2014; Allen and Angliss, 2014), little is known about the stock structure for beaked whales in the MITT Study Area and NMFS currently has not designated any beaked whale stocks specific to the MITT Study Area.

Of note, the number of beaked whales behaviorally harassed by exposure to MFAS/HFAS is generally higher than the other species because of the low Level B harassment threshold, which essentially makes the ensonified area of effects significantly larger than for the other species. Beaked whales have unique criteria based on specific data that show these animals to be especially sensitive to sound (McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Beaked whale non-impulsive behavioral criteria are used unweighted (*i.e.,* without weighting the received level before comparing it to the threshold (see Finneran and Jenkins, 2012)). The Navy has adopted an unweighted 140 dB re 1 µPa SPL threshold for significant behavioral effects for all beaked whales. The fact that the threshold is a step function and not a curve (and assuming uniform density) means that the vast majority of the takes occur in the very lowest levels that exceed the threshold (it is estimated that approximately 80 percent of the takes are from exposures of 140 dB to 146 dB), which means that the anticipated effects for the majority of exposures are not expected to be severe (As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of an animal). Further, Moretti *et al.* (2014) recently derived an empirical risk function for Blainville's beaked whale that predicts there is a 0.5 probability of disturbance at a received level of 150 dB (CI: 144–155), suggesting that in some cases the current Navy step function over-estimate the effects of an activity using sonar on beaked whales. Irrespective of the Moretti *et al.* (2014) risk function, NMFS' analysis assumes that all of the beaked whale Level B takes that are proposed for authorization will occur, and we base our negligible impact determination, in part, on the fact that these exposures would mainly occur at the very lowest end of the 140-dB behavioral harassment threshold where behavioral effects are expected to be much less severe and generally temporary in nature.

Behavioral responses of beaked whales can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012). Research has also shown that beaked whales are sensitive to the presence of human activity (Tyack *et al.,* 2011; Pirotta *et al.,* 2012). Beaked whales have been documented to exhibit avoidance of human activity or respond to vessel presence (Pirotta *et al.,* 2012). Beaked whales were observed to react negatively to survey vessels or low altitude aircraft by quick diving and other avoidance maneuvers, and none were observed to approach vessels (Wursig *et al.,* 1998). Some beaked whale vocalizations may overlap with the MFAS/HFAS TTS frequency range (2–20 kHz); however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur as a result of exposure to MFA/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Finneran and Schlundt, 2010; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b). However, large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

No beaked whales are predicted in the acoustic analysis to be exposed to sound levels associated with PTS, other injury, or mortality. After decades of the Navy conducting similar activities in the MITT Study Area without incident, NMFS does not expect stranding, injury, or mortality of beaked whales to occur as a result of Navy activities. Therefore, NMFS is not authorizing any Level A (injury or mortality) takes for beaked whales. Additionally, through the MMPA process (which allows for adaptive management), NMFS and the Navy will determine the appropriate way to proceed in the event that a causal relationship were to be found between Navy activities and a future stranding.

NMFS also considered New *et al.* (2013) and their mathematical model simulating a functional link between foraging energetics and requirements for survival and reproduction for 21 species of beaked whales. However, NMFS concluded that the New *et al.* (2013) model lacks critical data and accurate inputs necessary to form valid conclusions specifically about impacts of anthropogenic sound from Navy activities on specific beaked whale populations. The study itself notes the need for ''future research,'' identifies ''key data needs'' relating to input parameters that ''particularly affected'' the model results, and states only that the use of the model ''in combination with more detailed research'' *could* help predict the effects of management actions on beaked whale species. In short, information is not currently available to specifically support the use

of this model in a project-specific evaluation of the effects of Navy activities on the impacted beaked whale species in MITT.

It has been speculated for some time that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with mid-frequency sonar use. Research and observations show that if beaked whales are exposed to sonar or other active acoustic sources they may startle, break off feeding dives, and avoid the area of the sound source to levels of 157 dB re 1 µPa, or below (McCarthy *et al.,* 2011). Acoustic monitoring during actual sonar exercises revealed some beaked whales continuing to forage at levels up to 157 dB re 1 µPa (Tyack et al. 2011). Stimpert *et al.* (2014) tagged a Baird's beaked whale, which was subsequently exposed to simulated mid-frequency sonar. Received levels of sonar on the tag increased to a maximum of 138 dB re 1µPa, which occurred during the first exposure dive. Some sonar received levels could not be measured due to flow noise and surface noise on the tag. Manzano-Roth *et al.* (2013) found that for beaked whale dives that continued to occur during MFAS activity, differences from normal dive profiles and click rates were not detected with estimated received levels up to 137 dB re 1 µPa while the animals were at depth during their dives. In research done at the Navy's fixed tracking range in the Bahamas, animals were observed to leave the immediate area of the anti-submarine warfare training exercise (avoiding the sonar acoustic footprint at a distance where the received level was ''around 140 dB'' SPL, according to Tyack *et al.* [2011]) but return within a few days after the event ended (Claridge and Durban, 2009; Moretti *et al.,* 2009, 2010; Tyack *et al.,* 2010, 2011; McCarthy *et al.,* 2011). Tyack *et al.* (2011) report that, in reaction to sonar playbacks, most beaked whales stopped echolocating, made long slow ascent to the surface, and moved away from the sound. A similar behavioral response study conducted in Southern California waters during the 2010–2011 field season found that Cuvier's beaked whales exposed to MFAS displayed behavior ranging from initial orientation changes to avoidance responses characterized by energetic fluking and swimming away from the source (DeRuiter *et al.,* 2013). However, the authors did not detect similar responses to incidental exposure to distant naval sonar exercises at comparable received levels, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor. The study itself found the results inconclusive and meriting further investigation.

Populations of beaked whales and other odontocetes in the Bahamas and other Navy fixed ranges that have been operating for tens of years appear to be stable. Significant behavioral reactions seem likely in most cases if beaked whales are exposed to anti-submarine sonar within a few tens of kilometers, especially for prolonged periods (a few hours or more), since this is one of the most sensitive marine mammal groups to anthropogenic sound of any species or group studied to date and research indicates beaked whales will leave an area where anthropogenic sound is present (Tyack *et al.,* 2011; De Ruiter *et al.,* 2013; Manzano-Roth *et al.,* 2013; Moretti *et al.,* 2014). Research involving tagged Cuvier's beaked whales in the SOCAL Range Complex reported on by Falcone and Schorr (2012, 2014) indicates year-round prolonged use of the Navy's training and testing area by these beaked whales and has documented movements in excess of hundreds of kilometers by some of those animals. Given that some of these animals may routinely move hundreds of kilometers as part of their normal pattern, leaving an area where sonar or other anthropogenic sound is present may have little, if any, cost to such an animal. Photo identification studies in the SOCAL Range Complex, a Navy range that is utilized for training and testing more frequently than the MITT Study Area, have identified approximately 100 Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to seven years apart (Falcone and Schorr, 2014). These results indicate long-term residency by individuals in an intensively used Navy training and testing area, which may also suggest a lack of long-term consequences as a result of exposure to Navy training and testing activities. Finally, results from passive acoustic monitoring estimated regional Cuvier's beaked whale densities were higher than indicated by the NMFS's broad scale visual surveys for the U.S. west coast (Hildebrand and McDonald, 2009). Based on the findings above, it is clear that the Navy's long-term ongoing use of sonar and other active acoustic sources has not precluded beaked whales from also continuing to inhabit those areas.

In summary, based on the best available science, the Navy and NMFS believe that beaked whales that exhibit a significant TTS or behavioral reaction due to sonar and other active acoustic testing activities would generally not have long-term consequences for individuals or populations. Claridge (2013) speculates that sonar use in a Bahamas range could have ''a possible population-level effect'' on beaked whales based on lower abundance in comparison to control sites. However, the study suffers from several shortcomings and incorrectly assumes that the Navy range and control sites were identical. The author also acknowledged that ''information currently available cannot provide a quantitative answer to whether frequent sonar use at [the Bahamas range] is causing stress to resident beaked whales,'' and cautioned that the outcome of ongoing studies ''is a critical component to understanding if there are population-level effects.'' Moore and Barlow (2013) have noted a decline in beaked whale populations in a broad area of the Pacific Ocean area out to 300 nm from the coast and extending from the Canadian-U.S. border to the tip of Baja Mexico. There are scientific caveats and limitations to the data used for that analysis, as well as oceanographic and species assemblage changes on the U.S. Pacific coast not thoroughly addressed. Interestingly, however, in the small portion of that area overlapping the Navy's SOCAL Range Complex, long-term residency by individual Cuvier's beaked whales and higher densities provide indications that the proposed decline noted elsewhere is not apparent where the Navy has been intensively training and testing with sonar and other systems for decades.

There is no direct evidence that routine Navy training and testing spanning decades has negatively impacted marine mammal populations at any Navy range complex. In at least three decades of similar activities, only one instance of injury to marine mammals (March 4, 2011; three long-beaked common dolphin at Silver Strand Training Complex) has been documented as a result of training or testing using an impulse source (underwater explosion) and the Navy implemented more stringent mitigation measures as a result of this incident. Stranding events coincident with Navy MFAS use in which exposure to sonar is believed to have been a contributing factor were detailed in the Stranding and Mortality section of the proposed rule (FR 79 15437). However, for some of these stranding events, a causal relationship between sonar exposure and the stranding could not be clearly established (Cox *et al.,* 2006). In other instances, sonar was considered only one of several factors that, in their

aggregate, may have contributed to the stranding event (Freitas, 2004; Cox *et al.,* 2006). On March 24, 2015, a Cuvier's beaked whale stranded, and eventually died, near Bile Bay, Merizo Guam. The Navy confirmed that non-MTE sonar exercises took place in the MIRC from March 23–27, 2015. A necropsy was performed by the Guam Department of Agriculture, Division of Aquatics and Wildlife with assistance from NOAA. Results of the necropsy have yet to be released and no causal relationship between the stranding and Navy activities has been determined at this time.

Because of the association between tactical MFA sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation measures intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

The MITT training and testing activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for beaked whales. The degree of predicted Level B harassment is expected to be mild, and no beaked whales are predicted in the acoustic analysis to be exposed to sound levels associated with PTS, other injury, or mortality. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of beaked whales.

Social Pelagic Species (Small Whales)—The Navy's acoustic analysis predicts that the following numbers of Level B behavioral harassments of the associated species will occur annually: 84 killer whales; 555 false killer whales; 105 pygmy killer whales; 1,815 short-finned pilot whales; and 2,085 melon-headed whales; including the following numbers of TTS, respectively: 15, 101, 19, 334, and 448. These estimates represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. Behavioral responses of social pelagic small whales can range from a mild orienting response, or a shifting of attention, to flight and panic (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007; Finneran and Jenkins, 2012). No injurious takes from active acoustic stressors or explosives are requested or proposed for authorization.

Although NMFS has designated Pacific stocks for killer whales, false killer whales, pygmy killer whales, short-finned pilot whales, and melon-headed whales (Carretta *et al.,* 2014; Allen and Angliss, 2014), little is known about the stock structure for these species in the MITT Study Area and NMFS currently has not designated any stocks for these species specific to the MITT Study Area.

As mentioned previously, TTS from MFAS is anticipated to occur primarily in the 2–20 kHz range. If any individuals of these species were to experience TTS from MFAS/HFAS, the TTS would likely overlap with some of the vocalizations of conspecifics, and not with others. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFA/HFAS. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Finneran and Schlundt, 2010; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b). However, large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

Controlled exposure experiments in 2007 and 2008 in the Bahamas recorded responses of false killer whales, short-finned pilot whales, and melon-headed whales to simulated MFA sonar (De Ruiter *et al.,* 2013). The responses to exposures between species were variable. After hearing each MFAS signal, false killer whales were found to ''increase their whistle production rate and made more-MFAS-like whistles'' (De Ruiter *et al.,* 2013). In contrast, melon-headed whales had ''minor transient silencing'' after each MFAS signal, while pilot whales had no apparent response.

Pilot whales or false killer whales in the Bahamas showed an avoidance response to controlled exposure playbacks (Southall *et al.,* 2009). Consistent with the findings of other previous research (see, for example Southall *et al.,* 2007), De Ruiter *et al.,* (2013b) found the responses were variable by species and with the context of the sound exposure. The assumption is that odontocete species in general, including those in the MITT Study Area, would have similar variable responses.

Research and observations show that if killer whales are exposed to sonar or other active acoustic sources they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Killer whales may not react at all until the sound source is approaching within a few hundred meters to within a few kilometers depending on the environmental conditions and species. Killer whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, change their behaviors or vocalizations, avoid the sound source by swimming away or diving, or be attracted to the sound source. Research has demonstrated that killer whales may routinely move over long large distances (Andrews and Matkin, 2014; Fearnbach *et al.,* 2013). In a similar documented long-distance movement, an Eastern North Pacific Offshore stock killer whale tagged off San Clemente Island, California, moved (over a period of 147 days) to waters off northern Mexico, then north to Cook Inlet, Alaska, and finally (when the tag ceased transmitting) to coastal waters off Southeast Alaska (Falcone and Schorr, 2014). Given these findings, temporary displacement due to avoidance of training and testing activities are therefore unlikely to have biological significance to individual animals. Long-term consequences to individual killer whales or populations are not likely due to exposure to sonar or other active acoustic sources. Population-level consequences are not expected.

The MITT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for social pelagic species. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of these species.

Dolphins—The Navy's acoustic analysis predicts the following numbers of Level B harassment annually: 741 bottlenose dolphin; 12,811 pantropical spotted dolphin; 3,298 striped dolphin; 589 spinner dolphin; 1,819 rough toothed dolphin; 2,572 Fraser's dolphin;

and 505 Risso's dolphin. These estimates represent the total number of exposures and not necessarily the number of individuals exposed, as a single individual may be exposed multiple times over the course of a year. The majority of takes are anticipated to be by non-TTS behavioral harassment in the form of milder responses (low received levels and of a short duration) to sonar and other active acoustic sources. No injurious takes of dolphins from active acoustic stressors or explosives are requested or proposed for authorization. Behavioral responses can range from alerting, to changing their behavior or vocalizations, to avoiding the sound source by swimming away or diving (Richardson, 1995; Nowacek, 2007; Southall *et al.,* 2007).

Of the Level B takes, 150 bottlenose dolphin; 2,584 pantropical spotted dolphin; 612 striped dolphin; 119 spinner dolphin; 377 rough toothed dolphin; 493 Fraser's dolphin; and 84 Risso's dolphin takes are predicted to be in the form of generally mild TTS from sonar and other active acoustic sources. Though the group size and behavior of these species makes it likely that Navy lookouts would detect them and implement shutdown if appropriate, the proposed mitigation has a provision that allows the Navy to continue operation of MFAS if the animals are clearly bow-riding even after the Navy has initially maneuvered to try and avoid closing with the animals. As mentioned above, many of the recorded dolphin vocalizations overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur. Recovery from a threshold shift (TTS) can take a few minutes to a few days, depending on the exposure duration, sound exposure level, and the magnitude of the initial shift, with larger threshold shifts and longer exposure durations requiring longer recovery times (Finneran *et al.,* 2005; Finneran and Schlundt, 2010; Mooney *et al.,* 2009a; Mooney *et al.,* 2009b). However, large threshold shifts are not anticipated for these activities because of the unlikelihood that animals will remain within the ensonified area (due to the short duration of the majority of exercises, the speed of the vessels, and the short distance within which the animal would need to approach the sound source) at high levels for the duration necessary to induce larger threshold shifts. Threshold shifts do not necessarily affect all hearing frequencies equally, so some threshold shifts may not interfere with an animal's hearing of biologically relevant sounds.

One Level B take each for Fraser's dolphin and pantropical spotted dolphin is predicted to be in the form of non-injurious TTS from impulsive sound sources (explosive detonations). Research and observations suggest that if delphinids are exposed to impulse sound sources, they may react by alerting, ignoring the stimulus, changing their behavior or vocalizations, or avoiding the area by swimming away or diving (Richardson, 1995; Finneran, 2002; Madsen *et al.,* 2006; Weir, 2008; and Miller *et al.,* 2009).

Although NMFS has designated Pacific stocks for bottlenose, pantropical spotted, striped, spinner, rough toothed, Fraser's, and Risso's dolphins (Carretta *et al.,* 2014), little is known about the stock structure for these species in the MITT Study Area and NMFS currently has not designated any stocks for these species specific to the MITT Study Area.

The MITT activities are not expected to occur in an area/time of specific importance for reproductive, feeding, or other known critical behaviors for dolphins. Consequently, the activities are not expected to adversely impact rates of recruitment or survival of these species.

Long-Term Consequences

The best assessment of long-term consequences from training and testing activities will be to monitor the populations over time within a given Navy range complex. A U.S. workshop on Marine Mammals and Sound (Fitch *et al.,* 2011) indicated a critical need for baseline biological data on marine mammal abundance, distribution, habitat, and behavior over sufficient time and space to evaluate impacts from human-generated activities on long-term population survival. The Navy has developed monitoring plans for protected marine mammals occurring on Navy ranges with the goal of assessing the impacts of training and testing activities on marine species and the effectiveness of the Navy's current mitigation practices. Continued monitoring efforts over time will be necessary to completely evaluate the long-term consequences of exposure to noise sources.

Since 2006 across all Navy range complexes (in the Atlantic, Gulf of Mexico, and the Pacific), there have been more than 80 reports; Major Exercise Reports, Annual Exercise Reports, and Monitoring Reports. For the Pacific since 2011, there have been 29 monitoring and exercise reports submitted to NMFS to further research goals aimed at understanding the Navy's impact on the environment as it carries out its mission to train and test (*www.navymarinespeciesmonitoring.us*).

In addition to this multi-year record of reports from across the Navy, there have also been ongoing Behavioral Response Study research efforts (in Southern California and the Bahamas) specifically focused on determining the potential effects from Navy mid-frequency sonar (Southall *et al.,* 2011, 2012; Tyack *et al.,* 2011; DeRuiter *et al.,* 2013b; Goldbogen *et al.,* 2013; Moretti *et al.,* 2014). This multi-year compendium of monitoring, observation, study, and broad scientific research is informative with regard to assessing the effects of Navy training and testing in general. Given that this record involves many of the same Navy training and testing activities being considered for the Study Area and because it includes all the marine mammal taxonomic families and many of the same species, this compendium of Navy reporting is directly applicable to assessing locations such as the Mariana Islands.

In the Hawaii and Southern California Navy training and testing ranges from 2009 to 2012, Navy-funded marine mammal monitoring research completed over 5,000 hours of visual survey effort covering over 65,000 nautical miles, sighted over 256,000 individual marine mammals, took over 45,600 digital photos and 36 hours of digital video, attached 70 satellite tracking tags to individual marine mammals, and collected over 40,000 hours of passive acoustic recordings. In Hawaii alone between 2006 and 2012, there were 21 scientific marine mammal surveys conducted before, during, or after major exercises.

Based on monitoring conducted before, during, and after Navy training and testing events since 2006, the NMFS' assessment is that it is unlikely there will be impacts having any long-term consequences to populations of marine mammals as a result of the proposed continuation of training and testing in the ocean areas historically used by the Navy including the MITT Study Area. This assessment of likelihood is based on four indicators from areas in the Pacific where Navy training and testing has been ongoing for decades: (1) Evidence suggesting or documenting increases in the numbers of marine mammals present (Calambokidis and Barlow, 2004; Falcone *et al.,* 2009; Hildebrand and McDonald, 2009; Falcone and Shorr, 2012; Calambokidis *et al.,* 2009a; Berman-Kowalewski *et al.,* 2010; Moore and Barlow, 2011; Barlow *et al.* 2011; Kerosky *et al,.* 2012; Smultea *et al.,* 2013), or evidence suggesting

populations have reached carrying capacity (Monnahan *et al.,* 2014), (2) examples of documented presence and site fidelity of species and long-term residence by individual animals of some species (Hooker *et al.,* 2002; McSweeney *et al.,* 2007; McSweeney *et al.,* 2009; McSweeney *et al.,* 2010; Martin and Kok, 2011; Baumann-Pickering *et al.,* 2012; Falcone and Schorr, 2014), (3) use of training and testing areas for breeding and nursing activities (Littnan, 2010), and (4) eight years of comprehensive monitoring data indicating a lack of any observable effects to marine mammal populations as a result of Navy training and testing activities.

To summarize, while the evidence covers most marine mammal taxonomic suborders, it is limited to a few species and only suggestive of the general viability of those species in intensively used Navy training and testing areas (Barlow *et al.,* 2011; Calambokidis *et al.,* 2009b; Falcone *et al.,* 2009; Littnan, 2011; Martin and Kok, 2011; McCarthy *et al.,* 2011; McSweeney *et al.,* 2007; McSweeney *et al.,* 2009; Moore and Barlow, 2011; Tyack *et al.,* 2011; Southall *et al.,* 2012a; Melcon, 2012; Goldbogen, 2013; Baird *et al.,* 2013). However, there is no direct evidence that routine Navy training and testing spanning decades has negatively impacted marine mammal populations at any Navy range complex. Although there have been a few strandings associated with use of sonar in other locations (see U.S. Department of the Navy, 2013b), Ketten (2012) has recently summarized, ''to date, there has been no demonstrable evidence of acute, traumatic, disruptive, or profound auditory damage in any marine mammal as the result of anthropogenic noise exposures, including sonar.'' Therefore, based on the best available science (McSweeney *et al.,* 2007; Falcone *et al.,* 2009; McSweeney *et al.,* 2009; Littnan, 2010; Barlow *et al.,* 2011; Martin and Kok, 2011; McCarthy *et al.,* 2011; Moore and Barlow, 2011; Tyack *et al.,* 2011; Southall *et al.,* 2012a; Manzano-Roth *et al.,* 2013; DeRuiter *et al.,* 2013; Goldbogen *et al.,* 2013; Moretti *et al.,* 2014; Smultea and Jefferson, 2014), including data developed in the series of reports submitted to NMFS, we believe that long-term consequences for individuals or populations are unlikely to result from Navy training and testing activities in the Study Area.

Final Determination

NMFS concludes that training and testing activities proposed in the MITT Study Area could result in Level B and Level A takes, as summarized in Table 11. Based on best available science NMFS concludes that exposures to marine mammal species due to MITT activities would result in primarily short-term (temporary and short in duration) and relatively infrequent effects to most individuals, and not of the type or severity that would be expected to be additive for the portion of the stocks and species likely to be exposed. Marine mammal takes from Navy activities are not expected to impact annual rates of recruitment or survival and will therefore not result in population-level impacts for the following reasons:

- Most acoustic harassments (greater than 99 percent) are within the non-injurious TTS or behavioral effects zones (Level B harassment consisting of generally temporary modifications in behavior) and none of the estimated exposures result in mortality.
- As mentioned earlier, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal. For low frequency cetaceans (mysticetes) in the Study Area, most Level B exposures will occur at received levels less than 156 dB (Table 22). The majority of estimated odontocete takes from MFAS/HFAS (at least for hull-mounted sonar, which is responsible for most of the sonar-related takes) also result from exposures to received levels less than 156 dB (Table 22). Therefore, the majority of Level B takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of a take, but would likely be less severe in the range of responses that qualify as a take) and are not expected to have deleterious impacts on the fitness of any individuals.
- Acoustic disturbances caused by Navy sonar and explosives are short-term, intermittent, and (in the case of sonar) transitory, even during major training exercises. Navy activities are generally unit level. Unit level events occur over a small spatial scale (one to a few 10s of square miles) and with few participants (usually one or two). Single-unit unit level training would typically involve a few hours of sonar use, with a typical nominal ping of every 50 seconds (duty cycle). Even though an animal's exposure to active sonar may be more than one time, the intermittent nature of the sonar signal, its low duty cycle, and the fact that both the vessel and animal are moving provide a very small chance that exposure to active sonar for individual animals and stocks would be repeated over extended periods of time. Consequently, we would not expect the Navy's activities to create conditions of long-term, continuous underwater noise leading to habitat abandonment or long-term hormonal or physiological stress responses in marine mammals.
- Years of monitoring of Navy activities (since 2006) have documented hundreds of thousands of marine mammals on the range complexes and there are only two instances of overt behavioral change that have been observed.
- Years of monitoring of Navy activities have documented no instances of injury to marine mammals as a direct result of non-impulse acoustic sources.
- In at least three decades of similar activities, only one instance of injury to marine mammals (March 2011; three long-beaked common dolphin off Southern California) has been documented as a result of training or testing using an impulse source (underwater explosion).
- Range complexes where intensive training and testing have been occurring for decades have populations of multiple species with strong site fidelity (including highly sensitive resident beaked whales at some locations) and increases in the number of some species. Populations of beaked whales and other odontocetes in the Bahamas, and other Navy fixed ranges that have been operating for tens of years, appear to be stable.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, which includes consideration of the materials provided in the Navy's LOA application and MITT FEIS/OEIS, and dependent upon the implementation of the mitigation and monitoring measures, NMFS finds that the total marine mammal take from the Navy's training and testing activities in the MITT Study Area will have a negligible impact on the affected marine mammal species or stocks. NMFS has issued regulations for these activities that prescribe the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Impact on Availability of Affected Species for Taking for Subsistence Uses

NMFS has determined that the issuance of regulations and subsequent LOA for Navy training and testing activities in the MITT Study Area would not have an unmitigable adverse impact on the availability of species or stocks for subsistence use, since there are no such uses in the specified area.

Endangered Species Act (ESA)

There are five marine mammal species under NMFS' jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the Study Area: Blue whale, humpback whale, fin whale, sei whale, and sperm whale. The Navy consulted with NMFS pursuant to section 7 of the ESA, and NMFS also consulted internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for MITT activities. NMFS issued a Biological Opinion concluding that the issuance of the rule and subsequent LOA are likely to adversely affect, but are not likely to jeopardize, the continued existence of the threatened and endangered species (and species proposed for listing) under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat in the MITT Study Area. The Biological Opinion for this action is available on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental/*).

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the MITT FEIS/OEIS, which was published on May 22, 2015 and is available on the Navy's Web site: *http://www.mitt-eis.com*. NMFS determined that the MITT FEIS/OEIS is adequate and appropriate to meet our responsibilities under NEPA for the issuance of regulations and LOA and adopted the Navy's MITT FEIS/OEIS.

Classification

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOA to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C 553(d)(3)) to waive the 30-day delay in the effective date of the measures contained in the final rule. The Navy is the only entity subject to the regulations, and it has informed NMFS that it requests that this final rule take effect by August 3, 2015, when the regulations issued by NMFS to govern the unintentional taking of marine mammals incidental to the Navy's activities in the MIRC study area from 2010 to 2015 expire. Any delay of enacting the final rule would result in either: (1) A suspension of planned naval training, which would disrupt vital training essential to national security; or (2) the Navy's procedural non-compliance with the MMPA (should the Navy conduct training without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy is ready to implement the rule immediately. For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: July 24, 2015.

Paul N. Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follow:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart J is added to part 218 to read as follows:

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

Sec.

Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

§ 218.90 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the MITT Study Area, which includes the Mariana Islands Range Complex (MIRC) and areas to the north and west. The Study Area includes established ranges, operating areas, warning areas, and special use airspace in the region of the Mariana Islands that are part of the MIRC, its surrounding seas, and a transit corridor to the Hawaii Range Complex. The Study Area also includes Navy pierside locations where sonar maintenance and testing may occur.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) Non-impulsive Sources Used During Training and Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 123 hours per year.

(B) LF5—an average of 11 hours per year.

(C) LF6—an average of 40 hours per year.

(ii) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 1,872 hours per year.

(B) MF2—an average of 625 hours per year.

(C) MF3—an average of 192 hours per year.

(D) MF4—an average of 214 hours per year.
(E) MF5—an average of 2,588 items per year.
(F) MF6—an average of 33 items per year.
(G) MF8—an average of 123 hours per year.
(H) MF9—an average of 47 hours per year.
(I) MF10—an average of 231 hours per year.
(J) MF11—an average of 324 hours per year.
(K) MF12—an average of 656 hours per year.
(iii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:
(A) HF1—an average of 113 hours per year.
(B) HF4—an average of 1,060 hours per year.
(C) HF5—an average of 336 hours per year.
(D) HF6—an average of 1,173 hours per year.
(iv) Anti-Submarine Warfare (ASW) Source Classes:
(A) ASW1—an average of 144 hours per year.
(B) ASW2—an average of 660 items per year.
(C) ASW3—an average of 3,935 hours per year.
(D) ASW4—an average of 32 items per year.
(v) Torpedoes (TORP) Source Classes:
(A) TORP1—an average of 115 items per year.
(B) TORP2—an average of 62 items per year.
(vi) Acoustic Modems (M):
(A) M3—an average of 112 hours per year.
(B) [Reserved]
(vii) Swimmer Detection Sonar (SD):
(A) SD1—an average 2,341 hours per year.
(B) [Reserved]
(2) Impulsive Source Detonations During Training and Testing:
(i) Explosive Classes:
(A) E1 (0.1 to 0.25 lb NEW)—an average of 10,140 detonations per year.
(B) E2 (0.26 to 0.5 lb NEW)—an average of 106 detonations per year.
(C) E3 (>0.5 to 2.5 lb NEW)—an average of 932 detonations per year.
(D) E4 (>2.5 to 5 lb NEW)—an average of 420 detonations per year.
(E) E5 (>5 to 10 lb NEW)—an average of 684 detonations per year.
(F) E6 (>10 to 20 lb NEW)—an average of 76 detonations per year.
(G) E8 (>60 to 100 lb NEW)—an average of 16 detonations per year.
(H) E9 (>100 to 250 lb NEW)—an average of 4 detonations per year.
(I) E10 (>250 to 500 lb NEW)—an average of 12 detonations per year.
(J) E11 (>500 to 650 lb NEW)—an average of 6 detonations per year.
(K) E12 (>650 to 2,000 lb NEW)—an average of 184 detonations per year.
(ii) [Reserved]

§ 218.91 Effective dates and definitions.

(a) Regulations in this subpart are effective August 3, 2015 through August 3, 2020.
(b) The following definitions are utilized in these regulations:
(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place within an OPAREA where a Major Training Exercise (MTE) occurs and involves any one of the following:
(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in paragraph (b)(1)(ii) of this section) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.
(ii) A single individual or mother/calf pair of any of the following marine mammal species of concern: Beaked whale of any species, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot whale, humpback whale, sperm whale, blue whale, fin whale, or sei whale.
(iii) A group of two or more cetaceans of any species exhibiting indicators of distress.
(2) *Shutdown*—The cessation of active sonar operation or detonation of explosives within 14 nautical miles of any live, in the water, animal involved in a USE.

§ 218.92 Permissible methods of taking.

(a) Under a Letter of Authorization (LOA) issued pursuant to § 218.97, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.90, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.
(b) The activities identified in § 218.90(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.
(c) The incidental take of marine mammals under the activities identified in § 218.90(c) is limited to the following species, by the identified method of take:
(1) Level B Harassment for all Training and Testing Activities:
(i) Mysticetes:
(A) Blue whale (*Balaenoptera musculus*)—140 (an average of 28 annually)
(B) Bryde's whale (*Balaenoptera edeni*)—1,990 (an average of 398 annually)
(C) Fin whale (*Balaenoptera physalus*)—140 (an average of 28 annually)
(D) Humpback whale (*Megaptera novaeangliae*)—4,300 (an average of 860 annually)
(E) Minke whale (*Balaenoptera acutorostrata*)—505 (an average of 101 annually)
(F) Sei whale (*Balaenoptera borealis*)—1,595 (an average of 319 annually)
(G) Omura's whale (*Balaenoptera omurai*)—515 (an average of 103 annually)
(ii) Odontocetes:
(A) Blainville's beaked whale (*Mesoplodon densirostris*)—22,130 (an average of 4,426 annually)
(B) Bottlenose dolphin (*Tursiops truncatus*)—3,705 (an average of 741 annually)
(C) Cuvier's beaked whale (*Ziphius cavirostris*)—112,705 (an average of 22,541 annually)
(D) Dwarf sperm whale (*Kogia sima*)—71,085 (an average of 14,217 annually)
(E) False killer whale (*Pseudorca crassidens*)—2,775 (an average of 555 annually)
(F) Fraser's dolphin (*Lagenodelphis hosei*)—12,860 (an average of 2,572 annually)
(G) Gingko-toothed beaked whale (*Mesoplodon ginkgodens*)—19,485 (an average of 3,897 annually)
(H) Killer whale (*Orcinus orca*)—420 (an average of 84 annually)
(I) Longman's beaked whale (*Indopacetus pacificus*)—9,620 (an average of 1,924 annually)
(J) Melon-headed whale (*Peponocephala electra*)—10,425 (an average of 2,085 annually)
(K) Pantropical spotted dolphin (*Stenella attenuata*)—64,055 (an average of 12,811 annually)
(L) Pygmy killer whale (*Feresa attenuata*)—525 (an average of 105 annually)
(M) Pygmy sperm whale (*Kogia breviceps*)—27,895 (an average of 5,579 annually)
(N) Risso's dolphin (*Grampus griseus*)—2,525 (an average of 505 annually)
(O) Rough-toothed dolphin (*Steno bredanensis*)—9,095 (an average of 1,819 annually)
(P) Short-finned pilot whale (*Globicephala macrorhynchus*)—9,075 (an average of 1,815 annually)
(Q) Sperm whale (*Physeter macrocephalus*)—2,530 (an average of 506 annually)
(R) Spinner dolphin (*Stenella longirostris*)—2,945 (an average of 589 annually)

(S) Striped dolphin (*Stenella coerulealba*)—16,490 (an average of 3,298 annually)

(2) Level A Harassment for all Training and Testing Activities:

(i) Odontocetes:

(A) Dwarf sperm whale (*Kogia sima*)—205 (an average of 41 annually)

(B) Pygmy sperm whale (*Kogia breviceps*)—75 (an average of 15 annually)

(ii) [Reserved]

§ 218.93 Prohibitions.

Notwithstanding takings contemplated in § 218.92 and authorized by an LOA issued under §§ 216.106 and 218.97 of this chapter, no person in connection with the activities described in § 218.90 may:

(a) Take any marine mammal not specified in § 218.92(c);

(b) Take any marine mammal specified in § 218.92(c) other than by incidental take as specified in § 218.92(c);

(c) Take a marine mammal specified in § 218.92(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 and 218.97.

§ 218.94 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.90, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.97 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts.* The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on surface ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in paragraph (a)(1)(i) of this section.

(iii) Lookout measures for non-impulse sound:

(A) With the exception of vessels less than 65 ft (20 m) in length and ships that are minimally manned, ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two lookouts at the forward position. For the purposes of this rule, low-frequency active sonar does not include surface towed array surveillance system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, ships less than 65 ft (20 m) in length and ships that are minimally manned will have one lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one lookout.

(D) Surface ships or aircraft conducting high-frequency or non-hull mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one lookout.

(iv) Lookout measures for explosives and impulse sound:

(A) Aircraft conducting IEER sonobuoy activities and explosive sonobuoy exercises will have one lookout.

(B) Surface vessels conducting anti-swimmer grenade activities will have one lookout.

(C) During general mine countermeasure and neutralization activities using up to a 20-lb net explosive weight detonation (bin E6 and below), vessels greater than 200 ft (61 m) will have two lookouts, while vessels less than 200 ft (61 m) or aircraft will have one lookout.

(D) Mine neutralization activities involving positive control diver-placed charges using up to a 20-lb net explosive weight detonation will have two lookouts. The divers placing the charges on mines will report all marine mammal sightings to their supporting small boat or Range Safety Officer.

(E) When mine neutralization activities using diver-placed charges with up to a 20-lb net explosive weight detonation are conducted with a time-delay firing device, four lookouts will be used. Two lookouts will be positioned in each of two small rigid hull inflatable boats. When aircraft are used, the pilot or member of the aircrew will serve as an additional lookout. The divers placing the charges on mines will report all marine mammal sightings to their supporting small boat or Range Safety Officer.

(F) Surface vessels or aircraft conducting small- or medium-caliber gunnery exercises against a surface target will have one lookout.

(G) Aircraft conducting missile exercises (including rockets) against surface targets will have one lookout.

(H) Aircraft conducting bombing exercises will have one lookout.

(I) During explosive torpedo testing, one lookout will be used and positioned in an aircraft.

(J) During sinking exercises, two lookouts will be used. One lookout will be positioned in an aircraft and one on a surface vessel.

(K) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one lookout.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one lookout.

(B) During activities using towed in-water devices, that are towed from a manned platform, one lookout will be used.

(C) Non-explosive small-, medium-, and large-caliber gunnery exercises using a surface target will have one lookout.

(D) Non-explosive bombing exercises will have one lookout.

(2) *Mitigation zones.* The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulse sound:

(A) When marine mammals are visually detected, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels (for sources that can be powered down during the activity) if any visually detected marine mammals are within 1,000 yd (914 m) of the source (*i.e.,* the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level (for sources that can be powered down during the activity) if any detected marine mammals are sighted within 500 yd (457 m) of the source.

(C) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions

(for sources that can be turned off during the activity) are ceased if any visually detected marine mammals are within 200 yd (183 m) of the sonar dome. Active transmission will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes; the ship has transited more than 2,000 yd. (1.8 kilometers [km]) beyond the location of the last sighting; or the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(D) If the source is not able to be powered down during the activity (*e.g.,* low-frequency sources within bins LF4 and LF5), mitigation will involve ceasing active transmission if a marine mammal is sighted within 200 yd. (183 m). Active transmission will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source; the mitigation zone has been clear from any additional sightings for a period of 30 minutes; or the ship has transited more than 400 yd. (366 m) beyond the location of the last sighting.

(E) With the exception of activities involving platforms operating at high altitudes, when marine mammals are visually detected, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission (for sources that can be turned off during the activity) is ceased if any visually detected marine mammals are within 200 yd (183 m) of the source. Active transmission will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, the vessel or aircraft has repositioned itself more than 400 yd. (366 m) away from the location of the last sighting, or the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

(F) Prior to start up or restart of active sonar, operators shall check that the mitigation zone radius around the sound source is clear of marine mammals.

(G) Generally, the Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(iv) Mitigation zones for explosive and impulse sound:

(A)(*1*) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4). Mitigation would include pre-exercise aerial observation and passive acoustic monitoring, which would begin 30 minutes before the first source/receiver pair detonation and continue throughout the duration of the exercise. The pre-exercise aerial observation would include the time it takes to deploy the sonobuoy pattern (deployment is conducted by aircraft dropping sonobuoys in the water). Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(*2*) Passive acoustic monitoring would be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual observation.

(B)(*1*) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.5–2.5 lb net explosive weight (bin E3). Mitigation would include pre-exercise aerial monitoring during deployment of the field of sonobuoy pairs (typically up to 20 minutes) and continuing throughout the duration of the exercise within a mitigation zone of 350 yd (320 m) around an explosive sonobuoy. Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(*2*) Passive acoustic monitoring would also be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft in order to increase vigilance of their visual observation.

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (bin E2). Mitigation would include visual observation from a small boat immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around an anti-swimmer grenade. Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the activity has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

(D) A mitigation zone ranging from 350 yd (320 m) to 800 yd (732 m), dependent on charge size and if the activity involves the use of diver-placed charges, shall be established for mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in the following table.

Charge size net explosive weight (bins)	General mine countermeasure and neutralization activities using positive control firing devices [1]				Mine countermeasure and neutralization activities using diver placed charges under positive control [2]			
	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone	Predicted average range to TTS	Predicted average range to PTS	Predicted maximum range to PTS	Recommended mitigation zone
2.5–5 lb. (1.2–2.3 kg) (E4)	434 yd (474 m)	197 yd (180 m)	563 yd (515 m)	600 yd (549 m)	545 yd (498 m)	169 yd (155 m)	301 yd (275 m)	350 yd. (320 m).
5–10 lb. (2.7–4.5 kg) (E5)	525 yd (480 m)	204 yd (187 m)	649 yd (593 m)	800 yd (732 m)	587 yd (537 m)	203 yd (185 m)	464 yd (424 m)	500 yd. (457 m).
>10–20 lb. (5–9.1 kg) (E6)	766 yd (700 m)	288 yd (263 m)	648 yd (593 m)	800 yd (732 m)	647 yd (592 m)	232 yd (212 m)	469 yd (429 m)	500 yd. (457 m).

PTS: permanent threshold shift; TTS: temporary threshold shift.

[1] These mitigation zones are applicable to all mine countermeasure and neutralization activities conducted in all locations specified in Chapter 2 of the Navy's LOA application.

[2] These mitigation zones are only applicable to mine countermeasure and neutralization activities involving the use of diver placed charges. These activities are conducted in shallow-water and the mitigation zones are based only on the functional hearing groups with species that occur in these areas (mid-frequency cetaceans and sea turtles).

(*1*) During general mine countermeasure and neutralization activities, mitigation would include visual observation from one or more small boats or aircraft beginning 30 minutes before, during, and 30 minutes after (when helicopters are not involved in the activity) or 10 minutes before, during, and 10 minutes after (when helicopters are involved in the activity) the completion of the exercise within the mitigation zones around the detonation site.

(*2*) For activities involving diver-placed charges, visual observation would be conducted by either two small boats, or one small boat in combination with one helicopter. Boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius and human safety zone) and travel in a circular pattern around the detonation location. When using two boats, each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees. If used, helicopters would travel in a circular pattern around the detonation location.

(*3*) For both general and diver-placed positive control mine countermeasure and neutralization activities, explosive detonations will cease if a marine mammal is sighted within the mitigation zone. Detonations will recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, when helicopters are not involved in the activity or the mitigation zone has been clear from any additional sightings for a period of 10 minutes when helicopters are involved in the activity.

(E) A mitigation zone with a radius of 1,000 yd (914 m) shall be established for mine countermeasure and neutralization activities using diver-placed time-delay firing devices (bin E6). Mine neutralization activities involving diver-placed charges would not include time-delay longer than 10 minutes. Mitigation would include visual observation from small boats or aircraft commencing 30 minutes before, during, and until 30 minutes after the completion of the exercise within a mitigation zone of 1,000 yd (914 m) around the detonation site. During activities using time-delay firing devices involving up to a 20 lb net explosive weight charge, visual observation will take place using two small boats. Fuse initiation would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(*1*) Survey boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location. One lookout from each boat would look inward toward the detonation site and the other lookout would look outward away from the detonation site. When using two small boats, each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees. If available for use, helicopters would travel in a circular pattern around the detonation location.

(*2*) [Reserved]

(F) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (bin E2). Mitigation would include visual observation from a vessel or aircraft immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around the intended impact location. Vessels would observe the mitigation zone from the firing position. When aircraft are firing, the aircrew would maintain visual watch of the mitigation zone during the activity. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing vessel, or the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

(G) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5). Mitigation would include visual observation from a ship immediately before and during the exercise within a mitigation zone of 600 yd (549 m) around the intended impact location. Ships would observe the mitigation zone from the firing position. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to

have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

(H) A mitigation zone with a radius of 900 yd (823 m) around the deployed target shall be established for missile exercises involving aircraft firing up to 250 lb net explosive weight using and a surface target (bin E9). When aircraft are firing, mitigation would include visual observation by the aircrew or supporting aircraft prior to commencement of the activity within a mitigation zone of 900 yd (823 m) around the deployed target. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(I) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises involving aircraft firing >250 to 500 lb net explosive weight using and a surface target (bin E10). When aircraft are firing, mitigation would include visual observation by the aircrew prior to commencement of the activity within a mitigation zone of 2,000 yd (1.8 km) around the intended impact location. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(J) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (bin E12). Mitigation would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 2,500 yd (2.3 km) around the intended impact location. Bombing would cease if a marine mammal is sighted within the mitigation zone. Bombing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(K)(*1*) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (except for aircraft operating at high altitudes) (bin E11). Mitigation would include visual observation by aircraft immediately before, during, and after the exercise within a mitigation zone of 2,100 yd (1.9 km) around the intended impact location. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

(*2*) In addition to visual observation, passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. Passive acoustic observation would be accomplished through the use of remote acoustic sensors or expendable sonobuoys, or via passive acoustic sensors on submarines when they participate in the proposed action. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to the lookout posted in the aircraft in order to increase vigilance of the visual observation and to the person in control of the activity for their consideration in determining when the mitigation zone is free of visible marine mammals.

(L) A mitigation zone with a radius of 2.5 nautical miles around the target ship hulk shall be established for sinking exercises (bin E12). Mitigation would include aerial observation beginning 90 minutes before the first firing, visual observations from vessels throughout the duration of the exercise, and both aerial and vessel observation immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours. Prior to conducting the exercise, the Navy would review remotely sensed sea surface temperature and sea surface height maps to aid in deciding where to release the target ship hulk.

(*1*) The Navy would also monitor using passive acoustics during the exercise. Passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual observation. Lookouts will also increase observation vigilance before the use of torpedoes or unguided ordnance with a net explosive weight of 500 lb or greater, or if the Beaufort sea state is a 4 or above.

(*2*) The exercise would cease if a marine mammal is sighted within the mitigation zone. The exercise would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 30 minutes. Upon sinking the vessel, the Navy would conduct post-exercise visual observation of the mitigation zone for 2 hours (or until sunset, whichever comes first).

(M) A mitigation zone with a radius of 70 yd (64 m) within 30 degrees on either side of the gun target line on the firing side of the vessel for explosive and non-explosive large-caliber gunnery exercises conducted from a ship. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or the vessel has repositioned itself more than 140 yd (128 m) away from the location of the last sighting.

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be

established for all vessel movement, providing it is safe to do so.

(B) A mitigation zone of 250 yd (229 m) shall be established for all towed in-water devices that are towed from a manned platform, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for non-explosive small-, medium-, and large-caliber gunnery exercises using a surface target. Mitigation would include visual observation immediately before and during the exercise within a mitigation zone of 200 m around the intended impact location. Firing would cease if a marine mammal is visually detected within the mitigation zone. Firing would recommence if any one of the following conditions are met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing vessel, or the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting and the animal's estimated course direction.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for non-explosive bombing exercises. Mitigation would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 1000 yd (914 m) around the intended impact location. Bombing would cease if a marine mammal is visually detected within the mitigation zone. Bombing would recommence if any one of the following conditions are met: The animal is observed exiting the mitigation zone, the animal is thought to have exited the mitigation zone based on its course and speed and the relative motion between the animal and the source, or the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

(3) Stranding Response Plan:

(i) The Navy shall abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the MITT Study Area,'' to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 218.91) occurs during a Major Training Exercise (MTE) in the MITT Study Area, the Navy shall implement the procedures described below.

(*1*) The Navy shall implement a shutdown (as defined § 218.91) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the MITT Study Area Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and the Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s), including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NFMS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles from the distressed animal(s), is likely contributing to the animals' refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(*5*) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the MITT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (148-km), 72-hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(b) [Reserved]

§ 218.95 Requirements for monitoring and reporting.

(a) As outlined in the MITT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.90 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.91.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the MITT Monitoring Project Description.

(c) *General notification of injured or dead marine mammals.* Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security considerations allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, an Navy training or testing activity utilizing mid- or high-frequency active sonar, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(d) *Vessel strike.* In the event that a Navy vessel strikes a whale, the Navy shall do the following:

(1) Immediately report to NMFS (pursuant to the established Communication Protocol) the:

(i) Species identification if known;

(ii) Location (latitude/longitude) of the animal (or location of the strike if the animal has disappeared);

(iii) Whether the animal is alive or dead (or unknown); and

(iv) The time of the strike.

(2) As soon as feasible, the Navy shall report to or provide to NMFS, the:

(i) Size, length, and description (critical if species is not known) of animal;

(ii) An estimate of the injury status (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);

(iii) Description of the behavior of the whale during event, immediately after the strike, and following the strike (until the report is made or the animal is no long sighted);

(iv) Vessel class/type and operation status;

(v) Vessel length

(vi) Vessel speed and heading; and

(vii) To the best extent possible, obtain

(3) Within 2 weeks of the strike, provide NMFS:

(i) A detailed description of the specific actions of the vessel in the 30-minute timeframe immediately preceding the strike, during the event, and immediately after the strike (*e.g.,* the speed and changes in speed, the direction and changes in the direction, other maneuvers, sonar use, etc., if not classified); and

(ii) A narrative description of marine mammal sightings during the event and immediately after, and any information as to sightings prior to the strike, if available; and

(iii) Use established Navy shipboard procedures to make a camera available to attempt to capture photographs following a ship strike.

(e) *Annual MITT monitoring program report.* (1) The Navy shall submit an annual report describing the implementation and results of the MITT Monitoring Program, described in § 218.95. Data standards will be consistent to the extent appropriate across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the MITT Monitoring Program shall, at a minimum, provide the same marine mammal observation data required in this section.

(2) As an alternative, the Navy may submit a multi-range complex annual monitoring plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across multiple Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year date to be determined by the Adaptive Management process.

(f) *Sonar exercise notification.* The Navy shall submit to NMFS (specific contact information to be provided in the LOA) either an electronic (preferably) or verbal report within 15 calendar days after the completion of any major exercise indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise.

(g) *Annual MITT exercise and testing report.* The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of the LOA. The Navy shall submit a detailed report 3 months after the anniversary of the date of issuance of the LOA. The detailed annual report shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described below. The analysis in the detailed report will be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed report shall contain information identified in § 218.95(e)(1) and (2).

(1) Major Training Exercises/SINKEX:

(i) This section shall contain the reporting requirements for Coordinated and Strike Group exercises and SINKEX. Coordinated and Strike Group Major Training Exercises include:

(A) Joint Multi-Strike Group Exercise (Valiant Shield).

(B) Joint Expeditionary Exercise

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting during each MTE:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Sound source in use at the time of sighting.

(*10*) Indication of whether animal is <200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd from sound source.

(*11*) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(*12*) If source in use is a hull-mounted sonar, relative bearing of animal from ship, and estimation of animal's motion relative to ship (opening, closing, parallel).

(*13*) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.) and if any calves present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iv) Exercise information for each SINKEX:

(A) List of the vessels and aircraft involved in the SINKEX.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEX, and ordnance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, area, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(*10*) Mitigation implementation—Whether the SINKEX was stopped or delayed and length of delay.

(*11*) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(H) List of the ordnance used throughout the SINKEX and net explosive weight (NEW) of each weapon and the combined NEW.

(2) *Summary of sources used.* (i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual or quantity (per the LOA) of each bin of sonar or other non-impulsive source;

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin; and

(C) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(*1*) Total expended/detonated rounds (buoys).

(*2*) Total number of self-scuttled IEER rounds.

(3) *Geographic information presentation.* The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(h) *Five-year close-out exercise and testing report.*—This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 218.96 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.106 of this chapter) conducting the activity identified in § 218.90(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 218.97 or a renewal under § 218.98.

§ 218.97 Letters of Authorization.

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) The LOA will set forth:

(1) Permissible methods and extent of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.98 Renewals and modifications of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 218.97 of this chapter for the activity identified in § 218.90(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are within the scope of those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and;

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years). NMFS may publish a notice of proposed LOA in the **Federal Register,** including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 218.97 of this chapter for the activity identified in § 218.94 of this chapter may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augmenting, changing, or reducing) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.92(c), an LOA may be modified without prior notification and an opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

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Part III

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9305 of July 29, 2015

50th Anniversary of Medicare and Medicaid

By the President of the United States of America

A Proclamation

On July 30, 1965, President Lyndon B. Johnson signed Medicare and Medicaid into law. Fifty years later, these programs have been woven into the fabric of our society—cornerstones of the fundamental belief that in America, health care is a right and not a privilege. Today, Medicare and Medicaid help tens of millions of Americans live longer, healthier lives and achieve economic security. Together, they have helped protect the quintessential American promise that opportunity, prosperity, and economic mobility are within reach for everyone who works hard and plays by the rules. On this anniversary, we pause to celebrate these landmark achievements and reflect on the ways they have improved our Nation.

As we commemorate two of America's greatest triumphs, we must not forget that the security they provide was not always guaranteed, nor was their progress inevitable or their success preordained. Before Medicare and Medicaid, only about half of all seniors had some form of insurance, and too many of our most vulnerable citizens—including children and people with disabilities—did not have access to quality, affordable care.

As a Nation, we chose to end that era. With hard work and determination, we fought to secure the health and peace of mind of millions of our people who previously lacked a basic measure of security. Medicare and Medicaid did not just make our country better; they reaffirmed its greatness and established a legacy that we must carry forward today. We must recognize that this work, though begun a half-century ago and continued over the decades that have followed, is not yet complete. For too many, quality, affordable health care is still out of reach—and we must recommit to finishing this important task.

We have made important strides in this fight, and today, health care is more affordable and accessible than ever before thanks to the Affordable Care Act. Because of this law, more than 16 million uninsured Americans have gained the security of health insurance, including through its expansion of Medicaid. Nearly 40 million people on Medicare have taken advantage of free preventive health services, and the law has saved over 9 million seniors on Medicare more than $15 billion in prescription drug costs. It has expanded the options for home and community-based services offered by Medicaid. And since I signed this law, we have extended the life of the Medicare Trust Fund by 13 years.

Since the Affordable Care Act became law, health care prices have risen at the lowest rate since Medicare and Medicaid were established, and as President, I am dedicated to building on this progress to ensure these programs are protected and strengthened. Earlier this year, I was proud to sign bipartisan legislation to permanently fix the Medicare physician payment system—creating a cost-effective way to compensate doctors based on how well they help their patients get and stay healthy. I am fighting to further extend the solvency of the Hospital Insurance trust fund, align payments more closely with the value of care, and build on the Affordable Care Act by closing the Medicare Part D donut hole for brand drugs by 2017. I am committed to reducing rapidly rising prescription drug costs in both

Medicare and Medicaid. And every day, I am working to convince more Governors and State legislatures to take advantage of the Federal Government's financial support to expand Medicaid and cover the millions of additional Americans who would be eligible for quality, affordable health insurance.

Five decades ago, the United States recognized our obligation to care for our fellow Americans. Today, we must ensure this promise is protected for our parents, children, and grandchildren. On the 50th anniversary of Medicare and Medicaid, let us not be content with the progress we have made. Instead, let us summon the resolve of the generations that came before us and recommit to advancing this noble cause. Five decades from now, when people look back on this time, let it be said that our generation put its shoulder to the wheel and carried forward the work of making affordable health care a reality for all Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 30, 2015, as the 50th Anniversary of Medicare and Medicaid. I call upon all Americans to observe this day with appropriate ceremonies and activities that recognize the vital safety net that Medicare and Medicaid provide for millions of Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2015–19180
Filed 7–31–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Executive Order 13702 of July 29, 2015

Creating a National Strategic Computing Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to maximize benefits of high-performance computing (HPC) research, development, and deployment, it is hereby ordered as follows:

Section 1. *Policy.* In order to maximize the benefits of HPC for economic competitiveness and scientific discovery, the United States Government must create a coordinated Federal strategy in HPC research, development, and deployment. Investment in HPC has contributed substantially to national economic prosperity and rapidly accelerated scientific discovery. Creating and deploying technology at the leading edge is vital to advancing my Administration's priorities and spurring innovation. Accordingly, this order establishes the National Strategic Computing Initiative (NSCI). The NSCI is a whole-of-government effort designed to create a cohesive, multi-agency strategic vision and Federal investment strategy, executed in collaboration with industry and academia, to maximize the benefits of HPC for the United States.

Over the past six decades, U.S. computing capabilities have been maintained through continuous research and the development and deployment of new computing systems with rapidly increasing performance on applications of major significance to government, industry, and academia. Maximizing the benefits of HPC in the coming decades will require an effective national response to increasing demands for computing power, emerging technological challenges and opportunities, and growing economic dependency on and competition with other nations. This national response will require a cohesive, strategic effort within the Federal Government and a close collaboration between the public and private sectors.

It is the policy of the United States to sustain and enhance its scientific, technological, and economic leadership position in HPC research, development, and deployment through a coordinated Federal strategy guided by four principles:

(1) The United States must deploy and apply new HPC technologies broadly for economic competitiveness and scientific discovery.

(2) The United States must foster public-private collaboration, relying on the respective strengths of government, industry, and academia to maximize the benefits of HPC.

(3) The United States must adopt a whole-of-government approach that draws upon the strengths of and seeks cooperation among all executive departments and agencies with significant expertise or equities in HPC while also collaborating with industry and academia.

(4) The United States must develop a comprehensive technical and scientific approach to transition HPC research on hardware, system software, development tools, and applications efficiently into development and, ultimately, operations.

This order establishes the NSCI to implement this whole-of-government strategy, in collaboration with industry and academia, for HPC research, development, and deployment.

Sec. 2. *Objectives.* Executive departments, agencies, and offices (agencies) participating in the NSCI shall pursue five strategic objectives:

(1) Accelerating delivery of a capable exascale computing system that integrates hardware and software capability to deliver approximately 100 times the performance of current 10 petaflop systems across a range of applications representing government needs.

(2) Increasing coherence between the technology base used for modeling and simulation and that used for data analytic computing.

(3) Establishing, over the next 15 years, a viable path forward for future HPC systems even after the limits of current semiconductor technology are reached (the ''post-Moore's Law era'').

(4) Increasing the capacity and capability of an enduring national HPC ecosystem by employing a holistic approach that addresses relevant factors such as networking technology, workflow, downward scaling, foundational algorithms and software, accessibility, and workforce development.

(5) Developing an enduring public-private collaboration to ensure that the benefits of the research and development advances are, to the greatest extent, shared between the United States Government and industrial and academic sectors.

Sec. 3. *Roles and Responsibilities.* To achieve the five strategic objectives, this order identifies lead agencies, foundational research and development agencies, and deployment agencies. Lead agencies are charged with developing and delivering the next generation of integrated HPC capability and will engage in mutually supportive research and development in hardware and software, as well as in developing the workforce to support the objectives of the NSCI. Foundational research and development agencies are charged with fundamental scientific discovery work and associated advances in engineering necessary to support the NSCI objectives. Deployment agencies will develop mission-based HPC requirements to influence the early stages of the design of new HPC systems and will seek viewpoints from the private sector and academia on target HPC requirements. These groups may expand to include other government entities as HPC-related mission needs emerge.

(a) *Lead Agencies.* There are three lead agencies for the NSCI: the Department of Energy (DOE), the Department of Defense (DOD), and the National Science Foundation (NSF). The DOE Office of Science and DOE National Nuclear Security Administration will execute a joint program focused on advanced simulation through a capable exascale computing program emphasizing sustained performance on relevant applications and analytic computing to support their missions. NSF will play a central role in scientific discovery advances, the broader HPC ecosystem for scientific discovery, and workforce development. DOD will focus on data analytic computing to support its mission. The assignment of these responsibilities reflects the historical roles that each of the lead agencies have played in pushing the frontiers of HPC, and will keep the Nation on the forefront of this strategically important field. The lead agencies will also work with the foundational research and development agencies and the deployment agencies to support the objectives of the NSCI and address the wide variety of needs across the Federal Government.

(b) *Foundational Research and Development Agencies.* There are two foundational research and development agencies for the NSCI: the Intelligence Advanced Research Projects Activity (IARPA) and the National Institute of Standards and Technology (NIST). IARPA will focus on future computing paradigms offering an alternative to standard semiconductor computing technologies. NIST will focus on measurement science to support future computing technologies. The foundational research and development agencies will coordinate with deployment agencies to enable effective transition of research and development efforts that support the wide variety of requirements across the Federal Government.

(c) *Deployment Agencies.* There are five deployment agencies for the NSCI: the National Aeronautics and Space Administration, the Federal Bureau

of Investigation, the National Institutes of Health, the Department of Homeland Security, and the National Oceanic and Atmospheric Administration. These agencies may participate in the co-design process to integrate the special requirements of their respective missions and influence the early stages of design of new HPC systems, software, and applications. Agencies will also have the opportunity to participate in testing, supporting workforce development activities, and ensuring effective deployment within their mission contexts.

Sec. 4. *Executive Council.* (a) To ensure accountability for and coordination of research, development, and deployment activities within the NSCI, there is established an NSCI Executive Council to be co-chaired by the Director of the Office of Science and Technology Policy (OSTP) and the Director of the Office of Management and Budget (OMB). The Director of OSTP shall designate members of the Executive Council from within the executive branch. The Executive Council will include representatives from agencies with roles and responsibilities as identified in this order.

(b) The Executive Council shall coordinate and collaborate with the National Science and Technology Council established by Executive Order 12881 of November 23, 1993, and its subordinate entities as appropriate to ensure that HPC efforts across the Federal Government are aligned with the NSCI. The Executive Council shall also consult with representatives from other agencies as it determines necessary. The Executive Council may create additional task forces as needed to ensure accountability and coordination.

(c) The Executive Council shall meet regularly to assess the status of efforts to implement this order. The Executive Council shall meet no less often than twice yearly in the first year after issuance of this order. The Executive Council may revise the meeting frequency as needed thereafter. In the event the Executive Council is unable to reach consensus, the Co-Chairs will be responsible for documenting issues and potential resolutions through a process led by OSTP and OMB.

(d) The Executive Council will encourage agencies to collaborate with the private sector as appropriate. The Executive Council may seek advice from the President's Council of Advisors on Science and Technology through the Assistant to the President for Science and Technology and may interact with other private sector groups consistent with the Federal Advisory Committee Act.

Sec. 5. *Implementation.* (a) The Executive Council shall, within 90 days of the date of this order, establish an implementation plan to support and align efforts across agencies in support of the NSCI objectives. Annually thereafter for 5 years, the Executive Council shall update the implementation plan as required and document the progress made in implementing the plan, engaging with the private sector, and taking actions to implement this order. After 5 years, updates to the implementation plan may be requested at the discretion of the Co-Chairs.

(b) The Co-Chairs shall prepare a report each year until 5 years from the date of this order on the status of the NSCI for the President. After 5 years, reports may be prepared at the discretion of the Co-Chairs.

Sec. 6. *Definitions.* For the purposes of this order:

The term ''high-performance computing'' refers to systems that, through a combination of processing capability and storage capacity, can solve computational problems that are beyond the capability of small- to medium-scale systems.

The term ''petaflop'' refers to the ability to perform one quadrillion arithmetic operations per second.

The term ''exascale computing system'' refers to a system operating at one thousand petaflops.

Sec. 7. *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, 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,
July 29, 2015.

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CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

S. 971/P.L. 114–39
Medicare Independence at Home Medical Practice Demonstration Improvement Act of 2015 (July 30, 2015; 129 Stat. 440)

S. 984/P.L. 114–40
Steve Gleason Act of 2015 (July 30, 2015; 129 Stat. 441)

Last List July 30, 2015

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 3	Aug 18	Aug 24	Sep 2	Sep 8	Sep 17	Oct 2	Nov 2
August 4	Aug 19	Aug 25	Sep 3	Sep 8	Sep 18	Oct 5	Nov 2
August 5	Aug 20	Aug 26	Sep 4	Sep 9	Sep 21	Oct 5	Nov 3
August 6	Aug 21	Aug 27	Sep 8	Sep 10	Sep 21	Oct 5	Nov 4
August 7	Aug 24	Aug 28	Sep 8	Sep 11	Sep 21	Oct 6	Nov 5
August 10	Aug 25	Aug 31	Sep 9	Sep 14	Sep 24	Oct 9	Nov 9
August 11	Aug 26	Sep 1	Sep 10	Sep 15	Sep 25	Oct 13	Nov 9
August 12	Aug 27	Sep 2	Sep 11	Sep 16	Sep 28	Oct 13	Nov 10
August 13	Aug 28	Sep 3	Sep 14	Sep 17	Sep 28	Oct 13	Nov 12
August 14	Aug 31	Sep 4	Sep 14	Sep 18	Sep 28	Oct 13	Nov 12
August 17	Sep 1	Sep 8	Sep 16	Sep 21	Oct 1	Oct 16	Nov 16
August 18	Sep 2	Sep 8	Sep 17	Sep 22	Oct 2	Oct 19	Nov 16
August 19	Sep 3	Sep 9	Sep 18	Sep 23	Oct 5	Oct 19	Nov 17
August 20	Sep 4	Sep 10	Sep 21	Sep 24	Oct 5	Oct 19	Nov 18
August 21	Sep 8	Sep 11	Sep 21	Sep 25	Oct 5	Oct 20	Nov 19
August 24	Sep 8	Sep 14	Sep 23	Sep 28	Oct 8	Oct 23	Nov 23
August 25	Sep 9	Sep 15	Sep 24	Sep 29	Oct 9	Oct 26	Nov 23
August 26	Sep 10	Sep 16	Sep 25	Sep 30	Oct 13	Oct 26	Nov 24
August 27	Sep 11	Sep 17	Sep 28	Oct 1	Oct 13	Oct 26	Nov 25
August 28	Sep 14	Sep 18	Sep 28	Oct 2	Oct 13	Oct 27	Nov 27
August 31	Sep 15	Sep 21	Sep 30	Oct 5	Oct 15	Oct 30	Nov 30