



FEDERAL REGISTER

Vol. 80

Thursday,

No. 175

September 10, 2015

Pages 54407–54700

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.ofr.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.fdsys.gov, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpocusthelp.com.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 80 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email FRSubscriptions@nara.gov
Phone 202-741-6000



Contents

Federal Register

Vol. 80, No. 175

Thursday, September 10, 2015

Agency for International Development

NOTICES

Appointments:

Senior Executive Services Performance Review Board, 54511

Meetings:

Building Human Capital—Nutrition is Fundamental, 54511

Senior Executive Service Performance Review Board Membership, 54512

Agriculture Department

See Animal and Plant Health Inspection Service

See Food and Nutrition Service

See Food Safety and Inspection Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54512–54517

Animal and Plant Health Inspection Service

PROPOSED RULES

Scrapie in Sheep and Goats, 54660–54692

Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54555–54556

Broadcasting Board of Governors

NOTICES

Broadcasting Board of Governors FY–2013 Service Contract Analysis and FY–2014 Service Contract Inventory; Availability, 54517

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54517–54518

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Generic Clearance for the 2020 Census Field Tests, 54518

Centers for Medicare & Medicaid Services

NOTICES

Medicare Program:

Prohibition on Expansion of Facility Capacity under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition; Exception Approval, 54565–54566

Civil Rights Commission

NOTICES

Meetings:

Mississippi Advisory Committee; Correction, 54517

Coast Guard

RULES

Marine Vapor Control Systems, 54418

PROPOSED RULES

Great Lakes Pilotage Rates:

Annual Review and Changes to Methodology, 54484–54507

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Consumer Product Safety Commission

RULES

Toys; Determination Regarding Heavy Elements Limits for Unfinished and Untreated Wood, 54417–54418

Defense Department

See Army Department

See Navy Department

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Impact Evaluation of Data Driven Instruction Professional Development for Teachers, 54558

Energy Department

See Federal Energy Regulatory Commission

PROPOSED RULES

Appliance Standards and Rulemaking Federal Advisory Committee:

Central Air Conditioners and Heat Pumps Working Group to Negotiate a Notice of Proposed Rulemaking for Energy Conservation Standards, 54444

Walk-in Cooler and Freezer Refrigeration Systems

Working Group to Negotiate Energy Conservation Standards, 54443

NOTICES

Meetings:

Hydrogen and Fuel Cell Technical Advisory Committee, 54559

Secretary of Energy Advisory Board, 54558–54559

Environmental Protection Agency

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Connecticut; Infrastructure Requirements, 54471–54483

Wisconsin; Disapproval of Infrastructure SIP with Respect to Oxides of Nitrogen as a Precursor to Ozone Provisions for the 2006 PM2.5 NAAQS, 54468–54471

Federal Aviation Administration

RULES

Model Aircraft Operating Standards (June 9, 1981):

Advisory Circular 91–57, 54417

PROPOSED RULES

Establishment of Restricted Areas:

Chincoteague Inlet, VA, 54444–54446

NOTICES

Noise Exposure Maps:

Memphis International Airport, Memphis, TN, 54652–54653

Federal Deposit Insurance Corporation**NOTICES**

Receiverships; Terminations:

Community National Bank, Lino Lakes, MN, 54564

Terminations of Receivership:

Community Security Bank, New Prague, MN, 54564

State Bank of Aurora, Aurora, MN, 54564

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 54564

Federal Emergency Management Agency**NOTICES**

Major Disaster Declarations:

Kentucky; Amendment No. 1, 54573

Missouri; Amendment No. 1, 54573–54574

Federal Energy Regulatory Commission**NOTICES**

Combined Filings, 54559–54563

Federal Highway Administration**NOTICES**

Environmental Impact Statements; Availability, etc.:

Cowlitz County, WA, 54654

State Route 95 Realignment Study; Interstate 40 to State Route 68, Mohave County, AZ, 54655

MAP–21 Comprehensive Truck Size and Weight Limits Study Deadline, 54653–54654

Federal Motor Carrier Safety Administration**NOTICES**

Commercial Driver's License Standards; Exemption

Applications:

Daimler Trucks North America, 54655–54656

Federal Railroad Administration**NOTICES**

Applications for Approval of Discontinuance or Modification of a Railroad Signal System:

Norfolk Southern Corp., 54656–54657

Petitions for Waivers of Compliance, 54657

Fish and Wildlife Service**NOTICES**

Requests for Nominations:

Advisory Council on Wildlife Trafficking; Extension of Nominations Period, 54583

Food and Drug Administration**PROPOSED RULES**

Food Labeling:

Revision of the Nutrition and Supplement Facts Labels; Administrative Docket Update; Availability, 54446–54447

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

New Animal Drugs for Investigational Use, 54569–54570

Animal Food; Export Certificates; Food and Drug Administration Food Safety Modernization Act; Certification Fees, 54569

Guidance:

Distributor Labeling for New Animal Drugs, 54568–54569

International Conference on Harmonisation; Q3D Elemental Impurities, 54566–54567

Meetings:

Osteoporosis Drug Development; Public Workshop, 54567–54568

Food and Nutrition Service**RULES**

Clarification of Eligibility of Fleeing Felons, 54410–54417

Food Safety and Inspection Service**PROPOSED RULES**

Descriptive Designation for Needle or Blade Tenderized (Mechanically Tenderized) Beef Products; Correction, 54442

Foreign Claims Settlement Commission**NOTICES**

Meetings; Sunshine Act, 54594

Foreign-Trade Zones Board**NOTICES**

Expansions of Subzones:

Cummins, Inc., Foreign-Trade Zone 77, Memphis, TN, 54520–54521

Production Activities:

Bauer Manufacturing Inc., Foreign-Trade Zone 265, Conroe, TX, 54520

Quad-Cities, Iowa/Illinois; CNH Industrial America, LLC Subzone 133E, 54519–54520

Health and Human Services Department*See Centers for Medicare & Medicaid Services**See Food and Drug Administration**See National Institutes of Health***Homeland Security Department***See Coast Guard**See Federal Emergency Management Agency**See U.S. Citizenship and Immigration Services***NOTICES**

Meetings:

Homeland Security Science and Technology Advisory Committee, 54574

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Accountability in the Provision of HUD Assistance Applicant/Recipient Disclosure/Update Report, 54580–54581

Core Performance Reporting Requirements for Competitively-Funded Grants, 54577–54579

Legal Instructions Concerning Applications for Full Insurance Benefits; Assignment of Multifamily Mortgages to the Secretary, 54581–54582

Neighborhood Stabilization Program 2 Reporting, 54582–54583

Personal Financial and Credit Statement, 54580

Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Program Participants Informational Conference Call, 54579–54580

Interior Department*See Fish and Wildlife Service**See Land Management Bureau**See National Indian Gaming Commission**See Reclamation Bureau*

See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service

PROPOSED RULES

Guidance:

Imposition of Tax on Certain Gifts and Bequests from Covered Expatriates, 54447–54468

International Trade Administration

NOTICES

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Hot-Rolled Carbon Steel Flat Products from India, 54521–54523

Certain Welded Carbon Steel Standard Pipes and Tubes from India, 54523

Frozen Warmwater Shrimp from India, 54524–54529

Silicomanganese from Kazakhstan, 54523–54524

World Health Organization Pandemic Influenza

Preparedness Framework, 54529–54530

International Trade Commission

NOTICES

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof, 54592–54593

Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions, 54591–54592

Judicial Conference of the United States

NOTICES

Meetings:

Committee on Rules of Practice and Procedure, 54593–54594

Justice Department

See Foreign Claims Settlement Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Federal Coal Lease Request, 54594

Labor Department

See Mine Safety and Health Administration

Land Management Bureau

NOTICES

Realty Action:

Modified Competitive Sealed Bid Sale of Public Land, Eddy County, NM, 54583–54586

Management and Budget Office

RULES

Universal Identifier and System of Award Management:

Corrections, 54407–54410

Mine Safety and Health Administration

NOTICES

Petitions for Modification of Existing Mandatory Safety

Standards, 54594–54596

National Archives and Records Administration

NOTICES

Meetings:

Freedom of Information Act Advisory Committee, 54596

National Indian Gaming Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54586–54589

National Institute of Standards and Technology

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Hollings Manufacturing Extension Partnership Program Application Requirements, 54530

National Institutes of Health

NOTICES

Meetings:

Center for Scientific Review, 54571

Eunice Kennedy Shriver National Institute of Child Health and Human Development, 54570, 54573

National Institute of Allergy and Infectious Diseases, 54573

National Institute of Dental and Craniofacial Research, 54570

National Institute of Mental Health, 54572

National Institute on Aging, 54570, 54572

Proposed Start-up Exclusive Option License:

Therapeutic Uses for Cardio-metabolic Indications, Including Hypertriglyceridemia,

Hypercholesterolemia and Diabetes, 54571–54572

National Oceanic and Atmospheric Administration

RULES

Fisheries of the Exclusive Economic Zone Off Alaska:

Pacific Cod by Catcher/Processors Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska, 54440–54441

PROPOSED RULES

Fisheries Off West Coast States:

Coastal Pelagic Species Fisheries; Annual Specifications, 54507–54510

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54554

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Access-Point Angler Intercept Survey, 54534–54535

Cost-Earnings Surveys of American Samoa Longline Fishery, 54531

Reporting Requirements for Commercial Fisheries

Authorization under Section 118 of the Marine

Mammal Protection Act, 54532–54533

Southeast Region Permit Family of Forms, 54553–54554

Applications for Exempted Fishing Permits, 54531–54532

Takes of Marine Mammals Incidental to Specified

Activities:

Army Corps of Engineers during the Port of Miami Construction Project in Miami, FL; Withdrawal, 54554–54555

Mukilteo Multimodal Project Tank Farm Pier Removal Project, 54535–54544

Pier Maintenance Project, Naval Base Kitsap Bremerton, WA, 54544–54553

Workshops:

Schedules for Atlantic Shark Identification and Protected Species Safe Handling, Release, and Identification,

54533–54534

Navy Department**NOTICES**

Environmental Impact Statements; Availability, etc.:
Fighter Squadron Transitions, 54556–54557

Nuclear Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Specific Domestic Licenses to Manufacture or Transfer
Certain Items Containing Byproduct Material, 54596–
54598

Overseas Private Investment Corporation**NOTICES**

Meetings; Sunshine Act, 54598

Patent and Trademark Office**NOTICES**

Appointments:
Performance Review Board, 54555

Peace Corps**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 54598

Personnel Management Office**NOTICES**

Meetings:
Hispanic Council on Federal Employment, 54598

Pipeline and Hazardous Materials Safety Administration**RULES**

Hazardous Materials:
Special Permit and Approvals Standard Operating
Procedures and Evaluation Process, 54418–54440

Postal Regulatory Commission**NOTICES**

New Postal Products, 54599–54600

Postal Service**NOTICES**

Product Changes:
Priority Mail Express Negotiated Service Agreement,
54600
Priority Mail Negotiated Service Agreement, 54600

Presidential Documents**PROCLAMATIONS**

Special Observances:
Labor Day (Proc. 9316), 54693–54696

EXECUTIVE ORDERS

Government Agencies and Employees:
Contractors, Paid Sick Leave; Establishment (EO 13706),
54697–54700

Presidio Trust**NOTICES**

Meetings:
Board of Directors, 54600–54601

Reclamation Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:
Central Valley Project Municipal and Industrial Water
Shortage Policy, Central Valley, CA, 54589–54590

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 54617, 54630–54631,
54634–54635

Meetings; Sunshine Act, 54629

Self-Regulatory Organizations; Proposed Rule Changes:

BATS Exchange, Inc., 54614–54617
BATS Y-Exchange, Inc., 54631–54634
BOX Options Exchange, LLC, 54621–54627
EDGA Exchange, Inc., 54635–54638
EDGX Exchange, Inc., 54617–54621, 54638–54640
ICE Clear Credit, LLC, 54627–54628
NASDAQ OMX BX, Inc., 54601–54614, 54640–54646
NYSE Arca, Inc., 54646–54648
The Options Clearing Corp., 54628–54629

Small Business Administration**NOTICES**

Disaster Declarations:

Alaska, 54650
Kentucky, 54649
New York, 54648–54649
Ohio, 54649–54650

Meetings:

National Small Business Development Center Advisory
Board, 54650

State Department**NOTICES**

Charter Renewals:

Industry Advisory Group, 54651

Designation of Global Terrorist:

Abu 'Ubaydah Yusuf al 'Anabi aka Yusuf Abu-'Ubaydah
al-Anabi aka Abou Obeida Youssef al-Annabi aka
Abu-Ubaydah Yusuf al-Inabi, 54650–54651

Surface Mining Reclamation and Enforcement Office**NOTICES**

Stream Protection Rule, 54590–54591

Surface Transportation Board**NOTICES**

Railroad Revenue Adequacy, 2014 Determination, 54657–
54658

Trade Representative, Office of United States**NOTICES**

2015 Special 301 Out-of-Cycle Review of Notorious
Markets, 54651–54652

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See Pipeline and Hazardous Materials Safety
Administration

See Surface Transportation Board

Treasury Department

See Internal Revenue Service

U.S. Citizenship and Immigration Services**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Application for Action on an Approved Application or
Petition, 54576–54577

Monthly Report on Naturalization Papers, 54575–54576
Petition for CNMI-Only Nonimmigrant Transitional
Worker, 54574–54575

Separate Parts In This Issue

Part II

Agriculture Department, Animal and Plant Health
Inspection Service, 54660–54692

Part III

Presidential Documents, 54693–54700

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

2 CFR

25.....54407
200.....54407

3 CFR**Proclamations:**

9316.....54695

Executive Orders:

13706.....54697

7 CFR

272.....54410
273.....54410

9 CFR**Proposed Rules:**

54.....54660
79.....54660
317.....54442

10 CFR**Proposed Rules:**

430 (2 documents)54443,
54444

14 CFR

71.....54417

Proposed Rules:

73.....54444

16 CFR

1251.....54417

21 CFR**Proposed Rules:**

101.....54446

26 CFR**Proposed Rules:**

28.....54447

33 CFR

154.....54418
155.....54418
156.....54418

40 CFR**Proposed Rules:**

52 (2 documents)54468,
54471

46 CFR

35.....54418
39.....54418

Proposed Rules:

401.....54484
403.....54484
404.....54484

49 CFR

105.....54418
107.....54418
171.....54418

50 CFR

679.....54440

Proposed Rules:

660.....54507

Rules and Regulations

Federal Register

Vol. 80, No. 175

Thursday, September 10, 2015

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 25 and 200

Universal Identifier and System of Award Management; Corrections

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Correcting amendments.

SUMMARY: The Office of Management and Budget (OMB) is correcting the final guidance that appeared in the **Federal Register** on September 14, 2010 (75 FR 55673) and December 26, 2013 (78 FR 78589). OMB is amending the guidance to make technical corrections where needed. The final guidance is revised to remove references to the “System of Award Management” and replace them with the correct term “System for Award Management”.

With respect to the technical corrections to the final guidance, these corrections are included only where it has come to the attention of the Council on Financial Assistance Reform (COFAR) that particular language in the final guidance did not match with the COFAR’s intent and would result in an erroneous implementation of the guidance. These technical corrections will go into effect at the time of issuance.

Guidance on effective/applicability date is revised to allow a grace period of two fiscal years for non-Federal entities to implement changes to their procurement policies and procedures in accordance with guidance on procurement standards.

Other requirements in the section remain as originally published. Technical corrections are made to eliminate conflicting or unclear language and grammatical inconsistencies or citation errors throughout.

DATES: *Effective date:* September 10, 2015.

Implementation date: For all non-Federal entities, there is a two-year grace period for implementation of the procurement standards in 2 CFR 200.317 through 200.326.

FOR FURTHER INFORMATION CONTACT: Rhea Hubbard or Gil Tran, Office of Federal Financial Management, rhubbard@omb.eop.gov or Hai_M_Tran@omb.eop.gov, or via telephone at (202) 395–3993.

SUPPLEMENTARY INFORMATION: This is a summary of OMB’s Erratum, 2 CFR 200 released on December 26, 2013. This is the second set of corrections. The first set of corrections was published in the **Federal Register** on December 19, 2014 (79 FR 75871). This document augments the corrections which were published in the **Federal Register** on December 19, 2014 (79 FR 75871).

Additional Outreach and Training

Since the issuance of the Uniform Guidance on December 26, 2013, the COFAR has developed and provided numerous additional resources to assist stakeholders in learning about the guidance. For a complete list and access to these resources, please visit the COFAR Web site at cfo.gov/COFAR. Resources available include a Frequently Asked Questions document, as well as several training webcasts. Please note that the Frequently Asked Questions document will be referenced as additional guidance in the 2015 issuance of Appendix XI to Part 200—Compliance Supplement.

List of Subjects

2 CFR Part 25

Administrative practice and procedures, Grants administration, Grant programs, Loan programs.

2 CFR Part 200

Accounting, Auditing, Colleges and universities, State and local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

Mark Reger,

Deputy Controller.

Under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR parts 25 and 200

by making the following correcting amendments:

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

■ 1. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 2. Revise the heading of part 25 to read as set forth above.

§§ 25.100 and 25.310 and Appendix A to Part 25 [Amended]

■ 3. Amend §§ 25.100 and 25.310 and Appendix A to Part 25 by removing references to “System of Award Management” wherever they appear, and adding, in their place, “System for Award Management”.

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 4. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

§ 200.19 [Amended]

■ 5. Amend § 200.19 paragraph (b) by removing “C.12” and adding, in its place “C.2.a.”.

■ 6. In § 200.40 revise the introductory text of paragraph (a) and the the introductory text of paragraph (b), to read as follows:

§ 200.40 Federal financial assistance.

(a) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

* * * * *

(b) For § 200.202 Requirement to provide public notice of Federal financial assistance programs and Subpart F—Audit Requirements of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

* * * * *

■ 7. In § 200.101, revise the table in paragraph (b)(1), and revise paragraph (d)(1), to read as follows:

§ 200.101 Applicability.

* * * * *

(b) * * *

(1) * * *

This table must be read along with the other provisions of this section

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) below):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A—Acronyms and Definitions	—All.	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance.
Subparts C–D, except for §§ 200.202 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management.	—Grant Agreements and cooperative agreements.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.202 Requirement to provide public notice of Federal financial assistance programs.	—Agreements for loans, loan guarantees, interest subsidies and insurance.	—Agreements for loans, loan guarantees, interest subsidies and insurance.
§§ 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management.	—All.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
Subpart E—Cost Principles	—Grant Agreements and cooperative agreements, except those providing food commodities.	—Grant agreements and cooperative agreements providing foods commodities.
	—All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated.	—Fixed amount awards.
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements.	—Agreements for loans, loans guarantees, interest subsidies and insurance.
	—Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation.	—Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
	—Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996.	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

(d) * * *

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that Subpart E—Cost Principles of this Part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

* * * * *

■ 8. Revise § 200.110, paragraph (a) to read as follows:

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final. Federal awarding agencies must implement the

policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB. For the procurement standards in §§ 200.317–200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in § 200.104) for two additional fiscal years after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional two fiscal years before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies.

* * * * *

§ 200.203 [Amended]

■ 9. In § 200.203(a)(5), remove “Financial” and add, in its place, “Domestic”

■ 10. Revise § 200.305, paragraph (b)(9) introductory text to read as follows:

§ 200.305 Payment.

* * * * *

(b) * * *

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service

payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interest earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

* * * * *

■ 11. Revise § 200.308, paragraph (c) to read as follows:

§ 200.308 Revision of budget and program plans.

* * * * *

(c)(1) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) Change in a key person specified in the application or the Federal award.

(iii) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iv) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(v) The transfer of funds budgeted for participant support costs as defined in § 200.75 Participant support costs to other categories of expense.

(vi) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(vii) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(viii) The need arises for additional Federal funds to complete the project.

(2) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 Exceptions and 200.407 Prior written approval (prior approval).

* * * * *

§ 200.320 [Amended]

■ 12. In § 200.320, paragraph (c)(2)(i), remove “state,” and remove “publically” and add, in its place “publicly”.

■ 13. In § 200.330, revise the final sentence of paragraph (b) introductory text to read as follows:

§ 200.330 Subrecipient and contractor determinations.

* * * * *

(b) * * * Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

* * * * *

■ 14. Revise § 200.331, paragraphs (a)(1)(iv), (vi), (vii), (viii), and (x); (a)(2) and (a)(4) to read as follows:

§ 200.331 Requirements for pass-through entities.

* * * * *

(a) * * *

(1) * * *

(iv) Federal Award Date (see § 200.39 Federal award date) of award to the recipient by the Federal agency;

* * * * *

(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;

(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

* * * * *

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

* * * * *

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

* * * * *

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de

minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (f);

* * * * *

§ 200.431 [Amended]

■ 15. In § 200.431, paragraph (h)(3) remove “Federal Government’s” and add, in its place “non-Federal entity” and revise paragraph (j) to read as follows:

§ 200.431 Compensation—fringe benefits.

* * * * *

(j)(1) *For IHEs only.* Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

* * * * *

§ 200.449 [Amended]

■ 16. In § 200.449, paragraph (e), remove “September 23” and add, in its place “July 1”.

■ 17. Amend Appendix III to Part 200 as follows:

■ a. In Section C.7, revise the first sentence.

■ b. Amend the final sentence of Section C.11.a.(1), by adding “see” after “subrecipient,”.

The revision reads as follows:

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

* * * * *

C. * * *

7. Except as provided in paragraph (c)(1) of § 200.414 Indirect (F&A) costs, Federal agencies must use the negotiated rates in effect at the time of the initial award

throughout the life of the Federal award.
* * *

* * * * *

■ 18. Amend Appendix IV to Part 200 as follows:

■ a. In Section A., designate the second paragraph as Section A.1.2., and revise the newly designated paragraph.

■ b. In Section B.2.e. amend the first sentence to remove “Federal funding of direct costs” and adding in its place “direct Federal funding” and remove “section A.3 of this Appendix” and add in its place “paragraph (a) of § 200.414 Indirect (F&A) costs”.

■ c. In Section B.3.g. amend the final sentence by removing “section A.3 of this Appendix” and adding in its place “paragraph (a) of § 200.414 Indirect (F&A) costs”.

■ d. In Section C.2.b. amend the first sentence to remove “(e)” and add in its place “(f)”.

■ e. In Section C.2.c. amend the first sentence to remove “(f)” and add in its place “(g)”.

The revision reads as follows:

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

* * * * *

2. “Major nonprofit organizations” are defined in paragraph (a) of § 200.414 Indirect (F&A) costs. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

* * * * *

■ 19. Amend Appendix V to Part 200 by revising Section E.2. to read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

* * * * *

2. Allocated Central Services

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

* * * * *

[FR Doc. 2015-22074 Filed 9-9-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584-AE01

Clarification of Eligibility of Fleeing Felons

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This rule implements Section 4112 of the Food, Conservation, and Energy Act of 2008. Section 4112 amended Section 6(k) of the Food and Nutrition Act of 2008 to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure that State agencies use consistent procedures regarding the disqualification of a fleeing felon from eligibility for SNAP benefits when the individual is fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey) or is violating a condition of probation or parole under Federal or State law.

DATES: This rule is effective November 9, 2015.

FOR FURTHER INFORMATION CONTACT: Sasha Gersten-Paal, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305-2507.

SUPPLEMENTARY INFORMATION:

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (PRWORA) amended Section 6 of the Food Stamp Act of 1977 (now entitled The Food and Nutrition Act of 2008) (the Act) to disqualify fleeing felons from the Supplemental Nutrition Assistance Program (SNAP). To be disqualified under the fleeing felon provisions of PRWORA, an individual must be either: Fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing (or a high misdemeanor in New Jersey); or violating a condition of probation or parole imposed under Federal or State law. The intent of the law was to prohibit individuals who were intentionally fleeing to avoid

prosecution or imprisonment from receiving SNAP benefits and to aid law enforcement officials actively seeking to apprehend those fleeing to avoid prosecution or custody by providing them with needed information as allowable under the Act. The disqualification provisions were codified in the SNAP regulations on January 17, 2001, at 66 FR 4438. For simplicity, throughout the balance of this preamble we will use the term felony to encompass felonies, and, in the State of New Jersey, felonies and high misdemeanors.

Section 4112 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) amended Section 6(k) of the Act to require the Secretary of Agriculture to define the terms “fleeing” and “actively seeking” to ensure State agencies use consistent procedures to disqualify individuals fleeing to avoid prosecution, custody or confinement after conviction for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or is violating a condition of probation or parole under Federal or State law. On August 19, 2011, the U.S. Department of Agriculture’s (USDA) Food and Nutrition Service (FNS) published a proposed rule at 76 FR 51907, providing proposed definitions for “fleeing” and “actively seeking”, and procedures for disqualifying individuals determined to be fleeing or violating a condition of probation or parole. Readers are directed to the proposed rule for a more thorough description of the policies in effect prior to the publication of the proposed rule and for the reasons the Department was directed to define these terms. The Department received thirty-seven comments on the proposed rule. Comments were received from State agencies, legal service organizations, advocacy groups, state investigative agencies, and private citizens.

The regulations governing the fleeing felon and parole and probation violators are found at 7 CFR 272.1(c)(1)(vii) Disclosure, 7 CFR 273.1(b)(7)(ix) Special household requirements, 7 CFR 273.2(b)(4)(ii) Privacy Act Statement, and 7 CFR 273.11(n) Fleeing Felons and probation or parole violators. The Department proposed revising § 273.11(n) in its entirety. The Department also proposed a conforming amendment for 7 CFR 272.1(c)(1)(vii) Disclosure.

Section 202 of PRWORA established similar provisions for Supplemental Security Income (SSI). The Social Security Administration (SSA) developed more rigorous standards than FNS in implementing the legislative

provision. SSA's Social Security Program Operations Manual System (POMS) provided that an individual is ineligible to receive SSI benefits beginning any month in which a warrant, court order or decision, or an order of decision by an appropriate agency is issued which finds that individual is wanted in connection with a crime that is a felony. SSA was sued in multiple courts on its policy. On September 24, 2009, the United States District Court for the Northern District of California approved a settlement agreement in the case of *Martinez v. Astrue*, Civ. No. 08-cv-04735 cw. Under that settlement, SSA will suspend or deny benefits to an individual only if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of National Crime Information Center (NCIC) Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999). This method of identifying fleeing felon status is referred to throughout the rest of the preamble as *Martinez* for ease of reference.

In developing the proposed rule, the Department did not adopt the *Martinez* settlement for SNAP. As explained more thoroughly in the preamble to the proposed rule, after FNS' implementation of PRWORA requirements, the FCEA contained specific direction for additional amendments to SNAP requirements surrounding the disqualification of felons. At the same time, FNS believed that SSA's implementation of its PRWORA requirements were overly rigorous. Because the direction to FNS in the FCEA preceded the settlement agreement in *Martinez*, FNS did not believe it was appropriate to follow the *Martinez* settlement. However, the Department did express interest in hearing from commenters whether they believed that SNAP should follow the *Martinez* settlement in defining a fleeing felon. Twenty-two of the thirty-seven commenters recommended that the Department adopt the *Martinez* settlement. The Department has taken those comments into consideration in developing this final rule and is incorporating *Martinez* as an alternative test for establishing whether an individual is a fleeing felon and whether a law enforcement agency is actively seeking the individual.

Fleeing Felons

In § 273.11(n), the Department proposed that, before a State agency determines an individual to be a "fleeing" felon, the following four

criteria must be met: (1) There has to be a felony warrant for an individual; (2) the individual has to be aware of, or should reasonably have been able to expect that, a warrant has or would have been issued; (3) the individual has to have taken some action to avoid being arrested or jailed; and (4) a law enforcement agency must be actively seeking the individual. The Department proposed that all four items have to be present and verified by the State agency to determine that an individual is a fleeing felon (*i.e.*, there is an outstanding felony warrant, the State agency has documented evidence that the individual knew about the warrant or could reasonably have anticipated a warrant was going to be issued, the State agency has documentation that the individual took an action to avoid arrest or jail for the felony, and a law enforcement agency is actively seeking the individual).

The proposed rule allowed one exception to the four-part test. This exception provided that FNS would consider an individual to be a fleeing felon if a law enforcement officer presents an outstanding felony arrest warrant for any of three categories of NCIC Uniform Offense Classification Codes: Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999) to a State agency to obtain information on the location of and other information about the individual named in the warrant, in accordance with the provisions of Section 11(e)(8)(E) of the Act. Although the Department indicated in the proposed rule the intention not to adopt *Martinez*, the proposed exception essentially was *Martinez*, and an alternative to the four-part test. For this and other reasons discussed subsequently, in this final rule a State agency may adopt either the four-part test or, as an alternative, the *Martinez* test for purposes of determining whether an individual is a fleeing felon.

Thirteen commenters supported the four-part test, although, as noted above, most of those supporting it would prefer the Department adopt the *Martinez* test. One commenter recommended that we allow each State agency the option to adopt either the four-part test or the *Martinez* test.

Ten commenters opposed the four-part test, although the reasons for opposition were not consistent. Two commenters opposed the requirement that State agencies have the responsibility to verify fleeing felon status instead of the household. Eight commenters supported the proposed requirement. The Department is adopting the requirement that the State

agency has responsibility for obtaining verification of fleeing felon status. Since publication of the proposed rule, we have determined that the requirement that the State agency, not the household, has responsibility for verification of fleeing felon and probation or parole violation status should also be addressed in 7 CFR 273.2(f) (Verification). Consequently, the Department has added a provision to 7 CFR 273.2(f)(5)(i) that places responsibility for verification of fleeing felon on the State agency.

One commenter pointed out that the regulations needed to clarify that the underlying cause for the warrant was for a felony offense. The Department agrees and has revised § 273.11(n) to clarify that the underlying crime for which the warrant was issued was for committing a crime or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing.

Five commenters were concerned about the requirement that the State agency verify that the individual was aware or should have been aware of a warrant and/or that the individual had taken some action to avoid being arrested or jailed (parts 2 and 3 of the 4-part test of fleeing felon). The Department is aware that these are difficult determinations. However, it is impossible for the Department to supply an exhaustive list of actions that would constitute knowledge in either circumstance. Evidence provided by a law enforcement officer that the individual left the jurisdiction following a court appearance would be indicative of the individual taking action to avoid being arrested or jailed, for instance, but moving from one home to another would not be evidence of either part of the test. The State agency will have to evaluate each case separately, using a reasonable standard established by the State to ensure consistency for all cases, and document the case file accordingly.

Five commenters opposed the four-part test because they believed that the current tests are sufficient or that the proposal was too complex, and that a warrant in and of itself should be sufficient to identify a person as a fleeing felon. Two of these five commenters were investigative agencies and one was an organization representing investigative agencies. One commenter was a State agency who reported that its fraud investigators felt the Department had no authority to dictate a time frame for a law enforcement agency to act on a warrant. The fifth was a private citizen. The investigative agencies, in particular, wanted the policies to remain the same.

While we understand the concerns expressed by the investigative agencies, the Department cannot leave the regulations as currently written. The Department is required by law to define the terms “fleeing felon” and “actively seeking.” Congress, in enacting section 4112 and the legislative history supporting it, as documented in the proposed rule, made it clear that the current policies were not sufficient. The Department is not dictating the time frame for a law enforcement officer to act on a warrant. The Department is simply defining “actively seeking” for SNAP purposes, establishing when an individual must be disqualified under the fleeing felon provisions of the Act. That definition does not require a law enforcement agency to act within those time frames.

To more closely mirror the language in the Act, and to improve consistency of terms, the Department is revising certain terms referred to in the regulatory text of the final rule. In particular, the Department specifies that warrants are felony warrants that law enforcement agencies must be Federal, State or local law enforcement agencies, and that law enforcement officials must be acting in their official capacity, in the text of the final regulations. For consistency, the Department also adds to the text of the final regulation that not only if a law enforcement agency does not indicate that it intends to enforce a felony warrant, but also if a law enforcement agency does not intend to arrest an individual for probation or parole violations, within 30 days, the State agency shall not determine the person is a fleeing felon or probation or parole violator. In addition, the Department makes other minor changes in the final rule text to improve readability and legal clarity.

One commenter raised concerns about the difficulty of serving warrants on Indian reservations. While the Department recognizes that an Indian reservation may not cooperate with a local law enforcement agency concerning enforcement of a warrant, the Department does not believe that it is appropriate to disqualify an individual indefinitely from food assistance because of jurisdictional issues that cannot be resolved. It should be noted, however, that as long as the law enforcement agency continues to attempt to enforce the warrant, the law enforcement agency would be considered to be actively seeking the individual. The State agency would need verification from the law enforcement agency that it is continuing its attempts to enforce the warrant and

would need to document the case file accordingly.

The Department finds the commenters’ arguments supporting the use of the *Martinez* test persuasive. As discussed in the proposed rule and above, the Department believed the initial factors subject to the suit in *Martinez* to be too stringent and inappropriate for purposes of SNAP and that the legislative intent of the FCEA (post *Martinez* decision) required distinct, uniform, and clear standards. However, in light of the comments to the proposed rule, the Department is persuaded that the *Martinez* approach can still support the uniformity and clarity required by the FCEA. As demonstrated by the public’s response to the Department’s requests for specific feedback on this matter, allowing the *Martinez* test as an alternative to the Department’s four-part test has garnered significant support as a usable and administratively feasible way to also implement the FCEA’s requirements of uniformity and clarity. For example, one commenter, an association representing State agencies, commented that the proposed rule definition would require a complex and time-consuming series of steps that must be taken for disqualification of each individual, and includes criteria that cannot be known with objective certainty. The *Martinez* test, in contrast, provides simplicity and certainty due to its objective enforceability—the presentation of a felony arrest warrant by a law enforcement officer. This commenter also explained that although some States had implemented approaches similar to the four-part test in the Department’s proposed rule, a number of States had already implemented the *Martinez* test or were planning to do so. This established, real world use and commenter response demonstrates the value and reliability of the *Martinez* test.

The objective standard used by *Martinez*—the presentation of a felony arrest warrant based on one of the three NCIC categories by a law enforcement officer—effectively establishes uniform definitions of “fleeing” and “actively seeking,” as required by the FCEA. The definition of “fleeing” is uniformly established by requiring that the individual’s actions must fit within one of the three NCIC Uniform Offense Classification Codes, Escape (4901), Flight to Avoid (prosecution, confinement, etc.) (4902), and Flight-Escape (4999). The presentation of a felony arrest warrant to a State agency by a law enforcement officer establishes that the law enforcement agency is “actively seeking” the individual.

On further review, based on the comments received, the Department has decided to require State agencies to adopt the definitions of fleeing felon and actively seeking as proposed by using either the four-part test or the *Martinez* test. This allows State agencies the flexibility to determine which test best suits their needs and administrative structures, while still requiring uniform definitions, standards and procedures.

Each State agency will have to submit an amendment to its State Plan identifying the option it selects. We have added a requirement to 7 CFR 272.2(d)(1) to mandate that each State agency identify the option chosen in its State plan and have modified § 273.11(n) to reflect the two alternative tests to establish whether a person is a fleeing felon.

Three commenters raised concerns about inconsistency with SSA and State Combined Application Projects (CAP). The Department does not believe that inconsistency between the two agencies will present a problem. An individual disqualified by SSA as a fleeing felon would not be eligible for the State’s CAP. If the question of whether an individual may be a fleeing felon arises in the SNAP office, it will be the State agency’s responsibility to determine if the individual meets its definition of fleeing felon status. Each State agency using the four-part test would also remain responsible for determining “actively seeking” in the event that an individual is identified as a fleeing felon or probation or parole violator, regardless of whether the individual is participating through a CAP. Also, if a law enforcement officer approaches the State agency with a felony warrant, the State agency would still have to make a determination of fleeing felon status for a CAP SNAP participant. So, the State agency would not be relying on the SSA determination of fleeing felon status.

Probation and Parole Violators

Section 6(k) of the Act prohibits any individual from participating in SNAP during any period in which the individual is violating a condition of probation or parole imposed under a Federal or State law. Neither the term “fleeing” nor “felony” is referenced in the prohibition from participating based on probation or parole violation. Additionally, the Act and the legislative history of the Act provide no guidance about what constitutes a probation or parole violation. Likewise, the Act does not limit such violations to felony charges only. Therefore, the Department proposed that the disqualification apply to all identified probation or parole violations. The Department received no

comments addressing this aspect of the proposal and is adopting the provision that an individual determined to have violated any probation or parole imposed under Federal or State law will be disqualified from SNAP eligibility.

In the proposed rule, we proposed that in order for an individual to be a probation or parole violator, (1) the individual must have violated a condition of his or her probation or parole, and (2) law enforcement must be actively seeking the individual to enforce the conditions of the probation or parole.

The Department received eighteen comments on the proposed standards and procedures for determining whether an individual should be considered a probation or parole violator. Fourteen of those commenters requested that the regulation specify that an impartial party must make a determination that there has been a probation or parole violation. The Department agrees with these commenters that only an impartial party should determine whether an individual violated probation or parole imposed under Federal or State law. The State agency has the discretion to determine what constitutes an impartial party. The provision at § 273.11(n)(2) has been modified accordingly. Two commenters wanted the Department to make no changes to the current standards and procedures. One was an investigative agency, the other a private citizen. Congress directed the Department to address the lack of clarity in the current procedures; therefore, the Department cannot accommodate these two commenters.

As discussed in the preamble to the proposed rule, Section 6(k)(2) of the Act requires the Department to ensure that “actively seeking” is defined, and that consistent procedures are established that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual. In the proposed rule, we interpreted Section 6(k)(2) to also require the application of the term “actively seeking” to probation and parole violators. We proposed in § 273.11(n) that State agencies follow the same procedures for verifying through law enforcement whether an applicant or participant is a probation or parole violator as those used to determine if an individual is a fleeing felon. This would ensure that there are consistent procedures in place for establishing if a law enforcement office is actively seeking an individual, whether that individual is a fleeing felon or a probation or parole violator. One commenter, an investigator, wanted

the current procedure that does not define actively seeking to remain in place. Because we are required by law to define “actively seeking,” we have adopted the definition of “actively seeking” for probation and parole violators as proposed. We have also determined that State agencies have the responsibility of verifying the parole or probation violator status of an individual.

Application Processing

As discussed in the proposed rule, the time necessary for determining fleeing felon or probation or parole violator status may extend beyond the time frames allowed under 7 CFR 273.2(g) and 7 CFR 273.2(i)(3) for State agencies to process applications. Therefore, the Department proposed in § 273.11(n)(5) that if a State agency needs to act on an application without determining fleeing felon or probation or parole violator status in order to comply with the time frames allowed under 7 CFR 273.2(g) and 7 CFR 273.2(i)(3), the State agency shall process the application without consideration of the individual’s fleeing felon or probation or parole violator status.

Three commenters raised concerns about expedited service. As proposed in § 273.11(n)(5), the State agency would be required to meet the time frames for providing expedited service in 7 CFR 273.2(i)(3) if fleeing felon or probation or parole violator status could not be resolved within the expedited service time frames. The Department is adopting § 273.11(n)(5) as proposed.

One commenter raised a concern about determining when a person ceases to be a fleeing felon or a probation or parole violator (e.g., when the warrant expires, when the individual is arrested, at the next reporting period, or at recertification). That commenter recommended that an individual be disqualified until the individual is arrested. The Act does not define a specific period for which an individual is denied or terminated for being a fleeing felon or a probation or parole violator. It simply provides that the individual is disqualified if the individual is a fleeing felon or a probation or parole violator. It is the Department’s view that an individual is only a fleeing felon or a parole or probation violator for SNAP purposes if that individual meets the definition in § 273.11(n). Therefore, assuming the law enforcement agency has not arrested the individual who is therefore ineligible because he or she is a resident of an institution, the individual would be free to apply for SNAP at any time. A new determination of fleeing felon or

probation or parole violator would need to be made each time the individual applies. The Department recognizes that this could result in churning (that is, when a SNAP case exits the program and then reenters within four months or less); however, there is no provision in the Act that would establish a time period for disqualification or preclude the individual from reapplying.

Privacy Act, Simplified Reporting, and Transitional Benefits

It should be noted that the Privacy Act provisions and confidentiality provisions found at Section 11(e)(8) of the Act remain intact for individuals subject to the fleeing felon and parole or probation violator provisions of the Act. Therefore, the Department is reminding the reviewers of this rule that the provisions regarding the process of providing information to law enforcement officials only applies to legitimate law enforcement officers. Information about potential fleeing felons or parole or probation violators must not be released to individuals reporting possible violations by recipients or applicants, such as bounty hunters.

Under 7 CFR 273.12(a)(5), State agencies are permitted to place households under a simplified reporting system. Under such a system, the State agency may choose to act on all changes in household circumstances (7 CFR 273.12(a)(5)(vi)(A)), or to act on any change if it would increase the household’s benefits and not act on any change that would decrease the household’s benefits, unless the household has voluntarily requested that its case be closed, the State agency has information about the household’s circumstances considered verified upon receipt, or there has been a change in the household’s public assistance grant (7 CFR 273.12(a)(5)(vi)(B)). If an individual has been determined to be a fleeing felon or a probation or parole violator in accordance with 7 CFR 273.11(n), the Act prohibits this individual from participating in SNAP. In order to ensure that the individual is removed from the program in accordance with the requirements of the Act, the Department proposed to add a requirement to 7 CFR 273.12(a)(5)(vi)(B) that the State agency act to remove the individual even though it might result in a decrease in benefits. Two comments were received on this proposal. One commenter supported removing the individual; the other commenter opposed removing the individual as it complicates simplified reporting and requires additional computer programming. No commenter raised a

legal point that would allow an individual to continue to participate due to the restrictions of simplified reporting, and because an individual determined to be a fleeing felon or a probation or parole violator is prohibited by the Act from participating in the program, the individual cannot be allowed to participate regardless of the household's reporting system. Therefore, the Department has adopted the provision as proposed.

Subpart H of Part 273, beginning at § 273.26, which was promulgated in accordance with Section 4115 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Pub. L. 107-17, permits households leaving the Temporary Assistance for Needy Families (TANF) program to receive transitional benefits for households. Section 4115 refers to ineligible households rather than ineligible household members. The regulations at 7 CFR 273.26 provide that State agencies may choose to limit transitional benefits to households in which all members had been receiving TANF, or may provide benefits to any household in which at least one member had been receiving TANF. Households in which all members are disqualified for being fleeing felons or probation or parole violators are clearly excluded from receiving transitional benefits. Once approved for transitional benefits, the benefit amount cannot be changed unless the State agency has opted to adjust the benefit in accordance with 7 CFR 273.27. Consequently, the Department proposed that, in order to conform to the intent of section 4115 of the FSRIA concerning ineligible households rather than ineligible household members, the State agency shall not take action to adjust a household's transitional benefit amount because an individual in that household has been determined to be a fleeing felon or a probation or parole violator, unless the provisions of 7 CFR 273.27 are applicable. The Department did, however, express interest in seeking comments about this decision to continue transitional benefits for the entire household when an individual household member has been determined to be a fleeing felon or probation or parole violator.

The Department received five comments about transitional benefits. Three commenters supported continuing transitional benefits for the entire household when a household member has been determined to be a fleeing felon or probation or parole violator. One commenter misunderstood and thought the Department was proposing to remove the individual, not

keep the benefits unchanged. One commenter opposed the preamble explanation, and recommended that the fleeing felon be removed from the household and the benefits reduced. The Department is finalizing the prohibition that a State shall not adjust a household's transitional benefit amount because an individual in that household has been determined to be a fleeing felon or a probation or parole violator, unless the provisions of 7 CFR 273.27 are applicable. The Department continues to believe this decision conforms to the intent of section 4115 of the Farm Security and Rural Investment Act concerning ineligible households rather than ineligible household members.

Miscellaneous

Since publication of the proposed rule, two issues related to the provision disqualifying fleeing felons from participation, but not addressed in the proposed rule, have come to the Department's attention. When the final rule, Personal Responsibility Provisions of the Personal Responsibility Act of 1996 (66 FR 4438), January 17, 2001, was published, the preamble explained that the proposed paragraph 7 CFR 272.1(c)(1)(vii) essentially tracked the statutory language, including the requirement for the name of the household member being sought to be provided when requesting disclosure of household information. However, the actual language of paragraph 7 CFR 272.1(c)(1)(vii), in both the proposed rule and the final rule, omitted the requirement that the law enforcement officer provide the name of the individual being sought. Section 11(e)(8)(E) of the Act requires that the law enforcement officer furnish the State agency with the name of the household member being sought. This was a technical oversight that needs to be corrected. Therefore, the Department is adding this requirement at 7 CFR 272.1(c)(1)(vii) through this final rulemaking.

Following publication of the proposed rule, State agencies requested policy clarifications from FNS regional offices about how to determine the time period for establishing claims for individuals identified as fleeing felons or as probation or parole violators. Although we did not receive any formal comments about this issue, the Department would like to clarify that, for purposes of SNAP, an individual is not considered a fleeing felon or a probation or parole violator until a determination has been made in accordance with 7 CFR 273.11(n). Therefore, the date of the determination

of fleeing felon or probation or parole violator status would be the date from which any claims calculation would be made.

Procedural Matters

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601-612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. Individuals identified as fleeing felons or probation or parole violators will be affected by having their participation in the program terminated. The requirement to terminate such individuals' participation already exists. This rule only clarifies what participants will be determined to be fleeing felons or probation or parole violators. It is anticipated that potentially fewer participants will be terminated than under the previous requirements. State and local welfare agencies will be the most affected to the extent that they administer the program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain any Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.551.

For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is excluded in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under Executive Order 13132.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with this rule's provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities.

Section 821 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193 (PRWORA) amended Section 6 of the Act to prohibit fleeing felons and parole violators from participating in the program. This prohibition was codified in SNAP regulations by the final rule "Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work opportunity Reconciliation Act of 1996" (66 FR 4438). SNAP regulations at 7 CFR 273.11(n) addresses the prohibition for participation by an individual identified as a fleeing felon or a probation or parole violator. The existing regulations do not define "fleeing" and do not provide procedures for the State agency to use in disqualifying an individual identified as a fleeing felon or a probation or parole violator. Section 6(k) of the Act requires the Secretary of Agriculture to define the terms "fleeing" and "actively seeking" to ensure SNAP State agencies use consistent procedures to disqualify individuals. After a careful review of the rule's intent and provisions, FNS has determined that there is no way to determine whether the rule would have any impact on minorities, women, and persons with disabilities. FNS does not collect information on persons disqualified under the fleeing felon and parole violation provisions. Such a new collection would be difficult information to capture and cause an unnecessary burden on State agencies. Therefore, we are unable to determine whether a disproportionate number of minorities, women, and persons with disabilities are disqualified. This rule provides greater direction on what constitutes a fleeing felon or parole violator, what constitutes actively seeking, and more uniform procedures among the States. The impact of the rule may be to lower the number of individuals disqualified, but without information on the number currently being disqualified or information on the number of warrants that will be applicable under the procedures, there is no way to determine if there actually will be a reduction. Nor, without such data being available is there a way to determine if the new provisions affect minorities, women, and persons with

disabilities more than the general SNAP caseload.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Under this final rule State agencies will have to submit an amendment to its State Plan identifying which definition of "fleeing felon" it selects. Reporting burden for annual State Plan of Operations Updates, such as the requirement at 272.2(d)(1) to indicate the definition of fleeing felon, is included in a currently approved information collection (OMB Control Number 0584-0083, expiration date 4/30/2017). The impact of this rule on the existing burden is negligible and therefore no modification to the current requirements is necessary.

E-Government Act Compliance

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

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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 are unaware of any current Tribal laws that could be in conflict with the final rule. We did not receive any comments from Tribal organizations. One commenter raised concerns about the difficulties local law enforcement officers may have trying to enforce a warrant on tribal land. That is not a SNAP concern; it is a law enforcement concern. This regulation does not require any change in operations for the Tribal organizations.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Supplemental Nutrition Assistance Program, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

For the reasons set forth in the preamble, 7 CFR parts 272 and 273 are amended as follows:

- 1. The authority citation for Parts 272 and 273 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

- 2. Revise § 272.1(c)(1)(vii) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

- (c) * * *
- (1) * * *

(vii) Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole imposed under Federal or State law. The State agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a

household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall follow the procedures in § 273.11(n) to determine whether the member’s eligibility in SNAP should be terminated. A determination and request for information that does not comply with the terms and procedures in § 273.11(n) would not be sufficient to terminate the member’s participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

* * * * *

- 3. Amend § 272.2 by adding new paragraph (d)(1)(xvii) to read as follows:

§ 272.2 Plan of operation.

* * * * *

- (d) * * *
- (1) * * *

(xvii) A plan indicating the definition of fleeing felon the State agency has adopted, as provided for in § 273.11(n).

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

- 4. Amend § 273.2 by adding a new sentence at the end of paragraph (f)(5)(i) to read as follows:

§ 273.2 Office operations and application processing.

* * * * *

- (f) * * *
- (5) * * *

(i) * * * However, the State agency has primary responsibility for verifying fleeing felon and parole or probation violator status in accordance with § 273.11(n).

* * * * *

- 5. Amend § 273.11 by adding paragraphs (n)(1) through (5) to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

- (n) * * *

(1) *Fleeing felon.* An individual determined to be a fleeing felon shall be an ineligible household member. To establish an individual as a fleeing felon, a State agency must verify that an individual is a fleeing felon as provided in paragraph (n)(1)(i) of this section, or a law enforcement official acting in his or her official capacity must have provided the State agency with a felony warrant as provided in paragraph (n)(1)(ii) of this section. The State shall specify in its State plan of operation

which fleeing felon test it has adopted as required at § 272.2(d)(1)(xvii) of this chapter.

(i) *Four-part test to establish fleeing felon status.* To establish that an individual is a fleeing felon, the State agency must verify that:

(A) There is an outstanding felony warrant for the individual by a Federal, State, or local law enforcement agency, and the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or a high misdemeanor under the law of New Jersey;

(B) The individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued;

(C) The individual has taken some action to avoid being arrested or jailed; and

(D) The Federal, State, or local law enforcement agency is actively seeking the individual as provided in paragraph (n)(3) of this section.

(ii) *Alternative test to establish fleeing felon status.* Alternatively, a State agency may establish that an individual is a fleeing felon when a Federal, State, or local law enforcement officer acting in his or her official capacity presents an outstanding felony arrest warrant that conforms to one of the following National Crime Information Center Uniform Offense Classification Codes, to the State agency to obtain information on the location of and other information about the individual named in the warrant:

(A) Escape (4901);

(B) Flight to Avoid (prosecution, confinement, etc.) (4902); or

(C) Flight-Escape (4999).

(2) *Probation and parole violator.* An individual determined a parole or probation violator shall not be considered to be an eligible household member. To be considered a probation or parole violator, an impartial party, as designated by the State agency, must determine that the individual violated a condition of his or her probation or parole imposed under Federal or State law and that Federal, State, or local law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole, as provided in paragraph (n)(3) of this section.

(3) *Actively seeking.* For the purposes of this paragraph (n), actively seeking is defined as follows:

(i) A Federal, State, or local law enforcement agency informs a State agency that it intends to enforce an outstanding felony warrant or to arrest

an individual for a probation or parole violation within 20 days of submitting a request for information about the individual to the State agency;

(ii) A Federal, State, or local law enforcement agency presents a felony arrest warrant as provided in paragraph (n)(1)(ii) of this section; or

(iii) A Federal, State, or local law enforcement agency states that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within 30 days of the date of a request from a State agency about a specific outstanding felony warrant or probation or parole violation.

(4) *Response time.* The State agency shall give the law enforcement agency 20 days to respond to a request for information about the conditions of a felony warrant or a probation or parole violation, and whether the law enforcement agency intends to actively pursue the individual. If the law enforcement agency does not indicate that it intends to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the State agency's request for information about the warrant, the State agency shall determine that the individual is not a fleeing felon or a probation or parole violator and document the household's case file accordingly. If the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within 30 days of the date of the State agency's request for information, the State agency will postpone taking any action on the case until the 30-day period has expired. Once the 30-day period has expired, the State agency shall verify with the law enforcement agency whether it has attempted to execute the felony warrant or arrest the probation or parole violator. If it has, the State agency shall take appropriate action to deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator. If the law enforcement agency has not taken any action within 30 days, the State agency shall not consider the individual a fleeing felon or probation or parole violator, shall document the case file accordingly, and take no further action.

(5) *Application processing.* The State agency shall continue to process the application while awaiting verification of fleeing felon or probation or parole violator status. If the State agency is required to act on the case without being able to determine fleeing felon or probation or parole violator status in

order to meet the time standards in § 273.2(g) or § 273.2(i)(3), the State agency shall process the application without consideration of the individual's fleeing felon or probation or parole violator status.

* * * * *

■ 6. Amend § 273.12 by redesignating paragraph (a)(5)(vi)(B)(3) as paragraph (a)(5)(vi)(B)(4) and adding a new paragraph (a)(5)(vi)(B)(3) to read as follows:

273.12 Requirements for change reporting households.

- (a) * * *
- (5) * * *
- (vi) * * *
- (B) * * *

(3) A household member has been identified as a fleeing felon or probation or parole violator in accord with § 273.11(n);

* * * * *

Dated: September 1, 2015.

Audrey Rowe,
Administrator, Food and Nutrition Service.

[FR Doc. 2015-22763 Filed 9-9-15; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2014-0602; Amendment No. 71-35]

RIN 2120-AA66

Advisory Circular 91-57 Model Aircraft Operating Standards (June 9, 1981)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revision of Advisory Circular 91-57.

SUMMARY: On February 14, 2012, the FAA Modernization and Reform Act of 2012 (Pub. L. 112-95), was issued which contains provisions in section 336 related to model aircraft operations. AC 91-57 contains provisions that are inconsistent with section 336 and therefore the Advisory Circular is being revised. The FAA refers model aircraft users to section 336 of Public Law 112-95 for information regarding model aircraft operations.

DATES: *Effective date:* September 10, 2015.

FOR FURTHER INFORMATION CONTACT: Randy Willis, Manager, Emerging Technologies Team, 493 L'Enfant Plaza SW., Suite 3200, Washington, DC 20051; telephone (202) 267-8152; email:

Randy.Willis@faa.gov or Dean E. Griffith, Attorney, International Law, Legislation and Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8018; email: *dean.griffith@faa.gov*.

Issued in Washington, DC, on September 1, 2015.

Gary A. Norek,
Manager, Airspace Policy and Regulations Group.

[FR Doc. 2015-22828 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1251

[Docket No. CPSC-2011-0081]

Toys; Determination Regarding Heavy Elements Limits for Unfinished and Untreated Wood

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of significant adverse comments, the Consumer Product Safety Commission ("Commission" or "CPSC") is withdrawing the July 17, 2015 direct final rule determining that unfinished and untreated trunk wood does not contain heavy elements that would exceed the limits specified in the Commission's toy standard, ASTM F963-11. The CPSC will address these comments in a separate final action based on the July 17, 2015 notice of proposed rulemaking (80 FR 42378) published in the same issue of the **Federal Register**. The CPSC will not institute a second comment period on this action.

DATES: The direct final rule published on July 17, 2015 (80 FR 42376) is withdrawn, effective September 10, 2015.

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Hwy, Room 814, Bethesda, MD 20814; 301-504-7562; email: *rbutturini@cpsc.gov*.

SUPPLEMENTARY INFORMATION: On July 17, 2015, the CPSC published a direct final rule (80 FR 42376) determining that unfinished and untreated trunk wood does not contain heavy elements that would exceed the limits specified

in the Commission's toy standard, ASTM F963-11. For more information on the ASTM wood determination, please see the July 17, 2015 direct final rule (80 FR 42376).

In the July 17, 2015 direct final rule, the CPSC stated that if CPSC received significant adverse comments by August 17, 2015, the rule would be withdrawn and not take effect. The CPSC received significant adverse comments. Therefore, the CPSC is withdrawing the direct final rule. The CPSC will address these comments in a separate final action based on the July 17, 2015 notice of proposed rulemaking (80 FR 42378) published in the same issue of the **Federal Register**. The CPSC will not institute a second comment period on this action.

Dated: September 4, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015-22829 Filed 9-9-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 35 and 39

[USCG-1999-5150]

RIN 1625-AB37

Marine Vapor Control Systems

AGENCY: Coast Guard, DHS.

ACTION: Final rule; information collection approval.

SUMMARY: The Coast Guard announces that the Office of Management and Budget (OMB) has approved the amendment of an existing collection of information, as requested by the Coast Guard and described in the final rule published on July 16, 2013. The final rule revised safety regulations for facility and vessel vapor control systems (VCSs) to promote safe VCS operation in an expanded range of activities now subject to current Federal and State environmental requirements, reflect industry advances in VCS technology, and codify the standards for the design and operation of a VCS at tank barge cleaning facilities. The revised regulations increase operational safety by regulating the design, installation, and use of VCSs, but they do not require anyone to install or use VCSs. The OMB must approve any regulatory provisions that constitute a collection of

information under the Paperwork Reduction Act, before an agency can enforce those provisions. Having received OMB's approval, the Coast Guard will now enforce collection of information requirements in the final rule. This rulemaking promotes the Coast Guard's maritime safety and stewardship missions.

DATES: The collection of information requirements contained in the July 16, 2013 final rule (78 FR 42596) and approved by the OMB as an amendment to existing collection of information, control number 1625-0060, will be enforced beginning September 10, 2015. The requirements include provisions for VCS certifications, recertifications, periodic operational reviews, approval requests, reviews of operating manuals, failure analyses, operational review letters, and relabeling. These requirements aid the Coast Guard and industry in ensuring industry's regulatory compliance and safe practices in connection with VCSs.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Dr. Cynthia Znati, Office of Design and Engineering Standards, U.S. Coast Guard; telephone 202-372-1412, email hazmatstandards@uscg.mil. For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826, toll free 1-800-647-5527.

SUPPLEMENTARY INFORMATION: The Coast Guard's final rule, 78 FR 42596 (July 16, 2013), contained information collection provisions that cannot be enforced against any member of the public until OMB approves those provisions and assigns one or more OMB control numbers. The OMB has now approved those provisions and assigned OMB Control Number 1625-0060, and the Coast Guard will enforce them beginning September 10, 2015.

Documents mentioned in this document are in our online docket for USCG-1999-5150 at <http://www.regulations.gov> and can be viewed by following the Web site's instructions. You can also view the docket online at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: September 3, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015-22779 Filed 9-9-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA-2012-0260 (HM-233E)]

RIN 2137-AE99

Hazardous Materials: Special Permit and Approvals Standard Operating Procedures and Evaluation Process

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is adopting regulations to include the standard operating procedures (SOPs) and criteria used to evaluate applications for special permits and approvals. This rulemaking addresses issues identified in the Hazardous Materials Transportation Safety Improvement Act of 2012 related to the Office of Hazardous Materials Safety's Approvals and Permits Division. In addition, this rulemaking also provides clarity regarding what conditions need to be satisfied to promote special permit application completeness. An application that contains the required information reduces processing delays by reducing the number of applications rejected due to incompleteness. Through public notice and comment, this final rule is required to establish SOPs to support the administration of the special permit and approval programs, and objective criteria to support the evaluation of special permit and approval applications. These amendments do not change previously established policies, to include but not limited to any inspection activities subsequent to issuance, modification or renewal of a special permit and approval.

DATES: The final rule is effective on November 9, 2015.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet or Donald Burger, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366-4511, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
- II. Background
- III. Comment Discussion
 - A. American Trucking Associations
 - B. The Chlorine Institute
 - C. Dangerous Goods Advisory Council
 - D. Institute of Makers of Explosives
 - E. Reusable Industrial Packaging Association
 - F. Sporting Arms and Ammunition Manufacturers' Institute, Inc.
- IV. Regulatory Analyses and Notices
 - A. Statutory/Legal Authority for This Rulemaking
 - B. Executive Order 12866, 13563, and DOT Regulatory Policies and Procedures
 - C. Executive Order 13132
 - D. Executive Order 13175
 - E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
 - F. Paperwork Reduction Act
 - G. Regulation Identifier Number (RIN)
 - H. Unfunded Mandates Reform Act
 - I. Environmental Assessment
 - J. Privacy Act
 - K. Executive Order 13609 and International Trade Analysis
- V. Section by Section Review

I. Executive Summary

On July 6, 2012, the President signed the Moving Ahead for Progress in the 21st Century Act (MAP-21), which includes the Hazardous Materials Transportation Safety Improvement Act of 2012 (HMTSIA) as Title III of the statute. See Public Law 112-141, 126 Stat. 405, July 6, 2012. Under section 33012 of HMTSIA, Congress directed the U.S. Department of Transportation (Department or DOT) to issue a rulemaking to provide:

- Standard operating procedures (SOPs) to support the administration of the special permit and approval programs; and
- Objective criteria to support the evaluation of special permit and approval applications.

In this rulemaking, PHMSA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to incorporate procedures to support the administration of its special permits and approvals programs in a new Appendix A to Part 107, Subpart B of the 49 CFR. Incorporation of SOPs and objective criteria to support the evaluation of special permits and approvals accomplishes the mandate under section 33012 of MAP-21. By incorporating these internal agency procedures into regulation, PHMSA believes the benefits of this final rule will increase the public's understanding of the special permit and approval application and renewal process, improve the quality of information and completeness of applications submitted,

improve application processing times, improve the quality of information and completeness of applications submitted, improve application processing times, promote continued safe transportation of hazardous materials, and support U.S. trade competitiveness by permitting safe and innovative transportation methods for hazardous materials. Because this final rule will affect only agency procedures, PHMSA assumes no change in current industry costs or benefits and that this final rule does not impose additional costs on industry.

II. Background

The HMR prescribe regulations for the transportation of hazardous materials in commerce. PHMSA issues one type of variance from the HMR in the form of a "special permit." It also provides written consent to perform a function that requires prior consent under the HMR in the form of an "approval." These variances are designed to accommodate innovation, provide consent, and allow alternatives that meet existing transportation safety standards and/or ensure hazardous materials transportation safety. Federal hazardous materials (hazmat) law directs the Department to determine if the actions specified in each application for a special permit establish a level of safety that meets or exceeds that already present in the HMR, or if not present in the HMR, establish a level of safety that is consistent with the public's interest. PHMSA, through the HMR, applies these same conditions to the issuance of an approval. Due to the unique features that may exist in each application, PHMSA issues special permits and approvals on a case-by-case basis.

The HMR currently define a special permit as "a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter," "or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements)." (See 49 CFR 105.5, 107.1, and 171.8.) An approval is currently defined in the HMR as "written authorization . . . from the Associate Administrator or other designated Department official, to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter. . . ." Applicants who apply for a special permit must do so in conformance with the requirements prescribed in

§§ 107.101 to 107.127 of the HMR. Applicants who apply for an approval must do so in conformance with the requirements prescribed in §§ 107.401 to 107.404, and §§ 107.701 to 107.717 of the HMR.

PHMSA amended the HMR in 1996 (61 FR 21084) to include as part of the approval application review process a requirement to review each applicant's fitness to perform the tasks requested in their applications. PHMSA also issued and updated internal SOPs several times over the past decade to support the process and issuance of special permits and approvals that comply with the HMR. On February 29, 2012 (see Docket No. PHMSA-2011-0283), PHMSA held a public meeting to invite public comment on these considerations. In July 2012, PHMSA established a working group to examine ways to streamline the fitness review process while maintaining an acceptable level of safety, to expand the fitness review process to include special permit applicants, and to define and determine the adequacy of criteria that should be used to initiate fitness reviews. As a result of this working group's efforts, PHMSA published a Notice of Proposed Rulemaking (NPRM) on August 12, 2014 (79 FR 47047) to invite public comment on its proposal to add updated SOP and evaluation criteria to process special permit and approval applications. Specifically, the NPRM proposed to revise §§ 105.5, 107.1, 107.113, 107.117, 107.709; add a new Appendix A to 49 CFR part 107, entitled "Standard Operating Procedures for Special Permits and Approvals;" and revise § 171.8 to incorporate administrative procedures for processing special permits and approval applications. On September 12, 2014 (79 FR 54676), PHMSA published a correction to the August 2014 NPRM to propose that special permit and approval applications that undergo review by an Operating Administration (OA) will complete this review before they undergo an automated review. This proposed correction also clarified that an OA review, depending on its completeness, may negate the need for the automated review. We have summarized these proposed actions below.

§ 105.5

In § 105.5, we proposed to revise the definitions for "approval" and "special permit" to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator's designee, or as otherwise prescribed in the HMR.

§ 107.1

In § 107.1, we proposed to revise the definitions for “approval” and “special permit” to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR. In addition, we proposed to add for clarity new definitions for “applicant fitness,” “fit or fitness,” “fitness coordinator,” and “insufficient corrective action.”

§ 107.113

In § 107.113(a), we proposed that the Associate Administrator will review all special permit applications in conformance with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

§ 107.117

In § 107.117(e), we proposed that the Associate Administrator will review all emergency special permit applications in conformance with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

§ 107.709

In § 107.709(b), we proposed that the Associate Administrator will review all approval applications in conformance with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

49 CFR Part 107, Appendix A

In 49 CFR part 107, we proposed to add new Appendix A to incorporate PHMSA’s existing standard operating procedures for processing special permits and approval applications. These procedures can be defined in four phases consisting of: Completeness, **Federal Register** Publication, Evaluation, and Reconsideration.

§ 171.8

In § 171.8, we proposed to revise the definitions for “approval” and “special permit” to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR.

As stated earlier, PHMSA published a correction notice on September 12, 2014. In this notice, PHMSA added language to the proposed “Automated review” and “Safety profile review” sections of the proposed SOPs to clarify that special permit and approval applications that undergo a safety profile review by an OA will complete this safety profile review before they undergo an automated review, and that an OA review, depending on its completeness, may negate the need for the automated review, respectively.

In response to the NPRM, PHMSA received comments from six entities. These comments and PHMSA’s responses are provided in the “Comment Discussion” section of this final rule.

III. Comment Discussion

In response to the August 12, 2014 NPRM, and September 12, 2014 proposed rule correction notice, PHMSA received comments from the following organizations:

Name	Docket No.	Web site link
American Trucking Associations	PHMSA–2012–0260–0007	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0007 .
Chlorine Institute	PHMSA–2012–0260–0008	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0008 .
Dangerous Goods Advisory Council	PHMSA–2012–0260–0011	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0011 .
Institute of Makers of Explosives	PHMSA–2012–0260–0006	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0006 .
Reusable Industrial Packaging Association.	PHMSA–2012–0260–0009	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0009 .
Sporting Arms & Ammunition Manufacturers’ Institute.	PHMSA–2012–0260–0010	http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0260-0010 .

In this section, we summarize and discuss the comments received. You may access the NPRM, correction notice, comments, and other documents associated with this rulemaking by visiting the Federal eRulemaking Portal at <http://www.regulations.gov>, under Docket No. PHMSA–2012–0260, and specific comments by visiting the Web site links listed in the previous table.

A. American Trucking Associations Motor Carrier Exposure

The American Trucking Associations (ATA) expressed concern that the criteria PHMSA is using to reject applications during its automated tier and fitness application review processes will adversely penalize large fleets that transport materials more often. The ATA stated the chances for errors to occur in transportation increase proportionally as a carrier’s frequency in transportation increases. Further, the

ATA stated that many of the criteria PHMSA says it will use to conduct its initial evaluations will cause carriers’ applications to be rejected for violations proven to be poor indicators of safe transportation performance. The ATA believes PHMSA’s focus on these types of violations is not justified and offers the following in support of its position:

In 2012, hazardous materials carriers had four percent fewer crashes per truck tractor than traditional fleets. Fleets transporting hazardous materials also had thirty-five percent fewer inspections resulting in a driver being taken out of service, and fourteen percent fewer inspections resulting in a vehicle being taken out of service. Yet even accounting for the hazardous materials fleets’ superior safety performance, once a fleet reaches a certain size it is almost impossible that it will not have suffered an accident involving a death, injury, or property-damaging tow away due simply to exposure and the laws of probability. These carriers are almost guaranteed to fail the automated review process.

These carriers likely will not pass during the proposed Section 3(b)(ii) safety profile review either. At this point, PHMSA proposes that the fitness coordinator review “the applicant’s history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an application for an existing special permit, approval, or the HMR[s].” PHMSA proposes that carriers’ accidents caused merely by “driver error” can be dismissed at this point. However, a fitness coordinator is unlikely to be able to review enough of a carrier’s accident data to make such a determination off-site. The fitness coordinator will therefore likely recommend that the motor carrier applying for a special permit move on to the final level of review: An on-site inspection. During an on-site inspection, the inspector will have access to the carrier[’]s accident reports and any other pertinent safety information and would be able to clear the carrier for a special permit.

In 2012, 3,702 fatal crashes involving large trucks were reported to the Department of Transportation (DOT). DOT further estimates

another 367,000 crashes involving large trucks that resulted in injury or property damage only [occurred during this period]. In 2012, large trucks traveled an estimated 268,318,000,000 miles. Thus, on average and based on DOT figures, a large truck is involved in a traffic accident every 1.4 million miles.

ATA has only presented the data concerning crashes. However, PHMSA also proposes to remove those with two or more violations of its placarding regulations from automatic review and approval eligibility. In calendar year 2013, placarding violations were the seventh most common hazardous materials violation cited. Inspectors issued just under 2,300 violations in 2013. PHMSA proposes to check roughly 10,000 placarding violations over a four year period. A carrier—particularly a large one—might easily have two or more of those 10,000 violations. ATA also questions why two placarding violations should automatically send a carrier to secondary review when the six more frequently cited violations—especially failing to secure the package in the vehicle, damaged/deteriorated/obscured placards, and failure to carry shipping papers at all—have no similar effects on special permit or approval eligibility.

Ultimately, a carrier in the scenario described above is likely to receive approval for the special permit. Unfortunately, the carrier must comply with multiple levels of increasingly intrusive reviews in order to do so. Rather than require motor carriers to submit themselves to such levels of observation, ATA suggests that PHMSA implement a system that controls for both fleet size and for fleet utilization. Such a system should also include realistic violation levels for carriers of all sizes that are derived from examining FMCSA [Federal Motor Carrier Safety Administration]-provided data about violations during any given year.

PHMSA agrees with the ATA that those who transport hazardous materials frequently, including carriers with larger fleets, may be at greater risk¹ for involvement in transportation incidents due to their increased opportunity to be exposed to occurrences that affect safety in transportation (e.g., other vehicles, road conditions, weather, vehicle integrity, driver health, driver experience, etc.). PHMSA also agrees that a fitness assessment program which includes incident data proven to be an indicator of safe performance will assist with the process of performing a Section 3(b)(ii) safety profile review. However, PHMSA notes that the issuance of special permits and approvals is unique in that they authorize activities involving hazardous materials not currently permitted under the HMR. To ensure their safe performance, PHMSA must assess the safety of the tasks

requested and the ability of the person(s) making the request to successfully perform these tasks. PHMSA assesses the safety of the tasks requested by subjecting them to technical review by its Engineering and Research Division and/or appropriate OA's, as applicable. PHMSA assesses the ability of the person(s) to perform the tasks requested successfully based on recommendations it receives from its Field Services Support Division and OA's. These staff are most closely linked to the acquisition and use of this data, from incident reports submitted in conformance with §§ 171.15 and 171.16 and data that is developed and managed by the FMCSA and PHMSA's evaluation and risk management teams. Identifying and evaluating appropriate fitness screening criteria and available data is the center of PHMSA's risk management strategy.

Further, while other databases exist within the DOT and the federal government that contain additional hazmat transportation safety information that may be useful in a safety profile review, PHMSA does not have access to these databases at this time. In addition, the databases PHMSA currently uses are either not configured to retrieve or do not contain some of the information and normalizing controls the ATA has requested be included in the safety profile review. Nonetheless, PHMSA agrees with the ATA that these types of data collection changes will improve § 3(b)(ii) of 49 CFR part 107, Appendix A's safety profile review results, and reduce the opportunity for frequent shippers and carriers of hazardous materials from being adversely affected during the safety profile review process. Therefore, in the future PHMSA will continue to study what factors are proven indicators of safe hazmat transportation performance for the purposes of a safety profile review, and review its data systems, software programs, and data collection to include those safety indicators that can reasonably be obtained.

PHMSA disagrees with the ATA's statement that a fitness coordinator may not be able to review enough of a carrier's accident data information to make an offsite fitness determination of that carrier. In most instances before an on-site safety profile review is considered, PHMSA's fitness coordinators will contact the applicant for clarifying information. If the information the applicant provides is sufficient to address the coordinators' concerns and/or questions, this may eliminate the need for an on-site inspection.

PHMSA disagrees with the ATA's statement that PHMSA proposes to remove all carriers with two or more placarding violations from automatic review and approval eligibility. Specifically, the NPRM proposed to remove carriers from automated review and approval eligibility if they have two or more placarding violations involving materials with hazard classes listed in Table 1 of § 172.504(e). Historically, materials that meet the hazard classes listed in Table 1 of § 172.504(e) pose significantly higher risks in transportation. Thus, PHMSA believes additional scrutiny regarding transportation violations involving these materials is justified. The ATA also believes placarding violations involving Table 2 materials should not automatically send a carrier to secondary review. As stated in the revised SOPs, PHMSA will address placarding violations under FMCSA fitness criteria by not considering placarding violations involving § 172.504 Table 2 materials.

PHMSA also agrees with the ATA that a safety profile review should put greater weight on serious and not minor violations. Citing the violations listed on FMCSA's "Roadside Inspections/Hazmat Violations" Web page,² the ATA believes the six violations that occur most frequently are associated with more safety risks in transportation. These violations, listed in descending order of frequency, are:

1. Package not secured in vehicle;
2. No copy of USDOT hazmat vehicle registration number;
3. Placard damaged, deteriorated, or obscured;
4. Shipping paper accessibility;
5. No shipping papers (carrier); and
6. Vehicle not placarded as required.

Of these six, the ATA believes three—failing to secure the package in the vehicle, damaged/deteriorated/obscured placards, and failure to carry shipping papers—should take precedence over placarding violations involving § 172.504(e), Table 2 materials.

PHMSA further agrees with the ATA that inspection violations should be categorized in one of two triggers that also distinguish between greater and lesser transportation risks. Therefore, as proposed in the NPRM, PHMSA is reducing the number of levels that initiate, also called "trigger," a safety profile review to remove enforcement case referrals and incidents involving foreign cylinder manufacturers or

¹ Web site: Federal Motor Carrier Safety Administration's Large Truck and Bus Crash Facts—<http://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts>.

² Federal Motor Carrier Safety Administration Analysis & Information Division, "Roadside Inspections, HazMat Violations" (Web site: <http://ai.fmcsa.dot.gov/SafetyProgram/spViolation.aspx?rpt=RDHV>).

requalifiers, and revising the safety profile review triggers to include incorrect package selection, leaking packages, failure to secure package, damaged/deteriorated/obscured placards, failure to carry shipping papers, not following closure instructions, and blocking/bracing problems. PHMSA is also revising the violations that trigger an on-site inspection to include marking, labeling, placarding, and shipping paper violations. PHMSA will determine applicants as having failed the safety profile review if they are found to have any of the safety profile review violations described earlier in this paragraph. PHMSA believes these changes will lead to safety profile reviews that are more indicative of applicants that may cause compromises in safety. Further, PHMSA is revising the text in 49 CFR part 107, Appendix A, to remove language that states carriers with two § 172.504(e), Table 2, placarding violations, and applicants with more than two safety profile review trigger violations or more than five on-site inspection trigger violations that have occurred during the four years prior to applying for a special permit or approval are automatically subject to a secondary review. PHMSA made this revision because it lacks the software capability to discern these incidents during an automatic review.

Safety Performance Data

The ATA also commented that the NPRM “proposes that highway carriers ‘will be screened in an automated manner based upon criteria established by FMCSA . . . which consists of interstate carrier data, several states’ intrastate data, interstate vehicle registration data, and may include operational data such as inspections and crashes.’ PHMSA proposes that FMCSA’s Safety and Fitness Electronic Records (SAFER) system or another system like SAFER, but chosen by FMCSA, will be used.” The ATA believes safety data is better reflected in a company’s inspection information and crash history. It also recommends that PHMSA consult only the underlying data to the index scores if the validity of the index scores cannot be verified. The ATA recommends that PHMSA base its SOP fitness evaluation criteria on categories FMCSA has determined

are better indicators of a motor carrier’s safe performance. The ATA further states:

FMCSA has developed a new safety measurement tool, known as Compliance, Safety, Accountability (CSA). CSA utilizes the inspection and crash data that PHMSA proposes should be considered in making special permit determinations. The CSA system then amalgamates that data and runs it through an algorithm in order to generate seven index scores ranking motor carriers in relation to other carriers of similar size or with a similar number of inspections. But, PHMSA’s special permit and approvals requirements are based upon applicants showing that safety performance will be at the same or a higher level than would prevail outside of the special transportation provisions requested. Thus, CSA scores should only be used if they can be shown to reliably represent individual carrier safety performance.

Many of the individual, discrete pieces of data utilized by the CSA algorithm could be useful to PHMSA in making a determination about a carrier. These pieces of information could be useful with only an automated review or at the safety profile review by a DOT official. However, multiple studies have shown that FMCSA’s overall aggregate indexing and scoring system does not accurately or reliably represent an individual carrier’s safety performance or reliably predict future crash involvement. Essentially, the scores are not good indicators as to whether or not a carrier “is fit to conduct the activity [that would be] authorized by the special permit or approval application.”

FMCSA even avoids using CSA scores in awarding Hazardous Materials Safety Permits (Safety Permit). Safety Permits are required for the transport of highway route-controlled quantities of Class 7 hazardous materials, certain high explosives, poison inhalation hazards in Zones A–D, and shipments of compressed or liquefied natural gas. Rather than utilize CSA scores, FMCSA awards safety permits based on a carrier’s performance in avoiding crashes and out of service orders during vehicle, driver, and hazardous materials inspections.

Wisely, FMCSA is unwilling to award Safety Permits based upon CSA scores. In fact, several carriers that hold Safety Permits have CSA Hazmat BASIC index scores well above the threshold for agency intervention. Therefore, it is inappropriate for PHMSA to rely on these same index scores eschewed by FMCSA in approving or denying special permit or approval applications. PHMSA can and should rely on inspection information and crash history. However, absent verification that the index scores contain useful safety information, only the underlying data should be consulted.

As stated earlier in this preamble, PHMSA agrees with the ATA that data

considered when evaluating an applicant’s safety profile should be an indicator of the applicant’s safe performance in transportation. PHMSA further agrees that while an increased number of miles in transportation must be considered when evaluating transportation safety, companies should not be adversely penalized for placing an increased number of properly prepared hazardous materials in transit. PHMSA proposed in the NPRM to evaluate an applicant’s fitness based on accident and other operational data that are historical indicators of compromises in hazardous materials transportation safety. While PHMSA proposed to use FMCSA’s CSA data as a part of this evaluation, PHMSA is aware of the FMCSA’s concerns about its data collection programs and that it is considering revising the type of information it collects. PHMSA will investigate its data collection systems and confer with FMCSA to determine what safety compromise indicators can be retrieved from these databases, and if the normalizing controls of the type the ATA discussed may also be obtained. In addition, the initial review of the data will only be performed as part of the initial automated fitness review. Further review, including the safety profile review, will be conducted by a fitness coordinator and the data will be evaluated and normalized based upon available data during the review. Companies will not be determined to fail the safety profile review based solely upon the number of incidents or accidents that were discovered during the safety profile review process. Additional factors, such as the number of miles traveled and the number of vehicles in service, would also be considered.

As stated earlier in this preamble, PHMSA also proposed in the NPRM to modify its evaluation of the information needed to warrant a safety profile review into two types of initiating/trigger/tier events. The first event is for a safety profile review and emphasizes high-level indicators of these types of risks, and the second event is for on-site inspections and includes violations that PHMSA finds are low-level risk model indicators. In the NPRM, these proposed events were described in the following table:

TABLE 2—SAFETY PROFILE REVIEW AND ON-SITE INSPECTION TRIGGERS

Trigger for safety profile review	Trigger for on-site inspection *
Death or Injury § 172.504(e) Table 1 (Placarding) material AND Two or more Incidents	Any incident attributable to the applicant or package (not driver error).

TABLE 2—SAFETY PROFILE REVIEW AND ON-SITE INSPECTION TRIGGERS—Continued

Trigger for safety profile review	Trigger for on-site inspection *
Bulk AND Three or more Incidents. Two or More Prior Enforcement Case Referrals	Insufficient Corrective Actions on any enforcement case OR Independent Inspection Agency (IIA) Items (Except when reinspected with no violations noted).
Foreign Cylinder Manufacturer Or Requalifier	Never Inspected under current criteria (2010).

* The Fitness Coordinator assesses and applies these triggers.

PHMSA will consider additional high-level indicators of transportation safety compromises, such as wrong package selection, failure to close packages properly, and failure to test packages.

Due to their low risk, PHMSA will *not* include violations it finds are low-level risk model indicators, such as those described in the triggers for an on-site inspection in the earlier table, as triggers for an applicant’s on-site inspection. Also as previously stated, if PHMSA finds during an inspection evidence that an applicant in the four years prior to submitting its application has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, PHMSA will recommend that the applicant has failed this portion of the safety review process.

B. The Chlorine Institute

General Comments

The Chlorine Institute (CI) expressed its overall support of PHMSA’s initiative to incorporate the special permits and approvals SOPs and information about the evaluation process into the HMR. It stated that by putting this information in the public record and into the HMR, it allows stakeholders to be more informed about the special permit and approvals application process. In addition, CI stated that explaining the evaluation process and what criteria will prompt interviews and on-site inspections will assist applicants in being more prepared for the evaluation process. Further, CI stated that providing stakeholders with such details should make for a smoother and more efficient application review process, thereby benefitting both PHMSA and industry. Finally, the CI expressed its appreciation that PHMSA has listened to industry’s concerns pertaining to the special permits and approvals review process and undertaken this rulemaking.

C. Dangerous Goods Advisory Council

General Comments

The Dangerous Goods Advisory Council (DGAC) expressed its support of PHMSA’s efforts to comply with MAP–21 requirements to issue regulations that establish SOPs and criteria to evaluate applications for special permits and approvals, in addition to the publishing of the SOPs. However, the DGAC also expressed concerns about several proposals in the NPRM, and requested that PHMSA revise its SOPs to reduce possible subjectivity and processing times.

PHMSA’s Responses to Routine Requests

The DGAC commented that the procedures PHMSA proposed for managing special permit and approval applications do not provide for responding to routine requests for administrative revisions, such as name changes, address updates, or minor editorial revisions to correct non-substantive errors. The DGAC believes requiring applicants to submit an entire application to make such minor changes does not promote safety and burdens PHMSA’s and the applicant’s administrative processes.

PHMSA disagrees. When an applicant asks to modify an existing special permit to make routine administrative changes, such as a change of address and/or minor editorial revision to correct a non-substantive error, paragraphs (c) and (d) of § 107.105 require that the applicant requesting this change submit an application to PHMSA that describes and justifies their request and includes information relevant to the proposal, which is a “full” application for this type of request provided it complies with all applicable requirements of the HMR. Since the special permit is already approved, depending on the type of request, all the safety justification information required in the initial application will not be needed. Relevant information to the request is also what is needed to make routine administrative changes to an existing approval, but the language in

§ 107.705(b) is not as clear. Therefore, PHMSA is revising the introductory paragraph of § 107.705(c) to include language similar to that in § 107.105(c) that requires relevant information be submitted with the request. As a result, PHMSA believes making requests for modifications through the submission of a full application, as prescribed in the HMR, is not a significant burden. In addition, providing a full application does serve a safety benefit since it will require the application to be screened through an automated fitness review that will identify any possible changes to the company’s fitness profile. Regarding requests for name changes, additional information is needed since PHMSA technically does not issue “name changes” to permits and approvals. The applicant requesting a company name change must be able to demonstrate that the new company is performing the activities authorized under the special permit or approval in a manner that is identical to that of the previous company. For example, the applicant must provide a filing from the state of incorporation indicating that the only change to the corporation is a change in the name, or other documentation to indicate that although the company is changing, its personnel, procedures and activities performed under the special permit or approval will not change under the auspices of the new company. If these conditions are met, then PHMSA grants an approval or permit to the new company that it may maintain the same approval or permit number as the one previously issued.

Further, though PHMSA continuously strives to improve the efficiency of its special permit and approval processing operations, it is the applicant’s responsibility to ensure his or her application is correct and complete. PHMSA receives approximately 30,000 special permit and approval applications annually. One of the most effective ways to ensure efficient processing of an application is that it is complete. Past attempts by PHMSA to delay processing incomplete applications until it received the missing or corrected information from

applicants resulted in significant application processing delays. If applicants are permitted to submit incomplete applications without any negative consequences, there is no incentive for applicants to submit complete and conforming applications. Requiring applications to be complete prior to processing will enhance PHMSA's ability to process the applications in a timely manner. The time that would be utilized gathering additional information and updating applications could be used more effectively by processing complete applications. Further, budgetary constraints prevent PHMSA from modifying its current application processing software. Therefore, PHMSA will not create a separate application process for managing routine administrative application changes.

Assessment of Manufacturers That Do Not Ship

DGAC stated that it is not clear about the intent of PHMSA's request on how to assess hazardous materials manufacturers that do not ship. Specifically, the DGAC states that it is not clear what PHMSA's jurisdiction is to assess fitness for entities that do not offer hazardous materials or packaging marked as acceptable for transportation.

PHMSA disagrees. While the DGAC correctly points out that the HMR do not apply to a hazardous material that is not being transported in commerce, the HMR apply to all actions that affect the safe transport of hazardous materials in commerce, including those performed by manufacturers that do not ship, such as hazard classification and consignment through a freight forwarder or broker. Therefore, each applicant for a special permit or approval must be assessed for its fitness to perform actions relevant to compliance with the HMR. For those manufacturers that do not perform a hazmat function, PHMSA does not have regulatory jurisdiction over these entities. PHMSA believes that clarifying the responsibilities under the HMR of manufacturers that do not ship is beneficial to this process.

Necessity of Assessments of Applicants Performing Functions That Require Registration

The DGAC questioned the necessity for making fitness determinations of applicants that perform certain functions requiring registration. As an example, DGAC stated that persons desiring to use a symbol as their company identifier must register with PHMSA and be issued a number. DGAC stated that performing a fitness determination on these persons seems to

serve no useful purpose. For persons who perform only visual inspections of cylinders that are required to register to receive a Visual Identification Number (VIN), the DGAC expressed doubt that PHMSA has an inspection history on the vast majority of these individuals, and that PHMSA can perform an on-site inspection of all applicants for VINs in a timely manner. The DGAC concluded by stating that withholding the issuance of a VIN until an inspection can be performed may cause severe hardship for such applicants, and affect their ability to stay in business.

PHMSA disagrees. While it is not our intent to inspect all VIN applicants, and historically we have found low levels of risk with visual cylinder requalifiers, visually inspecting cylinders is a safety function under the HMR. Therefore, PHMSA will analyze VIN applicants for fitness if PHMSA is aware of any intelligence that the applicant is not capable of performing this activity. Further, the average processing time for a VIN is 3 to 5 days or less. PHMSA has never had delays in processing these applications. However, PHMSA is reviewing how we process these applications to determine if we can implement more automation.

Authority To Determine Sufficient Corrective Action

The DGAC expressed concern regarding the authority the proposed SOPs would give the PHMSA Field Operations (FOPS) officer or authorized Operating Administration (OA) representative to make a subjective determination that corrective action taken by an applicant in response to a prior enforcement case is insufficient and that the basic safety management controls proposed for the type of hazardous material, packaging, procedures and/or mode of transport remain inadequate. DGAC stated that such a determination by a single individual is purely subjective without a determination that a violation continues to exist. Further, DGAC believes that this type of determination lacks both the administrative and legal review to verify existence of a violation, and the administrative processes for a company to challenge such findings.

PHMSA disagrees. Fitness is not determined by one FOPS Division staff, or a representative of the Department, such as an OA representative. An applicant that undergoes an initial safety profile review and is flagged has his or her case first reviewed by a FOPS officer, and then the case goes through a second level review. Further, a company has 30 days to submit corrective actions after a FOPS officer or

OA investigator finds possible violations. If the first-line field supervisor considers the corrective actions sufficient to address the observed violation, the supervisor presumes that corrective actions have been put into place and will prevent future recurrence. In some instances, a follow up re-inspection is also executed to ensure the corrective actions have adequately addressed the problem. All field case reports, including corrective actions, are reviewed by PHMSA's legal counsel and a final penalty is assessed. The penalty amount can be challenged by the company under existing administrative processes. Further, for additional clarity and in response to a request from commenters, PHMSA has added a definition for "sufficient corrective action" under § 107.1.

Criteria Used To Determine if an Applicant is "Fit" or "Unfit"

DGAC states that it remains unclear as to what criteria will be used to determine if an applicant is either "fit" or "unfit." It also states that even though minor violations of the HMR may be uncovered during an on-site investigation, such violations may not have a serious impact on the compliance posture of the applicant. The DGAC recommends that PHMSA clearly articulate the conditions under which an applicant would be determined to be "unfit."

PHMSA has articulated these conditions to the extent possible in this final rule. However, too many variables exist among those who affect the safe transport of hazardous materials to state with certainty what HMR violations or previous incident history will be found and to what extent they will affect the status of an applicant's fitness. For example, if a violation or series of previous incidents is found and PHMSA determines the applicant has not implemented sufficient corrective actions for prior violations, or that the applicant is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested. Although FOPS officers and OA representatives do not disclose their inspection process and their inspections are unannounced, their inspections are conducted in a logical sequence and involve all aspects of the applicants' operations that are applicable to the HMR.

D. Institute of Makers of Explosives

General Comments

The Institute of Makers of Explosives (IME) expressed concern that the SOPs proposed in the NPRM introduce practices and procedures that increase the costs and timelines of producing and managing special permits and approvals applications without addressing the fundamental problems the DOT Office of Inspector General (OIG) identified with these PHMSA programs—deficiencies in how PHMSA manages its paperwork and provides clarity when processing these applications. The IME stated the DOT OIG directed PHMSA to clarify and publish its SOPs for special permits and approvals in its 2009 report. The IME also stated the DOT OIG cited as the reason for this directive PHMSA's deficiencies in managing its paperwork, but not for the performance of tasks PHMSA authorized in the special permits and approvals it has approved. The IME further stated PHMSA responded to the OIG's request by issuing "without public notice and comment, two documents describing new complex procedural schemes that substantively altered the special permit and approvals application and evaluation process, and fundamentally changed the procedures the agency would follow in conducting a fitness determination."

The IME further noted that although PHMSA identified its SOPs as "a process for evaluating an applicant's fitness," it identified its SOPs for approvals "as a draft with a 'to be determined'" placeholder for its fitness determination standard. The IME stated that the agency began using these SOPs to make regulatory determinations of fitness although the regulated community had no idea what threshold level of performance would be used to determine an applicant's "fitness." The IME stated the regulated community responded to this action "with letters and a petition for rulemaking requesting that PHMSA establish its SOPs and fitness criteria by rulemaking." When PHMSA rejected these requests, the IME stated, "Congress intervened with a directive that PHMSA issue regulations to establish SOPs for the SPAP [Special Permit Application Process], and objective criteria to support the evaluation of special permit and approval applications."

As stated earlier in this preamble, PHMSA continuously strives to improve the efficiency of its special permit and approval processing operations while processing approximately 30,000 special permit and approval applications

annually. In the past, delays in processing incomplete applications until PHMSA received missing or corrected information from applicants resulted in significant delays in processing applications. As a result, PHMSA has ceased that practice. PHMSA must also ensure that all special permit and approval requests are not authorized until they are determined to be as safe as those activities permitted under the HMR or are determined to be safe enough to serve the public interest. In addition, by undertaking this rulemaking process, PHMSA is responding to requests from the regulated public to open the development of its special permit and approval SOPs to full public disclosure and comment.

Concerns and Observations About the NPRM

The IME indicated in its comments that it supports several proposed amendments in the NPRM. These include a four-year review period, Table 1 applications, hazmat registration, party-to-applicant fitness, data normalization and relevance, and presumption of fitness. However, the IME provided several comments pertaining to a number of concerns and observations. They are as discussed below.

Costs and Benefits

In its comments, the IME stated that PHMSA's claim that costs and benefits are unaffected due to this rulemaking is premature. Specifically, it stated that "every determination PHMSA makes of an applicant's fitness or whether to issue or deny a special permit or approval has an effect outside of the agency. Furthermore, opportunities to affect those costs and benefits change when the procedures and standards change. For several years, the regulated community has relied on SOPs posted on PHMSA's Web page. Yet PHMSA acknowledged, at some time after its 2012 public meeting on fitness determination standards, that it has revised its SOPs. It may be that the agency's claim that the SOPs and fitness criteria described in the rulemaking are unlikely to change costs and benefits is because PHMSA is describing its current practices, not the SOPs posted to its Web site. Whatever the case, a declaration that costs and benefits are unaffected is premature because it presupposes the outcome of this rulemaking."

PHMSA notes that for several years, Congress and the DOT's Inspector General (IG) have directed PHMSA to assess the ability (*i.e.*, fitness) of special

permit, and more recently approval, applicants to ensure they can safely perform the tasks requested in their applications. PHMSA developed and revised its SOPs as internal administrative guidance to help its staff properly process these applications, reduce delays, and accommodate changes to automated systems, database availability, and DOT and PHMSA directives. PHMSA also recognizes the financial impact special permits and approvals have on industry processes. However, as mentioned earlier in this preamble, the risks associated with hazardous materials and the potential for severe consequences to the public and environment if they are improperly transported require that PHMSA must not authorize permission to transport these materials in a manner not permitted under the HMR until PHMSA ensures that the actions requested and the persons performing these actions are safe.

Streamlining the Process

The IME also expressed its concern of how "backlogged" applications have plagued the SPAP since the events of 2009. It noted that:

PHMSA exercises new authority to incorporate proven special permits into the HMR. Backlogs from this part of the SPAP may be self-correcting. While IME appreciates the dedication of PHMSA staff to move existing backlogged applications, the frequency with which intervention is required to request action on these applications suggests that the process needs to be better streamlined. PHMSA has established a 120-day processing schedule before an application can be deemed "backlogged." We do not believe that every application should be held to a 120-day processing schedule, and we associate ourselves with those that believe the length of time PHMSA takes to process and issue special permits or approvals, especially when applications lag beyond the current 120-day processing threshold, adversely impacts U.S. competitiveness. While nothing in this notice indicates that the regulated community can expect a shorter processing schedule, the agency does describe revised procedures that suggest a shorter timeframe is possible. For example, PHMSA has begun to concurrently process both the technical and the fitness evaluations. Based on concurrent processing, PHMSA should establish a shorter timeframe for applicants to gauge when they will be provided a decision from the agency.

In another streamlining initiative, PHMSA issued notice that it was ceasing to perform fitness reviews for classification approvals. These approvals are simply affirmations of compliance with classification regulations. Those affected must have PHMSA-required tests performed by PHMSA-approved laboratories. Denying a request for such an approval on the basis of fitness is, in effect, denying the applicant the opportunity to

properly classify a material in accordance with the applicable regulations. While we support this policy initiative, PHMSA left open the door for interpretive confusion with a concluding statement that, “[f]itness of applicants for classification approvals will continue to be reviewed through application evaluation, inspection, oversight and intelligence received from PHMSA or another Operating Administration (FAA, FMCSA, FRA, or USCG).” This statement appears to contradict the announced policy that fitness determinations would not be required for classification applications. PHMSA should clarify its policy as part of this rulemaking.

PHMSA states that there are four steps in the processing of an application, whether for special permits or approvals. They include a “completeness” phase, publication, “evaluation” phase (which includes both a technical and a fitness evaluation), and “disposition” phase. The completeness phase is to determine if the application contains all the information required by the HMR. However, the preamble states that evaluation phase is used to “determine if the application is complete.” This duplication is needless and will slow the processing of the application. Additionally, it is not clear from the preamble discussion when applicants will be notified that an application is rejected. Reasons to reject applications, such as incompleteness, omissions, errors, could be manifest at any stage of the processing phases. Whenever PHMSA makes a determination to reject an application, the applicant should be immediately notified. An application tagged to be rejected should not continue to move along the processing queue only to be rejected at some later date.

PHMSA has stated that it queues applications on a “first come, first served” basis. While we support this prioritization principle, it does not recognize the fact that applications are different and, once in the system, applications should be assigned to separate tracks and staff who specialize in the processing of application types. For example, it seems intuitive that classification approvals with a 3-part review process without the need for **Federal Register** publication or a fitness determination would require less time to complete than special permit applications with a 5-part process which includes **Federal Register** publication and a fitness determination. PHMSA should accommodate these distinctions with a shorter processing schedule.

Likewise, IME has long advocated for a separate track to process applications seeking minor corrections, such as name changes, or those with minor errors, such as misspellings, or omissions. However, PHMSA states that it has a “new” practice of rejecting “incomplete” applications. The agency states that “problems with recordkeeping” require the resubmission of the entire application, with corrections, in order for a rejected application to be reconsidered. This is a costly, ineffective way for PHMSA to get around problems it has with recordkeeping. The policy may make it easy for PHMSA to clear its books, as all the costs of resubmittal, including lost commercial opportunity costs, are borne by the applicant. While we agree that

incomplete applications and applications containing non-substantive errors should be tabled pending correction, we do not believe that these types of administrative deficiencies warrant returning resubmitted applications to the end of the queue and restarting the processing time-frame anew. Rather, we suggest that PHMSA establish a dual-track system, allowing applicants of incomplete applications or those otherwise tagged to be rejected for non-substantive reasons a grace period, such as 30 days, to correct the deficiency(ies) identified in the application. If the applicant resubmits a corrected application, the application should be returned to the point in the queue where it was pulled. If the applicant fails to resubmit requested information in the time allowed, the application should be rejected and any resubmittal treated as a new application.

In what could be seen as process streamlining, PHMSA states that it “will review companies with multiple locations as one organization, placing an emphasis on its examination of the company’s locations where the requested actions and/or processes are being performed.” However, the announced policy seems contradictory. A company with multiple locations is not being reviewed as one organization if, at the same time, PHMSA is examining locations where the safety permit or approval is to be carried out. If PHMSA means some type of middle ground, it should clarify how many “locations” within a company will be visited and how the locations will be selected.

It is important that PHMSA look for opportunities to streamline its 120-day special permit and approval processes. In each of the last four fiscal years, PHMSA has requested Congress to authorize millions in user fees to pay for the costs to administer the SPAP. SPAP users have resisted efforts to impose these fees for many reasons. One key reason is that PHMSA has done nothing to restrain its own costs within the program. Meanwhile, we are grateful that Congress has rejected these budget requests.

While PHMSA requests that applicants submit their special permit and approval applications 120 days before they would like them to be issued, PHMSA is not restricted by this timeline. Typically, it takes PHMSA less than 180 days to process a special permit application, approximately 45 days to process an approval classification, and approximately 5–6 days to process a VIN application provided all are correct and complete. While PHMSA agrees that the application process should be streamlined to the extent possible, PHMSA must take what time is needed to efficiently and effectively determine that the actions requested in each application are safe and what modifications, if any, may be needed to make the requested actions safe. PHMSA believes that it must consider applications as they are received to be fair to those applicants who have

prepared their applications correctly. PHMSA disagrees with the IME and other commenters that establishing grace periods for applications with missing information will improve its ability to streamline its application process. Past efforts to create internal systems that did this significantly delayed PHMSA’s ability to process applications efficiently. Further, budgetary constraints prevent PHMSA from modifying its current application processing software to create a separate application process for managing routine administrative application changes.

Over the past 10 years, approximately 10 percent of PHMSA’s special permit applications have been in processing for greater than 180 days. PHMSA must report applications that are not processed within 180 days in the **Federal Register**. PHMSA agrees that whenever an application fails any stage in the process, this failure should trigger immediate notification to the applicant to avoid excessive delays. To improve the transparency of this process, PHMSA has developed and is testing an online process for submitting and checking on the status of special permit and approval applications. This online system is being designed to notify applicants when their applications have failed to meet the required criteria. Once the testing is completed and the software is performing correctly, PHMSA will make this online information available to the general public. This online method should also improve times for issuing “M” and “VIN” numbers, and renewals.

PHMSA disagrees with the request to reduce processing times by no longer publishing notifications of applications received in the **Federal Register**. PHMSA is required by law to provide public notification in the **Federal Register** of its receipt of special permit applications only (see §§ 107.113(b) and (j), and 107.117(g)).

Regarding screening applicants with multiple locations as one entity, PHMSA agrees. PHMSA already performs its initial screening of these applicants as one entity; however, follow-up reviews are more site-specific, based on the number of locations and resource availability.

PHMSA also agrees with the IME that the language explaining the difference between the completeness phase to determine if the application contains all the information required by the HMR, and the evaluation phase to determine if the application is technically complete, is confusing. Further, the NPRM’s preamble stated the evaluation phase will be used to “determine if the

application is complete.” This duplication is needless and will slow the processing of the application. Therefore, in this final rule PHMSA is revising the Appendix to clarify the difference between the completeness phase and the evaluation phase.

Fitness Determination Procedure

The IME also expressed concern with the procedures and policies PHMSA is using to determine “fitness.”

PHMSA states that “incorporating an elaborate review system into the HMR . . . would be extremely difficult [given] the wide range of applicants.” PHMSA is not alone in the realization that establishing standards to fairly and accurately determine fitness of a myriad of private entities is a daunting task. The Federal Motor Carrier Safety Administration (FMCSA) has been attempting to update its fitness standards for years. However, PHMSA proposes to overcome the difficulty of this task by “incorporat[ing] a more straightforward, user-friendly review system.” While we can hope for a process that is straightforward and user-friendly, first and foremost PHMSA needs to accurately disclose the process and standards it is using.

As stated earlier in this preamble, PHMSA will conduct most of its safety profile evaluations through administrative research. PHMSA will conduct its site-specific and situational-dependent safety profile evaluations based on highest priority with regard to safety risk, and the number of locations and availability of agency resources to perform these tasks.

Fitness Determination Frequency

The IME commented on the frequency of fitness determinations when it stated that:

IME recommended that fitness determination reviews not be triggered by the filing of an application but be periodically performed at least once every four-years unless revoked or suspended due to subsequent findings of imminent hazard or a pattern of knowing or willful non-compliance. PHMSA addresses this concern, in large part, by announcing that it considers only fitness data since the last review. While this is a step in the right direction, applicants may submit several applications at the same or proximate time. It seems a waste of resources to ramp up separate fitness reviews for the same day or even month. We would recommend some de minimis exception between applications. Otherwise, the review becomes just a paper exercise and the cost may not be justified. Keep in mind that a de minimis exception does not preclude PHMSA from suspending or revoking a permit or approval whenever additional proof of non-compliance comes to light.

PHMSA disagrees. As stated earlier in this preamble, when PHMSA receives multiple applications from one entity

within a short period of time, PHMSA consolidates these applications when performing its safety review. PHMSA has a five-year plan for reviewing cylinders but a one-year plan for reviewing explosives because we have developed our program to be responsive to the level of risks associated with these materials. However, PHMSA does not have the resources to commit to reviewing special permit and approval applicants every four years. PHMSA increases the frequency of its inspections involving materials with greater incident risks regardless of the type of applicant.

On-Site Reviews for Fitness Determinations

In its comments, the IME recommended that:

The onsite reviews of fitness be reserved to a small set of applicants that have a history of serious hazmat incidents. However, PHMSA believes that these reviews should be a standard part of the process since onsite reviews are necessary to support the “accuracy” of the determination. This statement appears to conflict the fitness triggers that suggest only applicants exceeding certain performance thresholds would be subject to an onsite inspection. Additional agency justifications for onsite reviews—specifically whether packagings and/or operations requested are safe or what additional operational controls or limitations may be needed—may be relevant to the technical evaluation, but not to the determination of fitness. Finally, we agree that an onsite visit may be used to clear up misunderstandings or inaccuracies. However, the option to conduct an onsite review in these instances should be in response to a request from the applicant. Onsite reviews are no doubt the most costly aspect of the fitness determination process. As noted, some applicants may file multiple applications in a short timeframe. We continue to believe that onsite reviews should only be triggered when fitness cannot be demonstrated by some other means.

PHMSA disagrees that on-site reviews would be required for all applicants. PHMSA plans to conduct on-site reviews for only a small percentage of companies that are determined to have failed a safety profile review. However, an on-site review is not required to make a determination of “unfit.” Since 2010, PHMSA performed on-site reviews of five or fewer companies and none were determined to be unfit. PHMSA agrees that on-site reviews and accompanying close-out consultations are opportunities to clear up misunderstandings and inaccuracies.

Data Accuracy

In response to a solicitation by PHMSA to comment on data accuracy, the IME comments that:

PHMSA asked for comment about how to improve the quality of the Hazmat Intelligence Portal (HIP) data it uses to determine applicant fitness. When PHMSA launched HIP, the regulated community was promised future access to their own information. This has never happened. The best way to ensure data accuracy is to give the regulated community access to their data and an opportunity to challenge and correct misinformation. FMCSA allows motor carriers access to their records and provides a process to correct errors under its CSA program. While FMCSA is still grappling to perfect its process to correct errors, the CSA program sets a precedent that PHMSA should follow.

The vast majority of information PHMSA uses to conduct its carrier-specific fitness reviews, but not general hazardous material reviews, is contained in FMCSA’s databases. PHMSA contacted other modal agencies to obtain similar incident data but these agencies either did not have the information needed or were not willing to make this information available to PHMSA. FMCSA’s databases are well organized and the agency is willing to share them with PHMSA. PHMSA understands that FMCSA is revising its databases and considering ways to make this information more available to the public. When PHMSA first developed its Hazardous Materials Information System (HMIS) and Hazmat Intelligence Portal (HIP) databases, its intent was to make this information available to the general public. However, PHMSA was unable to complete this step due to budget and software design considerations. PHMSA intends to revise the HMIS, HIP, or other prospective application processing technology, to make the information it contains available to the public in the future.

Fitness Standards

The IME addressed fitness standards in its comments as follows:

The standards by which PHMSA determines “fitness” have profound implications for applicants. PHMSA still proposes a three-tiered review process. PHMSA explains that the applicant is first screened to see if a SPR [safety profile review] is triggered. Second, if a SPR finds any of a second set of risk indicators, an onsite review is triggered. Third, PHMSA’s field operations staff (FOS) will submit a fitness memorandum with a recommendation of fit or unfit. However, this process continues to be seriously flawed:

- Incident Triggers: PHMSA states that it is removing low-level incident data from its tier 1 automated fitness determination process, and focusing on three incident categories to trigger a SPR—incidents resulting in death, incidents resulting in injury, and “high-consequence” incidents. However, there are no definitions of “injury” or “high-

consequence.” First, we would urge PHMSA to adopt the same definition it uses for a “major injury”—one that requires a hospitalization—when reporting hazardous materials incidents as the definition of “injury” under the fitness standard. Second, PHMSA also needs to define “high-consequence” incident, and that definition must filter what incidents will trigger a tier 3 onsite review under the “Table 1” and “bulk packaging” tier 1 automatic screen. These tier 1 screens require that two or more incidents involve a Table 1 applicant or, in the case of a bulk packaging applicant, three or more incidents, in order to trigger a tier 2 SPR referral. During the SPR, PHMSA states that incidents not attributed to the applicant are dropped. However, we disagree with PHMSA’s policy that “any” of these attributable Table 1 or bulk package incidents would then trigger a tier 3 onsite review regardless of outcome. Just because the incident involved these materials or equipment does not ipso facto mean that the result of the incident was “high-consequence.” Such an interpretation would negate PHMSA’s promise that it is removing “low-level incident data” from the fitness determination. (Also see comments on review triggers below.) We do agree with PHMSA that an incident resulting in a death or injury (requiring hospitalization) attributable to the applicant (other than driver error) is an appropriate standard to trigger a tier 3 review. Finally, an incident attributable to a “package” may be relevant for a technical evaluation, but it is unclear why such an incident would be relevant to the fitness determination.

- **Conflicting Tier 1 Triggers:** Despite the statement above that only three types of high consequence incidents would trigger a fitness review, PHMSA states that a “pattern of minor violations may reveal larger problems that could adversely affect transportation safety.” Again, this statement appears to negate PHMSA’s statements about what standards may result in a determination of “unfit.”

- **Conflicting Tier 2 Triggers:** In the preamble, PHMSA states that it has revised its SOP to base fitness evaluations (and SPRs) on incidents and/or violations revealing “flagrant patterns and serious violations.” (Emphasis PHMSA’s.) Later in the preamble, PHMSA states that “the suggestion to ignore minor leaks in packaging may not be inconsequential depending on the risks contained in the material, and, therefore, [PHMSA] may not eliminate this as a consideration in a fitness evaluation.” The preamble also states that a trigger for a tier 2 SPR is “two or more prior enforcement case referrals.” However, PHMSA’s proposed “Appendix A” states that the trigger is met if the applicant has “a [*i.e.*, one] prior enforcement case referral.” These conflicting statements confuse rather than clarify agency policy and practice. PHMSA needs to clarify these discrepancies.

- **Tier 3 standard/What is “Fit”?:** Most concerning about PHMSA’s notice is that applicants unlucky enough to find themselves with a tier 3 onsite review still do not know what will be examined in an onsite inspection or what standard of performance

will yield a finding of “fitness.” PHMSA states that, during the inspection, “investigators” will search “for evidence that an applicant is at risk of being unable to comply with the terms of [any applicable] special permit, approval, or . . . HMR.” In fact, PHMSA states that the FOS may initiate audits of the applicant’s operations when determining fitness. PHMSA should provide examples of “evidence” that would put an applicant at risk, and clarify what records will have to be produced, who onsite can expect to be interviewed, and how long an onsite review can be expected to take. The onsite inspection should conclude with a closing conference outlining options applicants will have to learn of and address any identified concerns. We assume an inspection report will be prepared. Please clarify whether the applicant will receive a copy. Without some limitations, these inspections could degenerate into fishing expeditions. The uncertainty of what level of performance would produce a finding of “fit” is a burden that will only be borne by U.S. businesses.

- **Judge and Jury:** FOS have been delegated responsibility for the fitness review process for all decision-making after the initial automated review. Although PHMSA proposes that the associate administrator will “review” all special permit and approval applications, the permit or approval can be issued by individuals other than the associate administrator. We are concerned that too much authority for the fitness review, inspection, and determination is left in the hands of one individual. If the associate administrator has delegated the final decision on a fitness determination to FOS, at minimum, FOS should have to get the SPAP to sign-off on the decision.

The information PHMSA uses for safety profile reviews acquired from the incident report forms is standardized. High-consequence/injury events are similar to requirements which trigger National Response Center reporting under § 171.15. Incident reports may also be caused by incorrect package assembly or improper maintenance. Fitness coordinators will consult this information in addition to that provided in an application and, if clarifying information is needed, will contact the applicant to obtain it. If the information the applicant provides is sufficient, an on-site inspection may not be necessary. Also, participation from PHMSA’s Engineering and Research Division may be required. PHMSA will conduct an on-site review if it has evidence that: (1) An applicant is at risk of being unable to comply with the terms of an application; (2) any incident listed under paragraph 3(b)(i)(1) of the Appendix A to Part 107 is attributable to the applicant or package, other than driver error; (3) during an inspection in the four years prior to submitting the application an applicant has not implemented sufficient corrective

actions for prior violations, or is at risk of being unable to comply with the terms of an application for or an existing special permit, approval, or the HMR; or (4) incorrect or missing markings, labels, placards or shipping papers. The safety profile evaluation will normally follow the same procedures as an inspection. As stated earlier, the FOPS officer or OA representative will provide an exit briefing to document any observed violations, including those which may affect fitness determinations. After PHMSA’s Field Operations Division staff, or a representative of the Department, completes the safety profile evaluation the FOPS staff person or OA representative will make a recommendation to PHMSA’s Approvals and Permits Division if a company is fit or unfit. PHMSA’s Approvals and Permits Division will make the final fitness determination. Denied applicants have a right to reconsideration and appeal of that decision as prescribed in §§ 107.123, 107.125, 107.715, and 107.717. Further, PHMSA must include the scope of its inspection responsibilities under the HMR in the safety profile reviews it conducts.

Presumption of Guilt

In its comments, IME stated that:

PHMSA states that the process it has implemented “does not presume innocence or guilt” of an applicant. However, “new companies with no performance history” will still be subject to a fitness determination. PHMSA’s treatment of new companies is one that presumes non-compliance. These reviews will be based on a new company’s “training records.” Training records are only available for review onsite. Consequently, new companies will automatically find themselves pushed to a tier 3 inspection. We disagree that new companies automatically warrant this costly level of review. Additionally, PHMSA states that “select holders” who have never been inspected will be automatically referred for a tier 2 SPR. Again, this criterion is based on a presumption of non-compliance. This fact alone should not be a justification for a fitness review.

PHMSA agrees that an applicant’s history should not imply a presumption of guilt and there is no need to require on-site review of hazmat matters with lower risk, such as training records. PHMSA does not believe that an applicant’s lack of data is correlated to non-compliance. New companies are automatically presumed to pass their safety review since they have no “triggers” in the system. However, the fact that a company is new does not prevent PHMSA from doing inspections under other sections of the HMR.

Modal Evaluation

Regarding the evaluation performed by various modes during a fitness determination, IME commented that:

PHMSA states that it coordinates application evaluation with DOT modal agencies when the application is “mode specific, precedent setting, or meet[s] federal criteria for a “significant economic impact’.” We question the rationale for involving a modal agency in any application that does not involve the mode irrespective of whether it is precedent setting, or of significant economic impact. Furthermore, all modes have their own standards for determining “fitness.” PHMSA should not allow modal agencies to use PHMSA’s fitness procedures to impose more stringent fitness requirements than already exist in their modal regulations. Likewise, PHMSA should not use the fitness assessment process to impose its interpretation of who is a fit carrier on the modal agencies. We believe that the data reviewed should be relevant to the application. If an application involves “shipper” activities, “carrier” incidents attributable to the applicant, for example, should not be considered in the fitness determination. Likewise, modal agencies should not be involved in classification approvals. For example, applications for explosives classifications are based on UN tests performed by PHMSA-approved laboratories. There is no modal nexus to classification approvals.

The DOT’s modal agencies currently evaluate only those issues that are germane to their mode of transportation according to their own established criteria, and this will continue. In most cases, modal agencies will not be involved in the evaluation of classification approvals. However, the modal agencies may make fitness recommendations with on-site reviews of an applicant according to their own established criteria.

Guidance

In its comments, IME expressed concern whether the Appendix proposed in the NPRM was considered by PHMSA as a regulation when it stated that:

PHMSA states that rulemaking is not required because it considers these criteria to be “internal” guidance for its staff. Acting on this declaration, PHMSA proposes to incorporate its SOPs and fitness criteria into the HMR only as an “appendix.” This nomenclature and justification are troubling. Congress certainly felt that the SPAP SOPs and fitness criteria warrant the status of a rule, directing that “regulations” be issued by a date certain. Moreover, to be crystal clear in its intent, Congress directed that these rules be issued under the Administrative Procedure Act. PHMSA’s declaration that this appendix is simply guidance begs the question of how the agency views the legal status of the document. As “guidance”, does PHMSA believe that the appendix can be

changed, after this initial “rulemaking”, at will, as the agency has done to the current SOPs? We ask PHMSA to resist any temptation to treat the appendix as anything less than a regulation and to clarify the legal standing of the “appendix” in the final rule. Agency guidance issued without the benefit of careful consideration under the procedures for regulatory development and review risks being arbitrary and capricious.

PHMSA disagrees. The Appendix prescribed in this final rule is regulatory text that also performs as guidance because it discloses PHMSA’s administrative processes to the regulated public. To change the language in this appendix, PHMSA must issue a rulemaking. Another example of an appendix in the HMR that sets forth guidance is the “List of Frequently Cited Violations” in Appendix A of 49 CFR part 107, subpart D. Both inform the regulated public of general guidelines PHMSA uses to make determinations.

Reconsideration/Appeals

The IME noted that in the NPRM PHMSA proposed to process requests for reconsideration and appeals of special permit and approval decisions “in the same manner . . . [as] new applications.” It asked “what is the point of making such a filing if the application will simply be treated as a new application?” In addition, IME stated that “requests for reconsideration and appeals should be handled on a separate track from new applications.”

PHMSA agrees that applications for reconsideration and appeals will be treated differently from regular special permit and approval applications. Reconsideration requests are managed within the Special Permit and Approvals Division in conformance with § 107.123 for special permits and § 107.715 for approvals, and appeals are managed outside of the Special Permits and Approvals Division by PHMSA’s Office of Chief Counsel. When an applicant requests reconsideration of a denied application, the request is provided a higher priority in the review process. Thus, a decision will tend to be rendered more quickly since the initial review and evaluation has been completed. Appeals are handled by the Office of the Administrator and are not part of the routine special permit and approval evaluation process.

Transparency and Accountability

In its comments, IME noted that PHMSA describes its statutory obligation to publish notice of the receipt of special permit applications in the **Federal Register**. It also noted that, on its own initiative, PHMSA also

occasionally publishes final actions taken on special permit applications. The IME recommended that PHMSA utilize this rulemaking to institutionalize the publication of final decisions on applications for special permits in the **Federal Register**.

PHMSA is required by law to publish receipt and processing of its special permit applications in the **Federal Register**. This is an ongoing activity and cannot be addressed by issuing these decisions once in this final rule.

Organizational Issues

IME noted that:

PHMSA enumerates six screening criteria used during the tier 1 automated fitness review. Screens 5 and 6 should be listed as standalone provisions. In contrast to screens 1 through 4, the criteria in screens 5 and 6 are not derived from the occurrence of a high-consequence event or an enforcement action. Rather, they are descriptions of when and how the automatic review will be conducted for particular applicants.

Additionally, we question the inclusion of screen 6 in this section of the rule in light of a correction notice recently issued by PHMSA which clarifies that only those applicants who do not require coordination with an Operating Administration (OA) would be subject to the tier 1 review. Yet, screen 6 describes the review that applicants who are interstate carriers would undergo which is based on criteria of FMCSA, an OA. It seems intuitive that PHMSA would “coordinate” with FMCSA for the data used in this review.

PHMSA agrees with the IME and will revise the language in the Appendix of this final rule to make this correction. Further, the trigger selection process is an automated review and done without FMCSA interaction.

Interim Process

IME comments that Congress directed PHMSA to issue the regulations contemplated by this rulemaking no later than September 30, 2014. However, the comment period for the NPRM did not close until October 14, 2014, and the statutory deadline will obviously be missed. In light of these developments, IME expresses concern about the SOPs and fitness criteria that PHMSA will continue to use before the rule is promulgated. The IME expresses the hope that PHMSA will make changes to current practices and standards, but in the interim, exercise restraint in how it carries out any punitive actions using unauthorized procedures and criteria.

PHMSA has undergone its best effort to meet the deadline mandated for this rulemaking by the Congress in MAP-21. The provisions the commenter is requesting will become effective through the issuance of this final rule.

PHMSA does not plan to implement interim SOPs or fitness criteria or make changes to its current practices and standards before the ones prescribed in this final rule are implemented. Therefore, PHMSA has addressed the commenter's concerns.

Miscellaneous

In its closing comments, the IME makes several recommendations:

(1) PHMSA may wish to clarify the following statements:

A. Further, the HMR permit, in various sections, some federal agencies limited authority to directly issue certain types of approvals because of the proven safety of the type of action and/or process requested in the approval, and the subject matter expertise each agency can provide regarding hazardous materials transportation.

B. During the evaluation phase, if the tasks or procedures requested in each special permit or approval application are determined to provide an equivalent level of safety to that required in the HMR or, if a required safety level does not exist, that they provide a level of safety that demonstrates an alternative consistent with the public interest that will adequately protect against the risks to life and property inherent in the transportation of hazardous materials.

(2) PHMSA's proposed definition of "applicant fitness" at § 107.1 is incorrect based on the preamble statement. Rather than ". . . a determination by PHMSA . . .", the text should read ". . . a determination by the Associate Administrator . . .".

PHMSA agrees with the IME and has made these clarifications and corrections.

E. Reusable Industrial Packaging Association

Data Used for Fitness Determination

The Reusable Industrial Packaging Association (RIPA) supports PHMSA's stated intention in the NPRM to remove "low-level" incident data from fitness determinations, focusing rather on high-level incidents involving death, injury, or other "high-consequence" cases. RIPA does not believe an isolated incident or a reported packaging leak, with no other attendant consequences, warrants a rejection of fitness. RIPA also supports PHMSA's proposal to limit the historical period to 4 years over which the agency will review an applicant's performance history, citing it as "practical and more than sufficient to ensure safety." RIPA requested that PHMSA ". . . avoid linking a rejection or denial of an application to a single metric or a single occurrence in an applicant's history." PHMSA has revised the guidance document to emphasize high-level incidents, but disagrees that it must not consider an isolated incident or package leak

depending on how seriously the incident affects safety. If a single incident leads to death, serious injury, or a high-consequence event, rejection of that application would be appropriate and satisfy PHMSA's mission.

Delays in Processing Approval Applications

RIPA stated "PHMSA should address how its proposed modifications to the approval procedures will affect the increasing delays in processing approval applications. According to data recently supplied by the agency, as of October 6, 2014, there were 783 approval applications that had been in process for more than 120 days without a decision. As of July 7, 2014, there were only 570 approval applications older than 120 days. In just three months, the number of applications beyond the 120-day threshold has grown over 37 percent." One of the purposes of PHMSA's SOPs is to aid the agency in decreasing its delays in processing special permit and approval applications by ensuring that PHMSA begins its review with as complete an application as possible.

PHMSA disagrees. As stated earlier in this preamble, PHMSA is not restricted to a 120-day deadline. PHMSA has a responsibility to authorize only those activities deemed safe in transportation and must not institute practices that would ignore this responsibility. Each application can be unique and require different types of complex information to complete its review, and PHMSA continues to work to improve processing times.

Approval Technical Template

RIPA is concerned the additional levels of scrutiny for approval applicants in the proposed SOPs will add to PHMSA's delays in processing applications. RIPA also stated it asked in prior comments to the agency (February 29, 2012; Paul W. Rankin to Docket No. PHMSA-2011-0283—see <http://www.regulations.gov/documentDetail;D=PHMSA-2011-0283-0003>) how PHMSA can ask an applicant to "demonstrate its readiness to meet the terms of an approval if, in fact, the large investment required cannot be made without some certainty of being approved. PHMSA should articulate a process to encourage the adoption of new and better technologies without the huge uncertainty that the application process currently presents." RIPA suggested PHMSA implement an "approval technical template . . . as a guideline for applicants seeking the same (or very similar) approval. Such a template might also help applicants understand better the threshold for a

'complete' application." RIPA believes that "PHMSA's plans to codify into the HMR certain approvals with wide applicability and records of safety could also go a long way in disseminating new technologies and safe practices."

PHMSA agrees with RIPA that some types of approvals require less scrutiny than others and, thus, take less time to review. PHMSA also agrees that creating templates to help applicants meet SOPs targets would aid the applicants with successfully completing their applications. However, all forms and other types of government requests from the public must first be developed and cleared through the Office of Management and Budget. PHMSA has not developed a template under this rulemaking, and, as a result, this activity is outside the scope of this rulemaking. Therefore, PHMSA must decline this request.

Insufficient Corrective Actions

RIPA found that PHMSA's proposed criteria for "insufficient corrective actions":

. . . taken following two or more prior enforcement cases is a standard so broad as to be nearly meaningless. If corrective actions were insufficient, isn't the applicant still out of compliance? Also, who makes a determination of "insufficient corrective action"? Is there a document trail to follow in making such a determination? What if those cases were several years in the past, and were administered by wholly different personnel? Does the proposed 4-year historic limit apply here?

PHMSA agrees with RIPA that it should add more clarity regarding the term "insufficient corrective action." This will aid applicants as well as those conducting reviews to determine whether an applicant meets these criteria. Additionally, this will greatly aid the review and processing of applications, and clarify to applicants when a corrective action is satisfactory under the HMR. Therefore, PHMSA has added this definition to § 107.1.

On-Site Inspections

RIPA believes on-site reviews should be limited to the most serious instances of safety concerns. However, it states that the criteria for "fit or unfit" remain somewhat malleable, and could support the rejection of an application based on a FOPS Division agent recommendations that may be far removed from the narrow special permit or approval being sought. RIPA requests that an on-site review of an applicant for an approval need not be a "curb-to-curb" inspection, but a limited review of the operation or packaging in question, and that inspectors should

take action only on compliance issues “in plain sight.” RIPA states in its experience, this threshold provides equivalency in terms of public safety.

As stated earlier in this final rule, an applicant that has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, must be evaluated by PHMSA to determine that the applicant is unfit to conduct the activities requested. A full inspection is necessary for a complete assessment of the company’s capabilities.

F. Sporting Arms and Ammunition Manufacturers’ Institute, Inc.

The Sporting Arms and Ammunition Manufacturers’ Institute, Inc., (SAAMI) expresses appreciation of PHMSA’s efforts to engage in a rulemaking process regarding the procedures for special permits and approvals applications to allow review and comment by stakeholders. It stated that such a rulemaking addresses concerns with non-transparency when internal policies are enforced but not published. In addition, SAAMI supported the proposed fitness review period of four years, classification approvals not requiring a fitness review, and subjecting applicants for party-to status on a special permit to the same fitness standards as the original applicant. However, SAAMI also expressed concerns “that inflexible and non-accountable internal policies do result in routine unjustified delays for industry operating in good faith,” and provided the following recommendations.

MAP–21 Requirements

In its comments, SAAMI states the SOPs as guidance will not provide “the accountability sought by industry and regulated by Congress” under Congress’ MAP–21 instruction to PHMSA to issue this guidance. PHMSA disagrees. Congress directed PHMSA to issue regulations and objective criteria that support the administration and evaluation of special permit and approval applications. This final rule accomplishes that directive.

SAAMI references PHMSA remarks in the NPRM that the Appendix A is a guidance document to be used by PHMSA for the internal management of its special permits and approvals program. In addition, SAAMI questions the scope of the rule, stating its view that the proposed criteria cover fitness checks, but not other aspects of the evaluation of applications, and also

believes that the Appendix A to 49 CFR part 107 is not guidance, but rather is regulation. 49 CFR part 107, Appendix A, is regulatory text because it is being published in the HMR. It also serves as agency guidance in that it discloses PHMSA’s administrative processes to the regulated public. Similarly, Appendix A of 49 CFR part 107, subpart D, sets forth guidance in the HMR for frequently cited violations. Both appendices inform the regulated public of general guidelines PHMSA uses to make determinations.

Length of Time To Process Approvals

SAAMI states its awareness that classification approvals are taking “far too long to be issued.” Specifically, SAAMI states the 120-day timeline PHMSA currently uses “is twice or more the typical time used by other governments to issue similar approvals. This now has been increased to 180 days in notices sent to applicants. Industry can’t function efficiently when their new product introductions are delayed.” However, SAAMI supports PHMSA delegating these responsibilities to certified third parties, because it states “the number of PHMSA staff working on these approvals” and “the small technical team responsible for 20,000 approvals per year” is inadequate to quickly perform these tasks, especially when diverted by other work responsibilities like evaluating issues concerning crude oil by rail or other technical questions. As stated earlier in this preamble, PHMSA is not required to issue special permits and approvals in 120 days, but instead must issue them when the agency has determined that the actions requested in the application are safe. Further, PHMSA is streamlining its internal and online practices for processing special permit and approval applications, and will strive to improve these processing times in the future, especially with regard to explosives and fireworks.

Routine Revisions

SAAMI states that for non-significant “routine revisions to special permits and approvals, such as a company changing its name or acquiring another company . . . [PHMSA] has been inflexible in the application of its internal, non-regulatory requirements for complete documentation of test result, packaging and so forth when there has been no change to the operations at the facility.” Noting that “some companies have hundreds or over a thousand classification approvals,” SAAMI states that these approvals should not be required to meet the new completeness criteria and

“undergo a technical review with a complete data package as is currently the case.” SAAMI recommends instead that these approvals be “processed in batches as an administrative function.” SAAMI further recommends that requests for tweaks to recently modified approvals “. . . not go to the bottom of the stack with an additional 180-day waiting period,” as is also currently required, and that PHMSA resolve its recordkeeping problems “rather than making companies resubmit complete data packages” as described in the NPRM preamble. As stated earlier in this preamble, PHMSA currently does not have the resources to institute a separate processing method for routine and editorial revisions but will consider changes of this type as resources become available.

Timelines

SAAMI notes that special permits have determination timelines in § 107.113(a) but that approvals do not have similar provisions in § 107.709, and recommends that these sections be aligned. Similarly, SAAMI recommends that the deadline that exists in § 107.709 that requires applicants to respond to PHMSA’s requests within 30 days also be applied to special permit applicants in § 107.113. SAAMI also recommends that PHMSA consider adding timelines to its responses to requests for reconsideration and appeals, which currently apply only to stakeholders. PHMSA disagrees. As stated earlier in this preamble, PHMSA is not subject to the timelines in the HMR prescribed for applicants to submit special permit and approval applications for processing and renewal. PHMSA must ensure the activities requested in these applications are safe before approving these requests.

Fitness Procedures

SAAMI’s comments regarding fitness procedures indicated that PHMSA should focus on the most serious safety concerns and believe that some of the criteria PHMSA proposes to use to evaluate an applicant’s fitness are not adequate to make this assessment. PHMSA agrees and has made these changes.

SAAMI noted that of the six criteria listed in proposed Appendix A paragraph (3)(i), two refer to “incidents.” SAAMI recommends PHMSA define “incidents” “to ensure that only serious incidents will be factored in.” PHMSA declines this request. “Incident” is already defined in § 107.1 as “. . . an event resulting in the unintended and unanticipated release of a hazardous material or an event

meeting incident reporting requirements in §§ 171.15 or 171.16 of this chapter.”

SAAMI noted that although the criterion for insufficient corrective action relevant to a prior enforcement case is defined, the definition merely states that the fitness officer has made a determination. SAAMI recommends that this determination be quantified and the subsequent criteria be published in a rulemaking for transparency, due to the serious impact of application rejection. PHMSA disagrees. Special permit and approval applications are reviewed on a case-by-case basis because they are often unique and sometimes include information subject to applicant confidentiality requests. PHMSA believes providing specific determinations and corrective actions directly to an applicant is the most effective way to convey the compliance information where it is needed. Also, as stated earlier, PHMSA has revised this final rule to establish two, instead of four, triggers of violations for each applicant for a safety profile review or five or more triggers for an on-site inspection enforcement case referral event. Either will result in a failed automatic safety profile evaluation recommendation. Fitness Coordinators will follow-up with the applicant to provide and obtain clarifying information.

SAAMI recommends that to reduce subjectivity in safety profile and on-site fitness reviews, PHMSA document the criteria used to make these determinations. SAAMI also suggests that minor violations of the HMR that do not seriously impact safety not be factored in a fitness review. To address this issue, SAAMI further recommends that PHMSA “create a threshold below which violations are not factored in the review, or if a pattern of minor violations are taken into [effect],” PHMSA should create a metric to determine what is a pattern and provide an opportunity for public comment. PHMSA disagrees. For the two trigger violation thresholds, only enforcement cases are factored in. Enforcement cases only pertain to serious safety violations.

Finally, SAAMI states “there is too much subjectivity inherent in the proposed authority to be given to the PHMSA Field Operations Officer or authorizing Operating Administration representative.” SAAMI requests that violations be given an administrative second check to verify that they exist and that PHMSA should provide recourse to a company to challenge such findings without their having to resubmit a data package. SAAMI recommends that for applicants with multiple or frequent applications,

“fitness reviews[,] including on-site reviews[,] should not be conducted until after a certain time has elapsed since the last review.” Without such limits, SAAMI states, “the review becomes just a paper exercise using scarce resources of the agency.” PHMSA disagrees. As stated earlier, the fitness coordinator will contact the applicant for clarifying information that may eliminate the need for an on-site inspection. Violations in case reports are given second reviews by a first-line supervisor in the field and then by PHMSA legal counsel. Subsequent reviews are only completed up to the time of the last review to determine if something serious happened since the last review.

Closing Recommendations

SAAMI closes out its comments by providing a list of recommendations. They are as follows:

SAAMI recommends that PHMSA align the description of the type of approvals with those listed for special permits by adding classification, non-classification and registration approvals, noting that the NPRM “lists all types of special permits but only agency designation approvals. Classification, non-classification and registration approvals are not listed.” PHMSA disagrees. The Appendix in this final rule provides this exact information in the table “Special Permit and Approval Evaluation Review Process.”

SAAMI requests that PHMSA clarify in Appendix paragraph (3)(b)(ii) who will perform the fitness check when more than one OA is involved to streamline the process and clarify that PHMSA’s performance of a fitness review is not an additional [seventh] fitness review criterion. SAAMI recommends that PHMSA perform the fitness review if more than one OA is involved using this language: “The applicable OA performs a profile review if one mode of transportation is requested in the application[:]; however, PHMSA [will perform] the review if two or more modes of transportation are included.” PHMSA agrees that we do, and would oversee and not perform a safety profile evaluation if more than one mode is needed.

SAAMI requests that PHMSA clarify that OA’s will not be permitted “to use fitness procedures to impose more stringent fitness requirements than already exist in the OA’s regulations.” While PHMSA agrees that this clarification would be useful, this action is beyond the scope of this rulemaking because it is dictated by each OA’s internal process documents. All special permit and approvals subject to OA coordination will be subject to OA

criteria for fitness and not all of the OA criteria are regulatory. For example, air carrier fitness will be based upon whether or not the air carrier has “will-carry” status and is fit to fly. Therefore, FAA cannot in good conscience say an air carrier is fit to perform the activities prescribed in a special permit when the carrier has been assessed as not fit to fly. Therefore, PHMSA denies this request.

SAAMI points out that in Appendix A (3)(b)(iii), the reference to (3)(b) refers to itself, and suggested revising the reference to (3)(b)(i) and (3)(b)(ii). PHMSA agrees and has made this correction.

SAAMI requests that the language in Appendix paragraph (4)(a) and (4)(b) be revised to clarify that special permit and approval applications are not issued. PHMSA agrees and has made this correction.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in sections 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or is consistent with the public interest, if a required safety level does not exist. This final rule is also established under the authority of section 33012(a) of MAP-21 (Public Law 112-141, July 6, 2012). Section 33012(a) requires that no later than July 6, 2014, the Secretary of Transportation issue a rulemaking to provide notice and an opportunity for public comment on proposed regulations that establish standard operating procedures (SOPs) to support administration of the special permit and approval programs, and objective criteria to support the evaluation of special permit and approval applications. In this final rule, PHMSA is addressing the provisions in the Act.

B. Executive Order 12866, 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under § 3(f) of Executive Order 12866 and was not

reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” Executive Order 13563 supplements and reaffirms the principles governing regulatory review that were established in Executive Order 12866, Regulatory Planning and Review of September 30, 1993. Additionally, Executive Orders 12866, and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, PHMSA invited public comment on these considerations at a public meeting held on February 29, 2012 (see Docket No. PHMSA–2011–0283), and in the NPRMs issued on August 12, 2014, and September 12, 2014, under Docket No. PHMSA–2012–0260. PHMSA requested that the public include in its comments any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments aided PHMSA in the evaluation of the proposed requirements. PHMSA has since revised our evaluation and analysis to address the public comments received.

In this final rule, PHMSA amends the HMR to incorporate SOPs for processing and issuing special permit and approval applications. Incorporating these provisions into regulations of general applicability will provide shippers and carriers with clarity and flexibility to comply with PHMSA’s initial review and, as needed, subsequent renewal or modification process. In addition, the final rule would reduce the paperwork burden on industry and this agency from delays in processing incomplete applications. Taken together, the provisions of this final rule would improve the efficacy of the special permit and approval application and issuance process, which will promote the continued safe transportation of hazardous materials, while reducing transportation costs for the industry and administrative costs for the agency.

While the majority of commenters did not suggest this rulemaking would impose any cost to the regulated community, IME did note costs and benefits change when the procedures and standards change. PHMSA agrees

that changes to procedures could impact both cost and benefits, but we reiterate this rulemaking does not change current practices; rather, it simply codifies current operating procedures of the Approval and Permits Division. Therefore, PHMSA does not anticipate increased cost and the impact of this final rule is presumed to be minor. It intends to provide clarity by reducing applicant confusion regarding the special permit and approval application and renewal process, and improve the quality of information and completeness of the application submitted. Although it is difficult to quantify the savings, many special permits and approvals have economically impacted companies by improving the efficiency and safety of their operations in a manner that meets or exceeds the requirements prescribed in the HMR. Some examples of positive economic impacts include allowing the use of less expensive non-specification packages, reducing the number of tasks, or other methods that reduce costs incurred before the approval or special permit is issued. As a result, PHMSA calculates that this final rule does not impose any costs on industry. Although a slight reduction in the costs associated with processing delays may provide nominal benefits, generally, this final rule affects only agency procedures; therefore, we assume no change in current industry costs or benefits.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. The covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements

related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(5) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (1), (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the “substantively the same” standard. 49 U.S.C. 5125(b)(2) states that if PHMSA issues a regulation concerning any of the covered subjects, it must determine and publish, in the **Federal Register**, the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule, and not later than two years after the date of issuance. PHMSA proposes the effective date of federal preemption will be 90 days from publication of the final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Incorporation of these SOPs into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Entities affected by the final rule conceivably include all persons—shippers, carriers, and others—who offer and/or transport in commerce hazardous materials. The

specific focus of the final rule is to incorporate standard procedures to assess an applicant's fitness, *i.e.*, ability, to perform the required tasks to receive the relief from the HMR that each applicant is requesting. Overall, this final rule will reduce the compliance burden on the regulated industries by clarifying PHMSA's informational requirements for a special permit and approval application. We expect that the applicant will be better able to provide this information and, as a result, PHMSA can improve application processing and issuance times.

The Institute of Makers of Explosives (IME) stated the majority of its members are small businesses and the following: (1) Classification approvals are also the basis for obtaining authorization from foreign competent authorities to transport explosive products abroad, (2) criteria PHMSA uses for determining a company's fitness to carry out the terms of a special permit or approval can have profound implications for the ability of the commercial explosives industry to continue to do business in the United States, (3) differences between past SOPs PHMSA posted on line and the ones approved under this rulemaking may result in costs and benefits not currently assigned to this rulemaking, and (4) backlogs in processing special permit and approval applications adversely affect U.S. competitiveness. However, the IME did not provide any cost information to quantify the possible effects the SOP guidance proposed in the NPRM would have on its industry.

PHMSA's SOPs for special permits and approvals serve as internal administrative guidance to help its staff properly process these applications, reduce delays, and accommodate changes to automated systems, database availability, and DOT and PHMSA directives. PHMSA recognizes the financial impact special permits and approvals have on industry processes. As mentioned earlier in this preamble, risks associated with hazardous materials and the potential for severe consequences to the public and environment, if they are improperly transported, require that PHMSA must not authorize permission to transport these materials in a manner not permitted under the HMR until PHMSA ensures that the actions requested and the persons performing these actions are safe. In response to requests from commenters, including the IME, PHMSA revised the SOPs in this final rule for clarity, and to include activities for applicant review that are statistically revealed to be greater indicators of their safe performance in transportation. In addition, PHMSA committed to

investigate opportunities to improve its special permit and approval application review processes in the future, as these opportunities become available to the agency. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires federal agencies to minimize the paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve government performance, and improving the federal government's accountability for managing information collection activities. This final rule's benefits include reducing applicant confusion about the special permit and approval application and renewal processes; improving the quality of information and completeness of applications submitted; and improving applicant processing times. This final rule does not impose any additional costs on industry. Although a slight reduction in the costs associated with processing delays may provide nominal benefits, generally, this final rule affects only agency procedures; therefore, this final rule contains no new information collection requirements subject to the PRA. Further, this final rule does not include new reporting or recordkeeping requirements.

As stated earlier in this preamble, PHMSA is not aware of any information collection and recordkeeping burdens for the hazardous materials industry associated with the requirements proposed in this rulemaking. Thus, PHMSA has not prepared an information collection document for this rulemaking and did not assess its potential information collection costs. However, if any regulated entities determine they will incur information and recordkeeping costs as a result of this final rule, if information on this matter should become available, or if commenters have questions concerning information collection on this final rule, PHMSA requests that they provide comments on the possible burden

developing, implementing, and maintaining records and information these requirements may impose on businesses applying for a special permit or approval. Please direct your comments or questions to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, Telephone (202) 366-8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321-4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering the need for the proposed action, alternatives to the proposed action, probable environmental impacts of the proposed action and alternatives, and the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

The Need for the Proposed Action

This final rule revises the HMR to include the standard operating procedures and criteria used to evaluate applications for special permits and approvals. This rulemaking also provides clarity for the applicant as to what conditions need to be satisfied to promote completeness of the applications submitted.

Hazardous materials are capable of affecting human health and the environment if a release were to occur.

The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. These shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could entail loss of life, serious injury, or significant environmental damage. Atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats) could also be affected by a hazardous materials release. The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene. Improving the process by which the agency assesses the ability of each applicant to perform the tasks issued in a special permit improves the chance that the tasks in each special permit issued will be performed safely. Therefore, we do not anticipate any significant positive or negative impacts on the environment by incorporating these SOPs into the HMR.

Alternatives to the Proposed Action

The purpose and need of this final rule is to establish criteria for evaluating applications for approvals and special permits based on the HMR, including assessing an applicant's ability to operate under the approval or special permit. More information about benefits of this final rule can be found in the preamble to this final rule. The alternatives considered in the analysis include: (1) The proposed action, that is, incorporation of SOPs to evaluate applications for approvals and special permits based on the HMR, including assessing an applicant's ability to operate under the approval or special permit into the HMR; and (2) incorporation of some subset of these proposed requirements (*i.e.*, only some of the proposed requirements or modifications to these requirements in response to comments received to the NPRM) as amendments to the HMR; and (3) the "no action" alternative, meaning that none of the NPRM actions would be incorporated into the HMR.

Analysis of the Alternatives

(1) Incorporate Special Permit and Approval Processing Standard Operating Procedures

We proposed clarifications to certain HMR requirements to include those methods for assessing the ability of new special permit and approval applicants, and those applying for renewals of special permits and approvals, to

perform the tasks they have requested for transporting hazardous materials. The process through which special permits and approvals are evaluated requires the applicant to demonstrate that the requested approval, the alternative transportation method, or proposed packaging provides an equivalent level of safety as that for activities and packagings authorized under the HMR. Implicit in this process is that the special permit or approval must provide an equivalent level of environmental protection as that provided in the HMR or demonstrate an alternative consistent with the public interest that will adequately protect against the risks to life and property inherent in the transportation of hazardous materials. Thus, incorporating SOPs to assess the performance capability of special permit and approval applicants should maintain or exceed the existing environmental protections built into the HMR.

(2) Incorporation of Some, But Not All, of the Proposed Requirements or Modifications to These Requirements in Response to Comments Received

The changes proposed in the NPRM were designed to promote clarity and ease of the administration of special permits and approvals during the application review process. Since these changes may make it easier for special permit and approval applicants to successfully apply to PHMSA for authorized variances from the HMR, incorporation of the special permit and approval SOPs into the HMR may result in an increased number of applicants transporting hazardous materials under these types of variances. Because PHMSA will have determined the shipping methods authorized under these new variances to be at least equal to the safety level required under the HMR or, if a required safety level does not exist, consistent with the public interest, PHMSA expects that these additional shipments will not result in associated environmental impacts. Incorporating only some of these changes will help to obscure the informational requirements of the special permit and approval application process, confuse the regulated public by providing a partial understanding of the information needed to submit a complete special permit or approval application, and possibly further delay application review times. PHMSA does not recommend this alternative.

(3) No Action

If no action is taken, then special permit and approval applicants will

continue to be assessed in the same manner as they are today. This will result in no change to the current potential effects to the environment, but will also not provide the applicant with information needed to improve its application processing time within PHMSA. Further, it may negatively impact transportation in commerce by not making innovative and safe transportation alternatives more easily available to the hazmat industry. PHMSA does not recommend this alternative.

Discussion of Environmental Impacts in Response to Comments

PHMSA solicited comments about potential environmental impacts associated with the NPRM from other agencies, stakeholders, and citizens. None of the respondents commented on the potential environmental impacts of this rule.

Conclusion

The provisions of this rule build on current regulatory requirements to enhance the transportation safety of hazardous materials transported by all modes. PHMSA has calculated that this rulemaking will not impact the current risk of release of hazardous materials into the environment. Therefore, PHMSA finds that there are no significant environmental impacts associated with this final rule.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenters provide, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary, or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent

unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this final rule is consistent with E.O. 13609 and PHMSA’s obligations.

V. Section by Section Review

§ 105.5

In § 105.5, we revise the definitions for “approval” and “special permit” to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR.

§ 107.1

In § 107.1, we revise the definitions for “approval” and “special permit” to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR. In addition, we amend the HMR for clarity to add new definitions for “applicant fitness,” “fit or fitness,” “fitness coordinator,” “insufficient corrective action,” and “sufficient corrective action.”

§ 107.113

In § 107.113, we revise paragraph (a) to state that the Associate Administrator will review all special permit applications in conformance with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

§ 107.117

In § 107.117, we revise paragraph (e) to state that the Associate Administrator will review all emergency special permit applications in conformance

with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

§ 107.705

In § 107.705, we revise paragraph (b) for clarity to state that the information the applicant provides in an approval application must be relevant to the approval request.

§ 107.709

In § 107.709, we revise paragraph (b) to state that the Associate Administrator will review all approval applications in conformance with standard operating procedures proposed in new 49 CFR part 107, Appendix A.

49 CFR Part 107, Appendix A

In 49 CFR part 107, we amend the HMR to add new Appendix A to incorporate PHMSA’s existing standard operating procedures for processing special permits and approval applications. The words “fitness evaluation” and “fitness review” in 3(b)(i) are replaced for clarity with the words “safety profile evaluation” and “safety profile review,” respectively. The title and words “safety profile review” in 3(b)(ii) are replaced for clarity with “safety profile evaluation.” Further, in response to comments we clarify these procedures by revising them from four to five phases and define them as consisting of: Completeness, **Federal Register** Publication, Evaluation, Disposition, and Reconsideration.

§ 171.8

In § 171.8, we revise the definitions for “approval” and “special permit” to clarify that an approval and special permit may be issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR. In addition, we add language to the “Automated review” and “Safety profile review” sections of the SOPs to clarify that special permit and approval applications that undergo review by an Operating Administration (OA) will complete this review before they undergo an automated review, and that an OA review, depending on its completeness, may negate the need for the automated review, respectively.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR chapter I as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 2. In § 105.5, in paragraph (b), the definitions for “approval” and “special permit” are revised to read as follows:

§ 105.5 Definitions.

* * * * *

Approval means a written authorization, including a competent authority approval, issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter (49 CFR parts 171 through 180).

* * * * *

Special permit means a document issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006, 33010; 49 CFR 1.81 and 1.97.

■ 4. In § 107.1:

- a. Add in alphabetical order a definition for “applicant fitness”;
- b. Revise the definition for “approval”;
- c. Add in alphabetical order definitions for “fit or fitness,” “fitness coordinator,” and “insufficient corrective action”;
- d. Revise the definition for “special permit”; and
- e. Add in alphabetical order a definition for “sufficient corrective action”.

The additions and revisions read as follows:

§ 107.1 Definitions.

* * * * *

Applicant fitness means a determination by PHMSA, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, that a special permit or approval applicant is fit to conduct operations requested in the application or an authorized special permit or approval.

* * * * *

Approval means a written authorization, including a competent authority approval, issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter (49 CFR parts 171 through 180).

* * * * *

Fit or fitness means demonstrated and documented knowledge and capabilities resulting in the assurance of a level of safety and performance necessary to ensure compliance with the applicable provisions and requirements of subchapter C of this chapter or a special permit or approval issued under subchapter C of this chapter.

Fitness coordinator means the PHMSA Field Operations (FOPS) Division officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, that conducts reviews regarding an organization’s hazardous materials operations, including such areas as accident history, on-site inspection, compliance data, and other safety and transportation records to determine whether a special permit or approval applicant is determined to be fit as prescribed in §§ 107.113(f)(5) and 107.709(d)(5).

* * * * *

Insufficient corrective action means that either a PHMSA Field Operations (FOPS) Division officer or an authorized

representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant’s corrective action in response to prior to enforcement cases is inadequate or incomplete and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation remain inadequate to prevent recurrence of a violation.

* * * * *

Special permit means a document issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

Sufficient corrective action means that either a PHMSA Field Operations officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant’s corrective action in response to prior to enforcement cases is sufficient and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation are inadequate.

* * * * *

- 5. In § 107.113, paragraph (a) is revised to read as follows:

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for a special permit, modification of a special permit, party to a special permit, or renewal of a special permit in conformance with the standard operating procedures specified in appendix A of this part (“Standard Operating Procedures for Special Permits and Approvals”) to determine if it is complete and conforms with the requirements of this subpart. This determination will typically be made within 30 days of receipt of the application for a special permit, modification of a special permit, or party to a special permit, and typically within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the Associate Administrator may reject the application. If that occurs, PHMSA will

inform the applicant of the deficiency in writing.

* * * * *

- 6. In § 107.117, paragraph (e) is revised to read as follows:

§ 107.117 Emergency processing.

* * * * *

(e) Upon receipt of all information necessary to process the application, the receiving Department official transmits to the Associate Administrator, by the most rapidly available means of communication, an evaluation as to whether an emergency exists under § 107.117(a) and, if appropriate, recommendations as to the conditions to be included in the special permit. The Associate Administrator will review an application for emergency processing of a special permit in conformance with the standard operating procedures specified in appendix A of this part (“Standard Operating Procedures for Special Permits and Approvals”) to determine if it is complete and conforms with the requirements of this subpart. If the Associate Administrator determines that an emergency exists under § 107.117(a) and that, with reference to the criteria of § 107.113(f), granting of the application is in the public interest, the Associate Administrator will grant the application subject to such terms as necessary and immediately notify the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant will be notified immediately.

* * * * *

- 7. In § 107.705, paragraph (b) introductory text is revised to read as follows:

§ 107.705 Registrations, reports, and applications for approval.

* * * * *

(b) *Description of approval proposal.* In addition to the provisions in paragraph (a) for an approval, an application for an approval, or an application for modification or renewal of an approval, the applicant must include the following information that is relevant to the approval application—

* * * * *

- 8. In § 107.709, paragraph (b) is revised to read as follows:

§ 107.709 Processing of an application for approval, including an application for renewal or modification.

* * * * *

(b) The Associate Administrator will review an application for an approval,

modification of an approval, or renewal of an approval in conformance with the standard operating procedures specified in appendix A of this part (“Standard Operating Procedures for Special Permits and Approvals”). At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the Associate Administrator may deem the application incomplete and deny it. The

Associate Administrator may grant a 30-day extension to respond to the written request for additional information if the applicant makes such a request in writing.

* * * * *

■ 9. Add Appendix A to 49 CFR part 107 to read as follows:

Appendix A to Part 107—Standard Operating Procedures for Special Permits and Approvals

This appendix sets forth the standard operating procedures (SOPs) for processing an application for a special permit or an approval in conformance with 49 CFR parts

107 and 171 through 180. It is to be used by PHMSA for the internal management of its special permit and approval programs.

The words “special permit” and “approval” are defined in § 107.1. PHMSA receives applications for: (1) Designation as an approval or certification agency, (2) a new special permit or approval, renewal or modification of an existing special permit or an existing approval, (3) granting of party status to an existing special permit, and (4) in conformance with § 107.117, emergency processing for a special permit. Depending on the type of application, the SOP review process includes several phases, such as Completeness, Publication, Evaluation, and Disposition.

SPECIAL PERMIT AND APPROVAL EVALUATION REVIEW PROCESS

	Special permit	Non-classification approval	Classification approval	Registration approval
1. Completeness	X	X	X	X
2. Publication	X	.....	.....	.....
3. Evaluation.				
a. Technical	X	X	X	.....
b. Safety Profile	X	X	.....	X
4. Disposition.				
a. Approval	X	X	X	X
b. Denial	X	X	X	X
c. Reconsideration/Appeal	X	X	X	X

An approval for assessing an applicant’s ability to perform a function that does not involve classifying a hazardous material is described as a non-classification approval and certifies that: An approval holder is qualified to requalify, repair, rebuild, and/or manufacture cylinders stipulated in the HMR; an agency is qualified to perform inspections and other functions outlined in an approval and the HMR; an approval holder is providing an equivalent level of safety or safety that is consistent with the public interest in the transportation of hazardous materials outlined in the approval; and a radioactive package design or material classification fully complies with applicable domestic or international regulations. An approval for assessing the hazard class of a material is described as a classification approval and certifies that explosives, fireworks, chemical oxygen generators, self-reactive materials, and organic peroxides have been classed for manufacturing and/or transportation based on requirements stipulated in the HMR. Registration approvals include the issuance of a unique identification number used solely as an identifier or in conjunction with approval holder’s name and address, or the issuance of a registration number that is evidence the approval holder is qualified to perform an HMR-authorized function, such as visually requalifying cylinders. This appendix does not include registrations issued under 49 CFR part 107, subpart G.

1. *Completeness.* PHMSA reviews all special permit and approval applications to determine if they contain all the information required under § 107.105 (for a special permit), § 107.117 (for emergency processing) or § 107.402 (for designation as a certification

agency) or § 107.705 (for an approval). If PHMSA determines an application does not contain all the information needed to evaluate the safety of the actions requested in the application, the Associate Administrator may reject the application. If the application is rejected, PHMSA will notify the applicant of the deficiencies in writing. An applicant may resubmit a rejected application as a new application, provided the newly submitted application contains the information PHMSA needs to make a determination.

Emergency special permit applications must comply with all the requirements prescribed in § 107.105 for a special permit application, and contain sufficient information to determine that the applicant’s request for emergency processing is justified under the conditions prescribed in § 107.117.

2. *Publication.* When PHMSA determines an application for a new special permit or a request to modify an existing special permit is complete and sufficient, PHMSA publishes a summary of the application in the **Federal Register** in conformance with § 107.113(b). This provides the public an opportunity to comment on a request for a new or a modification of an existing special permit.

3. *Evaluation.* The evaluation phase consists of two assessments, which may be done concurrently, a technical evaluation and a safety profile evaluation. When applicable, PHMSA consults and coordinates its evaluation of applications with the following Operating Administrations (OAs) that share enforcement authority under Federal hazardous material transportation law: Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and United States Coast Guard. PHMSA also consults

other agencies with hazardous material subject-matter expertise, such as the Nuclear Regulatory Commission and the Department of Energy.

(a) *Technical evaluation.* A technical evaluation considers whether the proposed special permit or approval will achieve a level of safety at least equal to that required under the HMR or, if a required safety level does not exist, considers whether the proposed special permit is consistent with the public interest in that it will adequately protect against the risks to life and property inherent in the transportation of hazardous material. For a classification approval, the technical evaluation is a determination that the application meets the requirements of the regulations for issuance of the approval. If formal coordination with another OA is included as part of the evaluation phase, that OA is responsible for managing this process within the applicable OA. The OA reviews the application materials and PHMSA’s technical evaluation, and may provide their own evaluation, comments and recommendations. The OA may also recommend operational controls or limitations to be incorporated into the special permit or approval to improve its safety.

(b) *Safety profile evaluation.* Each applicant for a special permit or non-classification approval is subject to a safety profile evaluation to assess if the applicant is fit to conduct the activity authorized by the special permit or approval application. PHMSA will coordinate the safety profile evaluations with the appropriate OA if a proposed activity is specific to a particular mode of transportation, if the proposed activity will set new precedent or have a significant economic impact, or if an OA

requests participation. PHMSA does not conduct initial safety profile reviews as part of processing classification approvals, which include fireworks, explosives, organic peroxides, and self-reactive materials. Additionally, cylinder approvals and certification agency approvals do not follow the same minimum safety profile review model.

(i) *Automated Review.* An applicant for a special permit or approval which requires a safety profile evaluation, but does not include coordination with an OA, is subject to an automated safety profile review. If the applicant passes the initial automated

review, the applicant is determined to be fit. If the applicant fails the initial automated review, the applicant is subject to a safety profile evaluation. An applicant that fails a safety profile evaluation may be determined to be unfit. To begin this review, PHMSA or the applicant enters the applicant's information into the web-based Hazardous Materials Information System (HMIS) or Hazmat Intelligence Portal (HIP), or other future application processing technology that provide an integrated information source to identify hazardous material safety trends through the analysis of incident and accident information, and provide access to

comprehensive information on hazardous materials incidents, special permits and approvals, enforcement actions, and other elements that support PHMSA's regulatory program. PHMSA then screens the applicant to determine if, within the four years prior to submitting its application, the applicant was involved in any incident attributable to the applicant or package where two or more triggers for a safety profile review or five or more triggers for on-site inspection enforcement case referral events occurred.

(1) The trigger events are listed in the following table:

Trigger for safety profile review	Trigger for on-site inspection *
(1) Any incident that involved a death or injury;	(1) Evidence that an applicant is at risk of being unable to comply with the terms of an application, including those listed below.
(2) Two or more incidents involving a § 172.504(e) (placarding) Table 1 hazardous material;	(2) An on-site inspection at the recommendation of the fitness coordinator if the following criteria applies—Any incident listed under automated review in paragraph 3(b)(i) of this appendix is attributable to the applicant or package, other than driver error.
(3) Three or more incidents involving a bulk packaging, or an applicant that is acting as an interstate carrier of hazardous materials under the terms of the special permit or an approval; or	(3) If, during an inspection, evidence is found in the four years prior to submitting its application that an applicant has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested in an application or authorized special permit or approval.
(4) Any incident that involved: Incorrect package selection; leaking packages; not following closure instructions; failure to test packages, if applicable; and failure to secure packages, including incorrect blocking and/or bracing.	(4) Incorrect or missing: (a) Markings, (b) labels, (c) placards, or (d) shipping papers.

* The Fitness Coordinator assesses and applies these triggers.

(2) If an applicant is acting as an interstate carrier of hazardous materials under the terms of the special permit, they will be screened in an automated manner based upon criteria established by FMCSA, such as that contained in its Safety and Fitness Electronic Records (SAFER) system, which consists of interstate carrier data, several states' intrastate data, interstate vehicle registration data, and may include operational data such as inspections and crashes.

(ii) *Safety profile evaluation.* A fitness coordinator, as defined in § 107.1, conducts a safety profile evaluation of all applicants meeting any of the criteria listed earlier in this appendix under "automated review," and all applicants whose safety profile evaluations are subject to coordination with an OA, as described in introductory paragraph 3(b) of this appendix. In a safety profile evaluation, PHMSA or the OA performs an in-depth evaluation of the applicant based upon items the automated review triggered concerning the applicant's four-year performance and compliance history prior to the submission of the application. Information considered during this review may include the applicant's history of prior violations, insufficient corrective actions, or evidence that the applicant is at risk of being unable to comply with the terms of an application for an existing special permit, approval, or the HMR. PHMSA performs the review or coordinates with the OAs, if necessary, if two or more modes of transportation are

requested in the application, and coordinates this review with the OA(s) of the applicable mode(s). The applicable OA performs the review if one mode of transportation is requested in the application. If necessary, the fitness coordinator will attempt to contact the applicant for clarifying information. If the information provided is sufficient, an on-site inspection may not be necessary. After conducting an evaluation, if the fitness coordinator determines that the applicant may be unfit to conduct the activities requested in the application, the coordinator will forward the request and supporting documentation to PHMSA's Field Operations Division, or a representative of the Department, such as an authorized Operating Administration representative, to perform an on-site inspection. After the safety profile evaluation is completed, if the applicant is not selected for an on-site inspection, the applicant is determined to be fit. On-site inspections are not required for fitness determinations from modal administrations according to their own procedures.

(iii) *On-Site Inspection.* (A) The factors in paragraph 3(b)(i) and 3(b)(ii) are used as evidence that an applicant is at risk of being unable to comply with the terms of an application, including those listed below. PHMSA's Field Operations Division or representative of the Department, such as an Operating Administration representative, will conduct an on-site inspection at the recommendation of the fitness coordinator if one of the following criteria applies:

(1) Any incident listed under automated review in paragraph 3(b)(i) of this appendix is attributable to the applicant or package, other than driver error;

(2) Insufficient Corrective Actions, as defined in § 107.1, in any enforcement case for a period of four years prior to submitting the application, except when re-inspected with no violations noted; or

(3) Items noted by an IIA on a cylinder qualifier inspection report, except when re-inspected with no violations noted.

(B) If, during an inspection, the PHMSA investigator or a representative of the Department finds evidence in the four years prior to submitting its application that an applicant has not implemented sufficient corrective actions for prior violations, or is at risk of being unable to comply with the terms of an application for a special permit or approval, an existing special permit or approval, or the HMR, then PHMSA will determine that the applicant is unfit to conduct the activities requested in an application or authorized special permit or approval.

4. *Disposition.* (a) *Special Permit.* If an application for a special permit is issued, PHMSA provides the applicant, in writing, with a special permit and an authorization letter if party status is authorized.

(b) *Approval.* If an application for approval is issued, PHMSA provides the applicant, in writing, with an approval, which may come in various forms, including:

(1) An "EX" approval number for classifying an explosive (including fireworks;

see §§ 173.56, 173.124, 173.128, and 173.168(a);

(2) A “RIN” (requalification identification number) to uniquely identify a cylinder requalification, repair, or rebuilding facility (see § 180.203);

(3) A “VIN” (visual identification number) to uniquely identify a facility that performs an internal or external visual inspection, or both, of a cylinder in conformance with 49 CFR part 180, subpart C, or applicable CGA Pamphlet or HMR provision;

(4) An “M” number for identifying packaging manufacturers (see § 178.3); or

(5) A “CA” (competent authority) for general approvals (see §§ 107.705, 173.185, and 173.230).

(c) *Denial.* An application for a special permit or approval may be denied in whole or in part. For example, if an application contains sufficient information to successfully complete its technical review but the Associate Administrator determines the applicant is unfit, the application will be denied. If an application for a special permit or an approval is denied, PHMSA provides the applicant with a brief statement, in writing, of the reasons for denial and the opportunity to request reconsideration (see §§ 107.113(g), 107.402, and 107.709(f)).

(d) *Reconsideration and Appeal.* (1) *Special Permit.* If an application for a special permit is denied, the applicant may request reconsideration as provided in § 107.123 and, if the reconsideration is denied, may appeal as provided in § 107.125. Applicants submitting special permit reconsiderations and appeals must do so in the same manner as new applications, provided the new submission is sufficiently complete to make a determination.

(2) *Approval.* If an application for an approval is denied, the applicant may request reconsideration as provided in § 107.715 and, if the reconsideration is denied, may appeal as provided in § 107.717. Applicants submitting approval reconsiderations and appeals must do so in the same manner as new applications, provided the new submission is sufficiently complete to make a determination.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 10. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410, section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 11. In § 171.8, the definitions for “approval,” and “special permit” are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Approval means a written authorization, including a competent authority approval, issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, to

perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter (49 CFR parts 171 through 180).

* * * * *

Special permit means a document issued by the Associate Administrator, the Associate Administrator’s designee, or as otherwise prescribed in the HMR, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

Issued in Washington, DC, on September 2, 2015, under the authority delegated in 49 CFR part 1.97.

Marie Therese Dominguez,
Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2015–22617 Filed 9–9–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE174

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2015 total allowable catch apportioned to catcher/processors using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 6, 2015, through 1200 hours, A.l.t., December 31, 2015. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 21, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–

NMFS–2014–0118, 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-2014-0118, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), 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).

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

NMFS closed directed fishing for Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the GOA under § 679.20(d)(1)(iii) on January 1 pursuant to the final 2015 and 2016 harvest specifications for groundfish of the Gulf of Alaska (80 FR 10250, February 25, 2015).

NMFS has determined that as of September 2, 2015, approximately 463 metric tons of Pacific cod remain in the 2015 Pacific cod apportionment for catcher/processors using trawl gear in the Western Regulatory Area of the GOA. Therefore, in accordance with

§ 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2015 total allowable catch (TAC) of Pacific cod in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the GOA. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA

(AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish notification providing time for public comment because the most recent, relevant data only became available as of September 2, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of

prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher/processors using trawl gear in the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 21, 2015.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 2015.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015-22783 Filed 9-4-15; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 80, No. 175

Thursday, September 10, 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 AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. FSIS-2008-0017]

RIN 0583-AD45

Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the *Federal Register* on June 10, 2013, regarding new labeling requirements for raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with a marinade or solution. This correction removes a clerical error that appeared in the Paperwork Reduction Act section of the preamble in the proposed rule.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250-3700; Telephone (202) 205-0495; Fax (202) 720-2025.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2013, FSIS issued a proposed rule entitled “Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products.” FR Doc. No. 2013-13669; 78 FR 34589-34604. Within the abstract of the Paperwork Reduction Act section of the preamble to the proposed rule (FR 34603), FSIS inadvertently included the phrase “that do not fall under a regulatory standard of identity” when characterizing which products would be subject to the rule.

When read as a whole, it is clear that this phrase within the Paperwork Reduction Act section of the preamble was made in error. In no other section of the preamble or in the proposed text of the rule did FSIS make such a statement. Additionally, the remainder of that section of the preamble, as well as the Information Collection Request that FSIS submitted to the Office of Management and Budget accounted for raw or partially cooked needle- or blade-tenderized beef products regardless of whether they fall under a regulatory standard of identity. Moreover, the final rule that FSIS published on May 18, 2015 (80 FR 28153), did not exempt any raw or partially cooked mechanically tenderized products that fall under a regulatory standard of identity from its provisions. FSIS is therefore correcting the clerical error in the proposed rule’s Paperwork Reduction Act section.

USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410.

Fax: (202) 690-7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA’s TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will

announce it on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this *Federal Register* publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, *Federal Register* notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

Correction

In the proposed rule, entitled Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products (FR Doc. No. 2013-13669), beginning on page 34589 in the issue of Monday, June 10, 2013, make the following correction in the Paperwork Reduction Act section.

On page 34603, in the second column, remove “, that do not fall under a regulatory standard of identity.” and add a period after “solution”.

Done in Washington, DC, on September 4, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015-22778 Filed 9-9-15; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF ENERGY**10 CFR Part 430**

[Docket Number EERE-2015-BT-STD-0016]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Walk-In Cooler and Freezer Refrigeration Systems Working Group To Negotiate Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Department of Energy (DOE) announces public meetings and webinars for the Walk-in Cooler and Freezer Refrigeration Systems Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585 unless otherwise stated.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-4563. Email: asrac@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: michael.kido@hq.doe.gov

SUPPLEMENTARY INFORMATION: DOE will host public meetings and webinars on the below dates. Meetings will be hosted in room 8E-089 at DOE's Forrestal Building, unless otherwise stated.

- September 11, 2015; 9:00 a.m.–5:00 p.m.; Engineering Analysis from the 2014 final rule. 79 FR 32049 (June 3, 2014).
- September 30, 2015; 9:00 a.m.–5:00 p.m.
- October 1, 2015; 8:00 a.m.–3:30 p.m.
- October 15, 2015; 9:00 a.m.–5:00 p.m.
- October 16, 2015; 8:00 a.m.–3:30 p.m.
- November 3, 2015; 9:00 a.m.–5:00 p.m.
- November 4, 2015; 8:00 a.m.–3:30 p.m.

- November 20, 2015; 9:00 a.m.–5:00 p.m.
- December 3, 2015; 9:00 a.m.–5:00 p.m.
- December 4, 2015; 8:00 a.m.–3:30 p.m.
- December 14, 2015; 9:00 a.m.–5:00 p.m.
- December 15, 2015; 8:00 a.m.–3:30 p.m.

The content of the public meetings will be limited to the items specified below:

- Proposed energy conservation standards for the two walk-in cooler and freezer equipment classes applicable to multiplex condensing refrigeration systems operating at medium and low temperatures and the four walk-in cooler and freezer equipment classes applicable to dedicated condensing refrigeration systems operating at low temperatures. See 10 CFR 431.306(e); and
 - As part of the analysis considered underlying the proposed energy conservation standards mentioned, DOE will consider any comments (including any accompanying data) regarding the potential impacts of these six proposed standards on installers.

Meeting Address

U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Room 8E-089. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/30.

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email asrac@ee.doe.gov. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a

government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on September 3, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015-22841 Filed 9-9-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**10 CFR Part 430**

[Docket Number EERE-2014-BT-STD-0048]

RIN 1904-AD37

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Central Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking (NPR) for Energy Conservation Standards**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.**ACTION:** Notice of public meetings.**SUMMARY:** The U.S. Department of Energy (DOE) announces public meetings and webinars for the Central Air Conditioners and Heat Pumps Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.**ADDRESSES:** The meetings will be held at U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585 unless otherwise stated.**FOR FURTHER INFORMATION CONTACT:** Mr. Tony Bouza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-4653. Email: asrac@ee.doe.gov.Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. Email: michael.kido@hq.doe.gov**SUPPLEMENTARY INFORMATION:** DOE will host public meetings and webinars on the below dates from 9:00 a.m. to 5:00 p.m. Meetings will be hosted at DOE's Forrestal Building, Room 8E-089, unless otherwise stated.

- September 10, 2015 at AHRI, 2111 Wilson Blvd. #500, Arlington, VA 22201
- September 28–29, 2015; September 29 will be at 950 L'Enfant Plaza, 8th Floor SW., Washington, DC.
- October 13–14, 2015
- October 26–27, 2015
- November 18–19, 2015
- December 1–2, 2015

- December 16–17, 2015

The purpose of the September 10, 2015 meeting will be to discuss the content included in the proposed 10 CFR part 430, subpart B, App M1 and can be viewed here: <http://energy.gov/eere/buildings/downloads/issuance-2015-08-21-energy-conservation-program-test-procedures-central-a-0>.

Meeting Address

U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Room 8E-089. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/72.

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email asrac@ee.doe.gov. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona,

Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on September 3, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015-22840 Filed 9-9-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 73**

[Docket No. FAA-2015-2776; Airspace Docket No. 15-AEA-5]

RIN 2120-AA66

Proposed Amendment and Establishment of Restricted Areas; Chincoteague Inlet, VA**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to expand the restricted airspace at Chincoteague Inlet, VA, to support the National Aeronautics and Space Administration's (NASA) Wallops Island Flight Facility requirements. The proposed expansion would add 3 new restricted areas, designated R-6604C, R-6604D, and R-6604E. Additionally, a minor change would be made to 2 points in the boundary of existing area R-6604A to match the updated 3 nautical mile (NM) line from the shoreline of the United States (U.S.) as provided by the National Oceanic and Atmospheric Administration (NOAA).

DATES: Comments must be received on or before October 26, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2015-2776 and Airspace Docket No. 15-AEA-5, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. Comments on environmental and land use aspects to should be directed to: NASA Wallops Flight Facility, Attn: Ms. Shari Silbert, Wallops Island, VA 23337; telephone: 757-824-2327.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish restricted airspace at Wallops Island, VA, to contain activities deemed hazardous to nonparticipating aircraft.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2015-2776 and Airspace Docket No. 15-AEA-5) and be submitted in triplicate to

the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2015-2776 and Airspace Docket No. 15-AEA-5." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish three new restricted areas, designated R-6604C, R-6604D and R-6604E, at the NASA Wallops Island Flight Facility in Virginia. The new areas would abut the existing restricted areas (R-6604A and R-6604B) and be used to contain a wide variety of test activities deemed to pose a hazard to nonparticipating aircraft. These activities include, but are not limited to, high-risk test profiles by

heavily modified test aircraft, testing of emitters that could induce harmful electromagnetic interference effects on nonparticipating aircraft, non-eye-safe laser firings, and external stores separation testing. The following is a general description of the proposed areas.

R-6604C would overlie the Wallops Flight Facility airfield and would be contained entirely within the Wallops Flight Facility property boundary. It would extend from the surface up to 3,500 feet mean sea level (MSL).

R-6604D would extend from 100 feet above ground level (AGL) up to 3,500 feet MSL. It would be located between the western boundary of R-6604B and VOR Federal airway V-139 and would also extend approximately 15 NM to the northeast of the R-6604A/R-6604B northern boundary.

R-6604E would extend from 700 feet AGL up to 3,500 feet MSL. It would be located between the western boundaries of R-6604A and R-6604B and VOR Federal airway V-139.

All 3 of the proposed new areas would be activated by the issuance of a Notice to Airmen (NOTAM). Specific times of designation were not proposed for R-6604C, D and E due to the variable nature of test programs.

In addition to the above, 2 points in the boundary of R-6604A that intersect a line 3 NM from the shoreline of the U.S. shoreline would be adjusted to reflect NOAA's updated calculation of the U.S. shoreline.

The configuration of the proposed restricted areas was designed to allow for activation of only that portion of the complex required for the specific test profile being conducted. As is the current practice with R-6604A and R-6604B, when the proposed restricted areas are not required by the using agency, the airspace would be returned to the controlling agency for access by other aviation users.

Note that the existing areas (R-6604A and R-6604B) will continue to be used, as in the past, for missile and rocket launches, aircraft systems development, expendable launch vehicles, lasers, RPV, and other test programs.

Color charts showing the location of the proposed restricted areas will be posted on the internet at <http://www.regulations.gov>. Search docket no. FAA-2015-2776 to view the charts.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

Therefore, this proposed regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.66 [Amended]

■ 2. Section 73.66 is amended as follows:

* * * * *

R-6604A Chincoteague Inlet, VA [Amended]

By removing the current boundaries and inserting the following in its place:

Boundaries. Beginning at lat. 37°55′25″ N., long. 75°24′54″ W.; to lat. 37°51′31″ N., long. 75°17′16″ W.; then along a line 3 NM from and parallel to the shoreline to lat. 37°39′20″ N., long. 75°31′19″ W.; to lat. 37°47′00″ N., long. 75°31′18″ W.; to lat. 37°51′00″ N., long. 75°29′36″ W.; to the point of beginning.

R-6604C Chincoteague Inlet, VA [New]

Boundaries. Beginning at lat. 37°56′57″ N., long. 75°28′37″ W.; to lat. 37°56′54″ N., long. 75°26′56″ W.; to lat. 37°56′23″ N., long. 75°26′46″ W.; to lat. 37°56′45″ N., long. 75°27′29″ W.; to lat. 37°55′15″ N., long. 75°28′23″ W.; to lat. 37°55′15″ N., long. 75°28′39″ W.; to lat. 37°56′32″ N., long. 75°29′18″ W.; to the point of beginning.

Designated altitudes. Surface to 3,500 feet MSL.

Time of designation. By NOTAM.

Controlling agency. U.S. Navy, Patuxent River Radar Approach Control.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

R-6604D Chincoteague Inlet, VA [New]

Boundaries. Beginning at lat. 38°01′42″ N., long. 75°29′28″ W.; to lat. 38°07′12″ N., long. 75°14′48″ W.; to lat. 38°04′36″ N., long. 75°08′07″ W.; thence 3 NM from and parallel to the shoreline to lat. 37°51′31″ N., long. 75°17′16″ W.; to lat. 37°56′45″ N., long. 75°27′29″ W.; to lat. 37°53′55″ N., long. 75°29′11″ W.; to lat. 37°55′40″ N., long. 75°33′27″ W.; to the point of beginning; excluding R-6604C.

Designated altitudes. 100 feet AGL to 3,500 feet MSL.

Time of designation. By NOTAM.

Controlling agency. U.S. Navy, Patuxent River Radar Approach Control.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

R-6604E Chincoteague Inlet, VA [New]

Boundaries. Beginning at lat. 37°55′40″ N., long. 75°33′27″ W.; to lat. 37°53′55″ N., long. 75°29′11″ W.; to lat. 37°50′24″ N., long. 75°31′19″ W.; to lat. 37°39′20″ N., long. 75°31′19″ W.; to lat. 37°38′57″ N., long. 75°31′31″ W.; to lat. 37°46′55″ N., long. 75°39′13″ W.; to the point of beginning.

Designated altitudes. 700 feet AGL to 3,500 feet MSL.

Time of designation. By NOTAM.

Controlling agency. U.S. Navy, Patuxent River Radar Approach Control.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

* * * * *

Issued in Washington, DC on September 1, 2015.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2015–22827 Filed 9–9–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2012–N–1210]

RIN 0910–AF22

Food Labeling: Revision of the Nutrition and Supplement Facts Labels; Administrative Docket Update; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notification.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of certain documents to update the administrative docket of the proposed rule to amend FDA’s labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the Nutrition Facts and Supplement Facts labels to assist consumers in maintaining healthy dietary practices.

DATES: We are extending the comment period that was scheduled to close on September 25, 2015, until October 13, 2015.

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

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Docket No. (FDA–2012–N–1210) for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the “Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number(s), found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Serena Lo, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2488, email: ConsumerStudiesBranch@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 3, 2014 (79 FR 11879), we published a proposed rule that would amend our

labeling regulations for conventional foods and dietary supplements to provide updated nutrition information. More recently, in the **Federal Register** of July 27, 2015 (80 FR 44302), we reopened the comment period through September 25, 2015, for the proposed rule for the sole purpose of inviting public comments on two consumer studies being added to the administrative record. The consumer studies pertained to proposed changes to the Nutrition Facts label formats. We also issued a supplemental proposed rule (80 FR 44303) with a comment period through October 13, 2015. The supplemental proposal included two additional consumer studies pertaining to the declaration of added sugars and alternative footnote statements. We proposed text for the footnotes to be used on the Nutrition Facts label, after completing our consumer research in which we tested various footnote text options for the label, and to establish a Daily Reference Value of 10 percent of total energy intake from added sugars. The supplemental proposal also would require the declaration of the percent Daily Value for added sugars on the label and provide an additional rationale for the declaration of added sugars on the label. We explained that we were taking these actions based, in part, on the science underlying a new report released by the 2015 Dietary Guidelines Advisory Committee.

We have received some comments suggesting we are not eliciting comment on the consumer studies in the supplemental proposal published in July 2015. We clarify in this notice that: (1) The consumer studies on the added sugars declaration and the alternative footnote statements in the supplemental proposal relate to topics on which we sought comment and (2) the consumer studies on the format published in a separate notice in July 2015 were included for comment, and were placed in the docket at that time. We are now responding to additional requests for the raw data for each of these consumer studies that are relevant to the summary memoranda for the studies, also now available for comment.

II. Updated Information

We are updating the docket for the rulemaking with two additional documents: A request from the Grocery Manufacturers Association for the raw data associated with the four consumer studies described in this document, and our response to that request indicating that we will provide the raw data underlying the four consumer studies to anyone who submits a request to ConsumerStudiesBranch@fda.hhs.gov.

These documents may be seen by interested persons at the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at <http://www.regulations.gov>.

In addition, we are extending to October 13, 2015, the comment period on the two consumer studies pertaining to proposed changes to the Nutrition Facts label formats, which had been scheduled to close on September 25, 2015, to align the comment periods for all consumer studies.

We will continue to take comment on the supplemental proposed rule, including taking comment on the consumer studies on added sugars and the footnote, until October 13, 2015.

Dated: September 3, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-22757 Filed 9-9-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 28

[REG-112997-10]

RIN 1545-BJ43

Guidance Under Section 2801 Regarding the Imposition of Tax on Certain Gifts and Bequests From Covered Expatriates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to a tax on United States citizens and residents who receive gifts or bequests from certain individuals who relinquished United States citizenship or ceased to be lawful permanent residents of the United States on or after June 17, 2008. These proposed regulations affect taxpayers who receive covered gifts or covered bequests on or after the date these regulations are published as final regulations in the **Federal Register**. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 9, 2015. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for January 6, 2016, at 10

a.m., must be received by December 9, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-112997-10), Room 5205, 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-112997-10), 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> (IRS-REG-112997-10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Karlene Lesho or Leslie Finlow at (202) 317-6859; concerning the submission of comments, the public hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers) or email at Oluwafunmilayo.P.Taylor@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). 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, and to Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 9, 2015. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection

techniques or other forms of information technology; and

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

The collections of information in these proposed regulations are in §§ 28.2801-4(e), 28.2801-5(d), 28.6001-1, and 28.6011-1. The collection of information requirement in proposed regulation § 28.2801-4(e) is required in order for the IRS to verify that the U.S. person who received a covered gift or covered bequest is entitled to a reduction in the section 2801 tax for certain foreign taxes paid on the transfer and, if so, the amount of such reduction. The collection of information is mandatory to obtain a benefit. The likely respondents are individuals, domestic trusts, and foreign trusts electing to be treated as domestic trusts.

The collection of information in § 28.2801-5(d) is required to notify the IRS and the U.S. persons who are beneficiaries of a foreign trust that the trust is electing to be treated as a domestic trust for purposes of section 2801. It is also required for the IRS to verify the proper amount of section 2801 tax due and to notify the beneficiaries who are U.S. citizens or residents in the event the election terminates. This alerts the IRS and the U.S. citizens and residents who are beneficiaries that the trust will be liable for payment of the section 2801 tax while the election is in effect, but that the U.S. beneficiaries will be liable for the tax if and when the election terminates. This collection of information is necessary for the proper performance of IRS functions in the collection of the section 2801 tax. This collection of information is mandatory to obtain a benefit. The likely respondents are the trustees of foreign trusts.

The collection of information in § 28.6001-1 is required for the IRS to verify the books and records pertaining to covered gifts and covered bequests and for the proper performance of IRS functions in the collection of the section 2801 tax. It is also required to verify the receipt of covered gifts and covered bequests by U.S. persons and the value of such gifts and bequests. This collection of information is mandatory. The likely respondents are individuals and trustees of trusts.

The collection of information in § 28.6011-1 is required for the IRS to verify the receipt of a covered gift or covered bequest and other information relevant to the tax imposed under section 2801. This collection of information is necessary for the proper

performance of IRS functions in the collection of the section 2801 tax. This collection of information is mandatory. The likely respondents are individuals and trustees of trusts.

Estimated total annual reporting burden: 7,000 hours.

Estimated average annual burden hours per respondent: 1 hour to prepare and attach documentation to Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates," for the reduction of tax for foreign taxes paid; 2 hours for a trustee of an electing foreign trust to make the election and notify the beneficiaries; 1 hour for the trustee of the foreign trust to prepare annual certifications; 1 hour to notify the U.S. persons who are beneficiaries of the trust that the election is terminated; and, 2 hours to prepare taxpayer records and the Form 708 to report the section 2801 tax.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: Annually or less.

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 Office of Management and Budget.

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

Background

Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245 (122 Stat. 1624) (the HEART Act), added new section 877A to subtitle A of the Internal Revenue Code (Code), and new chapter 15 and new section 2801 to subtitle B, effective June 17, 2008. Prior to the addition of chapter 15, subtitle B contained chapters 11 through 14 relating to the estate tax, the gift tax, the generation-skipping transfer tax, and special valuation rules for purposes of subtitle B. New chapter 15 consists solely of section 2801.

Prior to the enactment of the HEART Act, citizens and long-term residents of the United States who expatriated to avoid U.S. taxes were subject to an alternative regime of U.S. income, estate, and gift taxes under sections 877, 2107, and 2501, respectively, for a period of 10 years following expatriation. Recognizing that citizens and residents of the United States generally are subject to estate tax on

their world-wide assets at the time of death, Congress determined that it was appropriate, in the interests of tax equity, to impose a tax on U.S. citizens or residents who receive, from an expatriate, a transfer that would otherwise have escaped U.S. estate and/or gift taxes as a consequence of expatriation.

In an explanation of an earlier bill also proposing enactment of new chapter 15 and section 2801, the Report of the House Ways and Means Committee states that citizens and long-term residents of the United States have a right to physically leave the United States and relinquish their citizenship or terminate their residency. See H.R. Rep. No. 110-431 (2007). The Report states that the Committee believed that the Code should not be used to discourage individuals from relinquishing citizenship or terminating residency. At the same time, however, the Report states that the Code should not reward individuals who leave the United States. The Report concludes that an individual's decision to relinquish citizenship or terminate long-term residency should not affect the total amount of taxes imposed (that is, it should be "tax neutral"). The Report further states that, where U.S. estate or gift taxes are avoided with respect to a transfer of property to a U.S. person by reason of the expatriation of the donor, it is appropriate for the recipient to be subject to a tax similar to the donor's avoided transfer taxes.

With the enactment of sections 877A and 2801, sections 877 and 2107 apply only to individuals who relinquished United States citizenship or ceased to be lawful permanent residents prior to June 17, 2008. Section 2501 generally continues to apply to any individual, resident or nonresident, including individuals who expatriate, whether or not on or after June 17, 2008. Section 2501(a)(3) and (a)(5), however, provides special rules for expatriates subject to section 877(b), which are not applicable to individuals who expatriate on or after June 17, 2008.

Section 2801 imposes a tax (section 2801 tax) on covered gifts and covered bequests received by a citizen or resident of the United States (U.S. citizen or resident) from a covered expatriate. The section 2801 tax applies with regard to any property transferred to a U.S. citizen or resident which qualifies as a covered gift or covered bequest under section 2801, regardless of whether the property transferred was acquired by the donor or decedent covered expatriate before or after expatriation.

The value of a covered gift or covered bequest is its fair market value at the time the gift or bequest is received by the U.S. citizen or resident. A U.S. citizen or resident receiving a covered gift or covered bequest (U.S. recipient) is liable for payment of the section 2801 tax imposed under this chapter. A domestic trust that receives a covered gift or covered bequest is treated as a U.S. citizen and therefore is liable for payment of the section 2801 tax. A foreign trust may elect to be treated as a domestic trust (an electing foreign trust) for this purpose; absent this election, the trust's U.S. citizen or resident beneficiaries will be taxed as distributions are made from the trust (a non-electing foreign trust).

On July 20, 2009, the Treasury Department and the IRS issued Announcement 2009-57, 2009-29 I.R.B. 158. Announcement 2009-57 put taxpayers on notice that any covered gift or covered bequest received on or after June 17, 2008, is subject to the imposition of the section 2801 tax. Announcement 2009-57 states that the IRS intends to issue guidance under section 2801 and that the due date for reporting, filing, and payment of the tax imposed under section 2801 will be included in the guidance. The announcement further provides that the guidance the IRS intends to issue will provide a reasonable period of time between the date of issuance of the guidance and the date prescribed for the filing of the return and the payment of the tax.

On October 15, 2009, the Treasury Department and the IRS released Notice 2009-85, 2009-45 I.R.B. 598. Notice 2009-85 generally provides guidance for individuals who are subject to section 877A (added to the Code together with section 2801). With respect to gifts and bequests, section 9 of Notice 2009-85 provides that gifts or bequests from a covered expatriate on or after June 17, 2008, are subject to a transfer tax under new section 2801. Section 9 of Notice 2009-85 further provides that satisfaction of the reporting and tax obligations under section 2801 for covered gifts or covered bequests received on or after June 17, 2008, is deferred pending the issuance of separate guidance by the IRS.

Explanation of Provisions

The proposed regulations amend title 26 of the Code of Federal Regulations by adding part 28 (Imposition of Tax on Gifts and Bequests from Covered Expatriates) under new section 2801 of the Code. The proposed regulations are divided into seven sections.

Section 28.2801-1 of the proposed regulations sets forth the general rules of liability for the tax imposed by section 2801(a). Section 2801 imposes a tax on United States citizens or residents who receive, directly or indirectly, covered gifts or covered bequests (including distributions from foreign trusts attributable to covered gifts and covered bequests) from a covered expatriate. For purposes of section 2801, domestic trusts and foreign trusts electing to be treated as domestic trusts are treated in the same manner as U.S. citizens.

Definitions

Section 28.2801-2 of the proposed regulations defines terms for purposes of new chapter 15. The proposed regulations define the term "citizen or resident of the United States" as an individual who is a citizen or resident of the United States under the estate and gift tax rules of chapter 11 and chapter 12, respectively, in subtitle B of the Code. Accordingly, whether an individual is a "resident" is based on domicile in the United States, notwithstanding that section 877A adopts the income tax definition of that term. The Treasury Department and the IRS believe that, because section 2801 imposes a tax subject to subtitle B, the tax definition of resident under subtitle B generally should apply for purposes of section 2801. See §§ 20.0-1(b)(1) and 25.2501-1(b).

The proposed regulations generally define the term "covered gift" by reference to the definition of gift for purposes of chapter 12 of subtitle B. The proposed regulations define the term "covered bequest" as any property acquired directly or indirectly because of the death of a covered expatriate. Such property generally is property that would have been includible in the gross estate of the covered expatriate under chapter 11 of subtitle B, had the covered expatriate been a U.S. citizen or resident at the time of death.

Section 2801 defines "covered expatriate" by reference to the section 877A(g)(1) definition of that term. Section 877A(g)(1) generally provides that an individual who expatriates on or after June 17, 2008, is a covered expatriate if, on the expatriation date, (1) the individual's average annual net income tax liability is greater than \$124,000 (indexed for inflation) for the previous five taxable years, (2) the individual's net worth is at least \$2,000,000 (not indexed), or (3) the individual fails to certify under penalty of perjury that he or she has complied with all U.S. tax obligations for the five preceding taxable years. See section 877A(g)(1); Notice 2009-85, 2009-45

I.R.B. 598. The proposed regulations provide that, if an expatriate meets the definition of a covered expatriate, the expatriate is considered a covered expatriate for purposes of section 2801 at all times after the expatriation date, except during any period beginning after the expatriation date during which such individual is subject to United States estate or gift tax as a U.S. citizen or resident.

Additionally, the proposed regulations define for purposes of section 2801 the terms "domestic trust," "foreign trust," "electing foreign trust," "U.S. recipient," "power of appointment," and "indirect acquisition of property."

Rules and Exceptions Applicable to Covered Gifts and Covered Bequests

Section 28.2801-3 addresses the rules in section 2801(e) and includes rules and several exceptions applicable to the definitions of covered gift and covered bequest. Exceptions include taxable gifts reported on a covered expatriate's timely filed gift tax return, and property included in the covered expatriate's gross estate and reported on such expatriate's timely filed estate tax return, provided that the gift or estate tax due is timely paid. Qualified disclaimers of property made by a covered expatriate are excepted from the definitions of a covered gift and covered bequest. In addition, charitable donations that would qualify for the estate or gift tax charitable deduction are excepted from the terms "covered gift" and "covered bequest."

Section 28.2801-3(c)(4) provides that a gift or bequest to a covered expatriate's U.S. citizen spouse is excepted from the terms "covered gift" and "covered bequest" if the gift or bequest, if given by a U.S. citizen or resident, would qualify for the gift or estate tax marital deduction. In the case of a gift or bequest in trust, this means that, to the extent the gift or bequest to the trust (or to a separate share of the trust) would qualify for the estate or gift tax marital deduction, the gift or bequest is not a covered gift or covered bequest. A gift or bequest of a partial or terminable interest in property that a covered expatriate makes to his or her spouse is excepted from the definitions of a covered gift and covered bequest only to the extent that such gift or bequest is qualified terminable interest property (QTIP), as defined in section 2523(f) or section 2056(b)(7), and a valid QTIP election is made. To the extent a covered gift or covered bequest is made to a non-electing foreign trust (or to a separate share of such a trust), a distribution from the trust (or from the

separate share of the trust) to the U.S. citizen spouse of the covered expatriate who funded the trust (whether in whole or in part) will not qualify for the exception. Note that gifts and bequests made by a covered expatriate to his or her noncitizen spouse are subject to an annual limit under section 2523(i). Furthermore, a bequest from a covered expatriate to his or her noncitizen surviving spouse who is a U.S. resident is not a covered bequest to the extent the bequest is made to a qualified domestic trust (QDOT) that satisfies the requirements of section 2056A and the corresponding regulations, and for which a valid QDOT election is made.

Section 28.2801–3(d) provides rules to implement section 2801(e)(4) regarding covered gifts and covered bequests made in trust, including transfers of property in trust that are subject to a general power of appointment granted by the covered expatriate. In identifying the recipient of such covered gifts and covered bequests made in trust, the proposed regulations do not adopt the gift tax rule of treating the trust beneficiary or holder of an immediate right to withdraw the property as the recipient of that property. Instead, for purposes of section 2801, the proposed regulations treat transfers in trust that constitute covered gifts and covered bequests as transfers to the trust, to be taxed under the rules in section 2801(e)(4). Specifically, the proposed regulations provide that, if a covered expatriate makes a transfer in trust and such transfer is a covered gift or covered bequest, the transfer is treated as a covered gift or covered bequest to the trust, without regard to the beneficial interests in the trust or whether any person has a general power of appointment or a power of withdrawal over trust property. Under section 2801(e)(4), the transfer to the trust will be taxed either to the trust receiving the covered gift or covered bequest, in the case of a domestic trust or electing foreign trust, or to the U.S. beneficiaries or distributees of a non-electing foreign trust as trust distributions are made.

Section 28.2801–3(e) provides two rules addressing covered gifts and covered bequests arising from powers of appointment. First, consistent with the rules in chapters 11 and 12, the proposed regulations confirm that the exercise, release, or lapse of a covered expatriate's general power of appointment for the benefit of a U.S. citizen or resident is a covered gift or covered bequest. Second, the proposed regulations provide that a covered expatriate's grant of a general power of appointment over property not held in

trust is a covered gift or covered bequest to the powerholder as soon as both the power is exercisable and the transfer of the property subject to the power is irrevocable. See also § 28.2801–4(d)(5)(ii). The preceding sentence applies only for purposes of section 2801, and should not be interpreted as having any impact on the determination of whether the grant of a general power of appointment over property not in trust is a completed gift for Federal gift tax purposes, which is a question to be resolved under chapter 12 without regard to this provision.

Liability for Section 2801 Tax

Section 28.2801–4 provides specific rules regarding who is liable for the payment of the section 2801 tax. Generally, the U.S. citizen or resident who receives the covered gift or covered bequest is liable. Similarly, the proposed regulations provide rules explaining that a domestic trust that receives a covered gift or covered bequest is treated as a U.S. citizen and thus is liable for payment of the section 2801 tax imposed under this section. An electing foreign trust also is treated as a U.S. citizen. See §§ 28.2801–2(b) and 28.2801–5(d). However, a non-electing foreign trust is not liable for the section 2801 tax. Instead, a U.S. citizen or resident who receives a distribution from a non-electing foreign trust is liable for the section 2801 tax on the receipt of that distribution to the extent the distribution is attributable to covered gifts or covered bequests to that trust. Under section 2801(e)(4)(B)(ii), that U.S. citizen or resident may be entitled to a limited deduction under section 164 against income tax for the section 2801 tax paid on the distribution. The deduction is limited to the extent that the section 2801 tax is imposed on that portion of the distribution that is reported in the gross income of the U.S. citizen or resident. Section 28.2801–4(a)(3)(ii) of the proposed regulations describes how to compute that deduction.

Section 28.2801–4(a)(2)(ii) of the proposed regulations provides that, in the case of a domestic trust or an electing foreign trust, the trust's payment of the section 2801 tax for which the trust is liable does not result in a taxable distribution under section 2621 of the Code to any beneficiary of the trust for generation-skipping transfer (GST) tax purposes. This provision is consistent with the GST tax consequences of a trust's payment of tax, which differ depending upon whether the trust or the trust beneficiary is liable for the tax being paid.

Section 28.2801–4(a)(2)(iv) provides a special rule for certain non-electing foreign trusts that become domestic trusts (migrated foreign trusts). A migrated foreign trust will be treated solely for purposes of section 2801 as a domestic trust for the entire year during which the change from foreign trust to domestic trust occurred. The trust must file a timely Form 708 for the year in which the trust becomes a domestic trust and must report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the year it becomes a domestic trust as well as on the portion of the trust's value attributable to any covered gifts and covered bequests received by the trust prior to the year in which it becomes a domestic trust determined as of December 31 of the year prior to the year it becomes a domestic trust.

Charitable Remainder Trusts

Section 28.2801–4(a)(2)(iii) of the proposed regulations provides rules for charitable remainder trusts (CRTs), as defined in section 664, contributions to which are made by covered expatriates for the benefit of one or more charitable organizations described in section 170(c) and a U.S. citizen or resident other than such a charitable organization (non-charitable U.S. citizen or resident). Section 2801(e)(3) indicates that the value of the charitable organization's remainder interest in a CRT is excluded from the definition of a covered gift or covered bequest. The value of the interest of the non-charitable U.S. citizen or resident in such contributions to the CRT is a covered gift or covered bequest, unless otherwise excluded.

Under section 664, a CRT must be a domestic trust. Accordingly, when a covered expatriate contributes a covered gift or covered bequest to a CRT, the CRT is liable for the payment of the section 2801 tax attributable to the value of the non-charitable U.S. person's interest in the trust. Section 664(d)(1)(B) and (d)(2)(B) and § 1.664–3(a)(4) of the Income Tax Regulations provide that no amount other than the annuity or unitrust amount may be paid "to or for the use of any person other than an organization described under section 170(c)." This rule has been applied in Revenue Ruling 82–128 (1982–2 CB 71) to disqualify a trust as a CRT if the trust could be required to pay estate taxes by reason of the applicable state apportionment statute. Thus, if the CRT's liability for payment of section 2801 tax attributable to the non-charitable recipient's interest in the CRT were to be deemed comparable to the CRT's liability for payment of estate tax,

the CRT would not qualify as a CRT under section 664.

A CRT's liability for payment of the section 2801 tax is distinguishable from a CRT's liability for payment of estate tax because the section 2801 tax is imposed expressly on the CRT under a federal tax statute, section 2801(e)(4)(A). In addition, the section 2801 tax is imposed on the CRT as a primary obligation of the CRT, rather than an obligation imposed on the CRT for the payment of a liability belonging to or attributable to another taxpayer. Accordingly, a CRT's payment of the section 2801 tax on the portion of each transfer to the CRT that is a covered gift or covered bequest is not a distribution to or for the use of any person within the meaning of section 664(d)(1)(B) and (d)(2)(B), and the CRT's liability for such a payment will not cause the trust to be disqualified as a CRT defined in section 664. The proposed regulations confirm that the charitable remainder interest's share of each transfer to the CRT is not a covered gift or covered bequest and provide the method for computing the net covered gifts and covered bequests that are taxable to the CRT under section 2801.

Computation of Section 2801 Tax

Section 28.2801-4 of the proposed regulations also provides guidance on how to compute the section 2801 tax. Generally, the section 2801 tax is determined by reducing the total amount of covered gifts and covered bequests received during the calendar year by the section 2801(c) amount, which is the dollar amount of the donee exclusion in effect under section 2503(b) for that calendar year (\$14,000 in 2015), and then multiplying the net amount by the highest estate or gift tax rate in effect during that calendar year. The reference to section 2503(b) in section 2801 is included solely to provide a dollar amount by which to decrease the U.S. recipient's aggregate covered gifts and covered bequests received during that calendar year to determine the amount subject to the section 2801 tax; section 2801 does not incorporate the substantive rule of section 2503(b) that applies to donors of gifts under chapter 12. The resulting tax then is reduced by any estate or gift tax paid to a foreign country with regard to those transfers. See § 28.2801-4(e).

Value of a Covered Gift or Covered Bequest

The value of a covered gift or covered bequest is the fair market value of the property on the date of its receipt by the U.S. citizen or resident. Section 28.2801-4(c) provides that the value of

a covered gift is determined by applying the federal gift tax valuation principles under section 2512 and chapter 14 and the corresponding regulations. Similarly, the value of a covered bequest is determined by applying the federal estate tax valuation principles under section 2031 and chapter 14 and the corresponding regulations, but without regard to sections 2032 and 2032A.

Date of Receipt

The proposed regulations identify the date of the receipt of a covered gift or covered bequest by a U.S. citizen or resident. See § 28.2801-4(d). In general, a covered gift is received on the same date it is given for purposes of chapter 12. In general, a covered bequest is received on the date the property is distributed from the estate or the covered expatriate's revocable trust. However, in the case of property that passes by operation of law or beneficiary designation upon the covered expatriate's death, the date of receipt is the date of death. The proposed regulations provide more detail with regard to the determination of the date of receipt of covered gifts and covered bequests received from a non-electing foreign trust, those received pursuant to powers of appointment, and those received indirectly.

Foreign Trusts

Section 28.2801-5 of the proposed regulations provides guidance on the treatment of foreign trusts under section 2801. If a covered gift or covered bequest is made to a foreign trust, the section 2801 tax applies to any distribution from that trust, whether of income or corpus, to a recipient that is a U.S. citizen or resident, unless the foreign trust elects to be treated as a domestic trust for purposes of section 2801. The proposed regulations define the term "distribution" broadly to include any direct, indirect, or constructive transfer from a foreign trust, including each disbursement from such a trust pursuant to the exercise, release, or lapse of a power of appointment.

Distributions From Foreign Trusts

The section 2801 tax applies only to the portion of a distribution from a non-electing foreign trust that is attributable to covered gifts and covered bequests contributed to the foreign trust. Section 28.2801-5(c) of the proposed regulations provides that the amount of the distribution attributable to covered gifts and covered bequests is determined by multiplying the total distribution by a ratio, as in effect at the time of the

distribution, that is redetermined after each contribution to the trust. The proposed regulations explain how to compute that ratio and provide that each distribution from the foreign trust is considered to be made proportionally from the covered and non-covered portions of the trust, without any tracing with regard to particular assets. One effect of this rule is that the portion of a distribution from a foreign trust that is attributable to covered gifts and covered bequests contributed to the foreign trust includes the ratable portion of any appreciation and income that has accrued on the foreign trust's assets since the contribution of the covered gifts and covered bequests to the foreign trust.

Election by Foreign Trust To Be Treated as Domestic Trust

Section 2801(e)(4)(B)(iii) provides that, solely for purposes of section 2801, a foreign trust may elect to be treated as a domestic trust. Consequently, the section 2801 tax is imposed on the electing foreign trust when it receives covered gifts and covered bequests, rather than on the U.S. trust beneficiaries when distributions are made from the trust. The election may be made for a calendar year whether or not the foreign trust received a covered gift or covered bequest during that calendar year. Section 28.2801-5(d)(3) of the proposed regulations provides guidance on the time and manner of making the election. In order for an election to be valid, the trustee of the foreign trust must satisfy several requirements. The trustee must make the election on a timely filed Form 708 and, if tax is due, timely pay the section 2801 tax (as computed under § 28.2801-5(d)(3)(iii)) by the due date of the Form 708 for that year and include a computation of how the applicable ratio and tax liability were calculated. Further, the trustee must designate and authorize a U.S. agent for purposes of section 2801, and must agree to file annually a Form 708 either to certify that no covered gifts or covered bequests were received by the foreign trust during the calendar year, or to report and, if tax is due, pay the section 2801 tax on covered gifts and covered bequests received by the foreign trust during the calendar year. The trustee also must report the portion of the trust attributable to covered gifts and covered bequests and all distributions attributable to covered gifts and covered bequests made to U.S. recipients in years prior to the year of the election. Finally, the trustee must notify the permissible U.S. distributees of the trust that the trustee is making the election to

be treated as a domestic trust for purposes of section 2801.

Under § 28.2801–5(d)(3)(iii), an electing foreign trust that received covered gifts or covered bequests in prior calendar years when the election to be treated as a domestic trust was not in effect also must pay the section 2801 tax liability for all prior calendar years at the time the election is made on Form 708. Such liability is based on the fair market value of the trust attributable to covered gifts and covered bequests as of the last day of the calendar year immediately preceding the year for which the election is made, using the ratio calculated and then in effect under § 28.2801–5(c). If the trustee is unable to determine the portion of the trust attributable to covered gifts and covered bequests, then the fair market value of the entire trust as of the last day of the calendar year immediately preceding the year for which the election is made is subject to the section 2801 tax.

A valid election to be treated as a domestic trust is effective as of the beginning of the calendar year for which the Form 708 is filed. The effect of a valid election is that, as of such effective date of the election and until the election is terminated, U.S. citizens and residents receiving a distribution from that foreign trust will not be subject to section 2801 tax on that distribution. Instead, the electing foreign trust, like a domestic trust, must report and pay the section 2801 tax on each covered gift and covered bequest as it is received. The election, however, will not change the section 2801 tax liability of the U.S. recipients with regard to distributions made from the trust prior to the effective date of the election. The election has no impact outside of section 2801 on the taxation or reporting of trust distributions to U.S. persons.

Dispute as to Amount of Section 2801 Tax Owed by Electing Foreign Trust

If the IRS asserts that additional section 2801 tax is due from the electing foreign trust because, for example, the trust undervalued the covered gift or covered bequest or failed to report all covered gifts and covered bequests, then the IRS will notify the trustee of the foreign trust and the U.S. agent of the additional tax due on the asserted additional value or additional covered gifts or covered bequests, including any penalties and interest, and request payment by the due date identified in the IRS letter. If the trustee of the electing foreign trust and the IRS are unable to come to an agreement and the trustee fails to timely pay the additional tax and other asserted amounts, then the election is deemed to be an “imperfect

election.” This means that the election terminates as of the first day of the calendar year for which the IRS asserts that the additional section 2801 tax is due. In this event, the covered gifts and covered bequests for which the return was timely filed, but only to the extent of the value on which the section 2801 tax was timely paid, are no longer considered to be covered gifts or covered bequests for purposes of determining the ratio under § 28.2801–5(c)(1), and distributions relating to such amounts will not be taxable to a U.S. citizen or resident who receives a trust distribution. However, with regard to the asserted additional value or additional covered gifts or covered bequests on which the trust did not timely pay the section 2801 tax asserted by the IRS, the foreign trust is not an electing foreign trust and thus is not the taxpayer responsible for the payment of that additional section 2801 tax. Instead, as of the effective date of the termination of the trust’s election, the usual rule of section 2801(e)(4)(B) applies with regard to the taxation of distributions from foreign trusts. Specifically, the U.S. citizens or residents who receive any trust distributions on or after the effective date of the terminated election should take into consideration the additional value or additional covered gifts or covered bequests asserted by the IRS in determining the ratio under § 28.2801–5(c)(1) to be applied to such distributions. If the U.S. recipient does not take the additional value or additional covered gifts or covered bequests asserted by the IRS into consideration in computing that ratio, and the IRS challenges the computation of that ratio during its review of the U.S. recipient’s Form 708 reporting the distribution, the IRS’s assertion of the additional value or additional covered gifts or covered bequests then will become an issue to be resolved as part of the usual examination process for the U.S. recipient’s Form 708. See § 28.2801–5(e), *Example 4*.

Termination of Status as Electing Foreign Trust

An electing foreign trust’s failure to file the Form 708 on an annual basis or to timely pay its section 2801 tax terminates that foreign trust’s election to be treated as a domestic trust as of the first day of the calendar year for which the certification is not timely made or for which its section 2801 tax is not timely paid. But see § 28.2801–5(d)(6) in the case of a dispute as to the amount of section 2801 tax owed by an electing foreign trust. In the event of the termination of the election, the trustee

should notify the permissible U.S. distributees of the effective date of the termination and that each U.S. recipient of a distribution made from the foreign trust on or after that date is subject to the section 2801 tax to the extent the distribution is attributable to covered gifts or covered bequests. After an election is terminated, a foreign trust is not prohibited from making a new election to be treated as a domestic trust by complying with all applicable requirements.

Other Provisions

Section 28.2801–6(a) addresses how the basis rules under sections 1014, 1015(a), and 1022 impact the determination of the U.S. recipient’s basis in the covered gift or covered bequest. Unlike section 1015(d), which generally allows gift tax paid on the gift to be added to the donee’s basis, section 2801 does not provide a similar basis adjustment for the payment of the section 2801 tax.

Section 28.2801–6(b) clarifies the applicability of the GST tax to certain section 2801 transfers and cross-references the GST rules.

Section 28.2801–6(c) discusses the interaction of section 2801 and the information reporting provisions of sections 6039F and 6048(c). Generally, pursuant to section 6039F and Notice 97–34, 1997–1 CB 422, a U.S. person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) who receives a gift or bequest (including a covered gift or covered bequest) from a foreign person (other than through a foreign trust) must report such gift or bequest on Part IV of Form 3520, “Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts,” if the total value of such gifts and bequests exceeds a certain threshold. A U.S. citizen or resident, as defined under § 28.2801–2(b) and thus including a domestic trust as defined in § 28.2801–2(c), but not including a foreign trust that elects to be treated as a domestic trust, is included within the definition of a U.S. person for purposes of section 6039F.

Under section 6039F(c)(1)(A), if a U.S. person fails to furnish all of the information regarding the gift or bequest in accordance with the requirements of Form 3520, and any related guidance, within the time prescribed (in the case of a U.S. citizen or resident, the time for filing the Form 1040, including extensions), then, absent reasonable cause, a monthly penalty of 5 percent of the amount of the gift or bequest (not to exceed 25 percent) may be imposed until such information is furnished. In

addition, the tax consequences of the receipt of such gift or bequest may be determined by the Secretary. Taxpayers should be aware that the information reported on Part IV of Form 3520, whether or not timely filed, may be considered in determining whether a U.S. citizen or resident received a covered gift or covered bequest.

Pursuant to section 6048(c) and Notice 97-34, a U.S. person must report any distributions received from a foreign trust on Part III of Form 3520. Under section 6677(a), a penalty of the greater of \$10,000 or 35 percent of the gross value of the distribution may be imposed on a U.S. person who fails to timely report the distribution. A U.S. citizen or resident, as defined in § 28.2801-2(b), but not including a foreign trust that elects to be treated as a domestic trust, generally would be required to report such a distribution under section 6048(c).

Further, if adequate records are not provided to determine the treatment of such a distribution, to the extent provided in Notice 97-34, as modified by the instructions to Form 3520 and any subsequent guidance, such distribution may be treated as an accumulation distribution includible in the gross income of the distributee. Taxpayers similarly should be aware that information reported on Part III of Form 3520 may be used to determine if a U.S. citizen or resident received a trust distribution attributable to a covered gift or covered bequest.

Finally, § 28.2801-6(d) addresses the section 6662 accuracy-related penalties on underpayments of tax, the section 6651 failure to file and pay penalties, and the section 6695A penalty on substantial and gross valuation misstatements attributable to incorrect appraisals. The Treasury Department and the IRS recognize that taxpayers have had to defer their tax reporting and payment obligations with respect to covered gifts and covered bequests received after the effective date of section 2801 (as described in Notice 2009-85). Thus, there may be circumstances under which a taxpayer who received a covered gift or covered bequest in a year prior to the issuance of final regulations may have difficulty in complying with the deferred filing and payment requirements with respect to those receipts. A taxpayer who establishes that such failure in this regard is due to reasonable cause and not to willful neglect will not be subject to the section 6651 penalties for failure to file or pay. The determination of whether an exception to the other penalties applies will be made on a case-by-case basis.

Section 28.2801-7 provides guidance on the responsibility of a U.S. recipient, as defined in § 28.2801-2(e), to determine if tax under section 2801 is due. The Treasury Department and the IRS realize that, because the tax imposed by this section is imposed on the U.S. citizen or resident receiving a covered gift or covered bequest, rather than on the donor or decedent covered expatriate making the gift or bequest, U.S. taxpayers may have difficulty determining whether they are liable for any tax under section 2801. Nevertheless, the same standard of due diligence that applies to any other taxpayer to determine whether the taxpayer has a tax liability or a filing requirement also applies to U.S. citizens and residents under this section. Accordingly, it is the responsibility of each U.S. citizen or resident receiving a gift or bequest, whether directly or indirectly, from an expatriate (as defined in section 877A(g)(2)) to determine its tax obligations under section 2801. Thus, the burden is on that U.S. citizen or resident to determine whether the expatriate was a covered expatriate (as defined in section 877A(g)(1)) and, if so, whether the gift or bequest was a covered gift or covered bequest.

The Treasury Department and the IRS understand that a U.S. citizen or resident receiving a gift or bequest from an expatriate may be unable to obtain directly from the expatriate, the expatriate's attorney, the expatriate's executor, or other reliable sources the information necessary to make the above determinations. If the IRS receives a request from a U.S. citizen or resident who received a gift from an expatriate who has consented to the disclosure of certain return information to that donee, a gift from an expatriate who is deceased at the time of the request, or a bequest from an expatriate, the IRS may in certain circumstances disclose to such U.S. citizen or resident the return or return information of the donor or decedent expatriate that may assist the U.S. citizen or resident in determining whether the donor or decedent was a covered expatriate and whether the transfer was a covered gift or covered bequest. See section 6103. The types of information and requirements and procedures for requesting such information will be set forth in guidance published in the Internal Revenue Bulletin.

Although the IRS, if authorized, may disclose returns and return information upon request, the IRS will not make the determinations as to whether an expatriate from whom a gift or bequest was received was a covered expatriate

or whether the gift or bequest was a covered gift or covered bequest. Furthermore, the U.S. citizen or resident receiving a gift or bequest from an expatriate may not rely on any information provided by the IRS that the U.S. citizen or resident knows or has reason to know is incorrect. These determinations are the responsibility of the U.S. citizen or resident.

The proposed regulations provide that, if a living expatriate donor does not authorize the IRS to release to a U.S. citizen or resident the donor's relevant return or return information, there is a rebuttable presumption that the expatriate donor is a covered expatriate and that each gift from that expatriate to a U.S. citizen or resident is a covered gift. A taxpayer who reasonably concludes that a gift or bequest is not subject to section 2801 and intends to rebut the presumption may choose to file a protective return to start the period for assessment of any section 2801 tax. See §§ 28.2801-7(b)(2), 28.6011-1(b).

Administrative Regulations

The proposed regulations also include administrative regulations that address filing and payment due dates, returns, extension requests, and recordkeeping requirements with respect to the section 2801 tax. See §§ 28.6001-1, 28.6011-1, 28.6060-1, 28.6071-1, 28.6081-1, 28.6091-1, 28.6101-1, 28.6107-1, 28.6109-1, 28.6151-1, 28.6694-1, 28.6694-2, 28.6694-3, 28.6694-4, 28.6695-1, 28.6696-1, 28.7701-1. Section 28.6011-1(a) provides the return requirements to report the receipt of covered gifts and covered bequests from covered expatriates using Form 708.

The Treasury Department and IRS will permit the filing of a protective Form 708, unaccompanied by any payment of tax under section 2801, in limited circumstances when a U.S. citizen or resident receives a gift or bequest from an expatriate and reasonably concludes, after exercising due diligence, that the gift or bequest is not a covered gift or covered bequest from a covered expatriate. The mere absence of information confirming that the expatriate is a covered expatriate or that the gift or bequest is a covered gift or covered bequest is not a sufficient basis for a protective return. Section 28.6011-1(b)(i) provides that filing a protective Form 708, together with the required attachments, will start the period for the assessment of any section 2801 tax.

The IRS intends to issue Form 708 once these regulations are published as final regulations in the **Federal Register**.

The IRS will provide the due date for filing Form 708 and for payment of the section 2801 tax liability in the final regulations. Consistent with Announcement 2009–57, U.S. recipients will be given a reasonable period of time after the date the final regulations are published in the **Federal Register** to file the Form 708 and to pay the section 2801 tax on covered gifts and covered bequests received on or after June 17, 2008, and before the date of publication of the final regulations in the **Federal Register**. Interest will not accrue on the section 2801 tax liability for any taxable years until the due date for payment, as specified in the final regulations, has passed.

Effect on Other Documents

The following publication will be obsolete when regulations finalizing these proposed regulations are published in the **Federal Register**:

Announcement 2009–57, 2009–29 I.R.B. 158.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation does not affect small entities because it applies to individuals and certain trusts. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Statement of Availability for Documents Published in the Internal Revenue Bulletin

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Karlene Lesho and Leslie Finlow, Office of the Associate Chief

Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In particular, comments are requested with respect to the following issues:

1. How to calculate the amount of a distribution from a foreign trust that is attributable to a covered gift or covered bequest if the U.S. recipient does not have adequate books and records or information available to make such a determination.

2. How to minimize the burden associated with a foreign trust making an election to be treated as a domestic trust while adequately securing the government's interest in collecting the tax from the foreign trust.

3. How contributions to or distributions from a non-electing foreign trust to a U.S. citizen spouse could qualify for the marital exception in section 2801(e)(3), taking into account the rules applicable to domestic trusts and foreign trusts in section 2801(e)(4).

All comments will be available at www.regulations.gov or upon request.

A public hearing has been scheduled for January 6, 2016, at 10 a.m. in the IRS Auditorium Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by December 9, 2015. A period of 10 minutes will be allotted to each person for making comments. Copies of the agenda will be available free of charge at the meeting.

List of Subjects in 26 CFR Part 28

Expatriation taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR chapter 1 is proposed to be amended by adding part 28 to subchapter B to read as follows:

PART 28—IMPOSITION OF TAX ON GIFTS AND BEQUESTS FROM COVERED EXPATRIATES

Sec.

- 28.2801–0 Table of contents.
- 28.2801–1 Tax on certain gifts and bequests from covered expatriates.
- 28.2801–2 Definitions.
- 28.2801–3 Rules and exceptions applicable to covered gifts and covered bequests.
- 28.2801–4 Liability for and payment of tax on covered gifts and covered bequests; computation of tax.
- 28.2801–5 Foreign trusts.
- 28.2801–6 Special rules and cross-references.
- 28.2801–7 Determining responsibility under section 2801.
- 28.6001–1 Records required to be kept.
- 28.6011–1 Returns.
- 28.6060–1 Reporting requirements for tax return preparers.
- 28.6071–1 Time for filing returns.
- 28.6081–1 Automatic extension of time for filing returns reporting gifts and bequests from covered expatriates.
- 28.6091–1 Place for filing returns.
- 28.6101–1 Period covered by returns.
- 28.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.
- 28.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.
- 28.6151–1 Time and place for paying tax shown on returns.
- 28.6694–1 Section 6694 penalties applicable to return preparer.
- 28.6694–2 Penalties for understatement due to an unreasonable position.
- 28.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.
- 28.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.
- 28.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.
- 28.6696–1 Claims for credit or refund by tax return preparers and appraisers.
- 28.7701–1 Tax return preparer.

Authority: 26 U.S.C. 7805.

Section 28.6001–1 also issued under 26 U.S.C. 6001(a).

Section 28.6011(a)–1 also issued under 26 U.S.C. 6011(a).

Section 28.6060–1 also issued under 26 U.S.C. 6060(a).

Section 28.6071(a)–1 also issued under 26 U.S.C. 6071(a).

Section 28.6081–1 also issued under 26 U.S.C. 6081(a).

Section 28.6091–1 also issued under 26 U.S.C. 6091.

Section 28.6101–1 also issued under 26 U.S.C. 6101.

Section 28.6107–1 also issued under 26 U.S.C. 6107(c).

Section 28.6109–1 also issued under 26 U.S.C. 6109(a).

Section 28.6151–1 also issued under 26 U.S.C. 6151.

Section 28.6695–1 also issued under 26 U.S.C. 6695(b).

Section 28.6696–1 also issued under 26 U.S.C. 6696(c).

§ 28.2801–0 Table of contents.

This section lists the captions in §§ 28.2801–1 through 28.2801–7.

§ 28.2801–1 *Tax on certain gifts and bequests from covered expatriates.*

- (a) In general.
- (b) Effective/applicability date.

§ 28.2801–2 *Definitions.*

- (a) Overview.
- (b) Citizen or resident of the United States.
- (c) Domestic trust.
- (d) Foreign trust.
 - (1) In general.
 - (2) Electing foreign trust
- (e) U.S. recipient.
- (f) Covered bequest.
- (g) Covered gift.
- (h) Expatriate and covered expatriate.
- (i) Indirect acquisition of property.
- (j) Power of appointment.
- (k) Effective/applicability date.

§ 28.2801–3 *Rules and exceptions applicable to covered gifts and covered bequests.*

- (a) Covered gift.
- (b) Covered bequest.
- (c) Exceptions to covered gift and covered bequest.
 - (1) Reported taxable gifts.
 - (2) Property reported as subject to estate tax.

(3) Transfers to charity.

(4) Transfers to spouse.

(5) Qualified disclaimers.

(d) Covered gifts and covered bequests made in trust.

- (e) Powers of appointment.
 - (1) Covered expatriate as holder of power.
 - (2) Covered expatriate as grantor of power.
- (f) Examples.
- (g) Effective/applicability date.

§ 28.2801–4 *Liability for and payment of tax on covered gifts and covered bequests; computation of tax.*

- (a) Liability for tax.
 - (1) U.S. citizen or resident.
 - (2) Domestic trust.
 - (i) In general.
 - (ii) Generation-skipping transfer tax.
 - (iii) Charitable remainder trust.
 - (iv) Migrated foreign trust.
 - (3) Foreign trust.
 - (i) In general.
 - (ii) Income tax deduction.
- (b) Computation of tax.
 - (1) In general.
 - (2) Net covered gifts and covered bequests.

(c) Value of covered gift or covered bequest.

(d) Date of receipt.

(1) In general.

(2) Covered gift.

(3) Covered bequest.

(4) Foreign trusts.

(5) Powers of appointment.

(i) Covered expatriate as holder of power.

(ii) Covered expatriate as grantor of power.

(6) Indirect receipts.

(e) Reduction of tax for foreign estate or gift tax paid.

(f) Examples.

(g) Effective/applicability date.

§ 28.2801–5 *Foreign trusts.*

(a) In general.

(b) Distribution defined.

(c) Amount of distribution attributable to covered gift or covered bequest.

(1) Section 2801 ratio.

(i) In general.

(ii) Computation.

(2) Effect of reported transfer and tax payment.

(3) Inadequate information to calculate section 2801 ratio.

(d) Foreign trust treated as domestic trust.

(1) Election required.

(2) Effect of election.

(3) Time and manner of making the election.

(i) When to make the election.

(ii) Requirements for a valid election.

(iii) Section 2801 tax payable with the election.

(iv) Designation of U.S. agent.

(A) In general.

(B) Role of designated agent.

(C) Effect of appointment of agent.

(4) Annual certification or filing requirement.

(5) Duration of status as electing foreign trust.

(i) In general.

(ii) Termination.

(iii) Subsequent elections.

(6) Dispute as to amount of section 2801 tax owed by electing foreign trust.

(i) Procedure.

(ii) Effect of timely paying the additional section 2801 tax amount.

(iii) Effect of failing to timely pay the additional section 2801 tax amount (imperfect election).

(A) In general.

(B) Notice to permissible beneficiaries.

(C) Reasonable cause.

(D) Interim period.

(7) No overpayment caused solely by virtue of defect in election.

(e) Examples.

(f) Effective/applicability date.

§ 28.2801–6 *Special rules and cross-references.*

(a) Determination of basis.

(b) Generation-skipping transfer tax.

(c) Information returns.

(1) Gifts and bequests.

(2) Foreign trust distributions.

(3) Penalties and use of information.

(d) Application of penalties.

(1) Accuracy-related penalties on underpayments.

(2) Penalty for substantial and gross valuation misstatements attributable to incorrect appraisals.

(3) Penalty for failure to file a return and to pay tax.

(e) Effective/applicability date.

§ 28.2801–7 *Determining responsibility under section 2801.*

(a) Responsibility of recipients of gifts and bequests from expatriates.

(b) Disclosure of return and return information.

(1) In general.

(2) Rebuttable presumption.

(c) Effective/applicability date.

§ 28.2801–1 Tax on certain gifts and bequests from covered expatriates.

(a) *In general.* Section 2801 of the Internal Revenue Code (Code) imposes a tax (section 2801 tax) on covered gifts and covered bequests, including distributions from foreign trusts attributable to covered gifts or covered bequests, received by a United States citizen or resident (U.S. citizen or resident) from a covered expatriate during a calendar year. Domestic trusts, as well as foreign trusts electing to be treated as domestic trusts for purposes of section 2801, are subject to tax under section 2801 in the same manner as if the trusts were U.S. citizens. See section 2801(e)(4)(A)(i) and (e)(4)(B)(iii). Accordingly, the section 2801 tax is paid by the U.S. citizen or resident, domestic trust, or foreign trust electing to be treated as a domestic trust for purposes of section 2801 that receives the covered gift or covered bequest. For purposes of this part 28, references to a U.S. citizen or U.S. citizens are considered to include a domestic trust and a foreign trust electing to be treated as a domestic trust for purposes of section 2801.

(b) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801–2 Definitions.

(a) *Overview.* This section provides definitions of terms applicable solely for purposes of section 2801 and the corresponding regulations.

(b) *Citizen or resident of the United States.* A citizen or resident of the United States (U.S. citizen or resident) is an individual who is a citizen or resident of the United States under the

rules applicable for purposes of chapter 11 or 12 of the Code, as the case may be, at the time of receipt of the covered gift or covered bequest. Furthermore, for purposes of this part 28, references to U.S. citizens also include domestic trusts, as well as foreign trusts electing to be treated as a domestic trust under § 28.2801–5(d). See § 28.2801–1(a)(1).

(c) *Domestic trust*. The term *domestic trust* means a trust defined in section 7701(a)(30)(E). For purposes of this part 28, references to a domestic trust include a foreign trust that elects under § 28.2801–5(d) to be treated as a domestic trust solely for purposes of section 2801.

(d) *Foreign trust*—(1) *In general*. The term *foreign trust* means a trust defined in section 7701(a)(31).

(2) *Electing foreign trust*. The term *electing foreign trust* is a foreign trust that has in effect a valid election to be treated as a domestic trust solely for purposes of section 2801. See § 28.2801–5(d).

(e) *U.S. recipient*. The term *U.S. recipient* means a citizen or resident of the United States, a domestic trust, and an electing foreign trust that receives a covered gift or covered bequest, whether directly or indirectly, during the calendar year. The term U.S. recipient includes U.S. citizens or residents receiving a distribution from a foreign trust not electing to be treated as a domestic trust for purposes of section 2801 if the distributions are attributable (in whole or in part) to one or more covered gifts or covered bequests received by the foreign trust. This term also includes the U.S. citizen or resident shareholders, partners, members, or other interest-holders, as the case may be (if any), of a domestic entity that receives a covered gift or covered bequest.

(f) *Covered bequest*. The term *covered bequest* means any property acquired directly or indirectly by reason of the death of a covered expatriate, regardless of its situs and of whether such property was acquired by the covered expatriate before or after expatriation from the United States. The term also includes distributions made by reason of the death of a covered expatriate from a foreign trust that has not elected under § 28.2801–5(d) to be treated as a domestic trust for purposes of section 2801 to the extent the distributions are attributable to covered gifts or covered bequests made to the foreign trust. See § 28.2801–3 for additional rules and exceptions applicable to the term *covered bequest*.

(g) *Covered gift*. The term *covered gift* means any property acquired by gift directly or indirectly from an individual

who is a covered expatriate at the time the property is received by a U.S. citizen or resident, regardless of its situs and of whether such property was acquired by the covered expatriate before or after expatriation from the United States. The term also includes distributions made, other than by reason of the death of a covered expatriate, from a foreign trust that has not elected under § 28.2801–5(d) to be treated as a domestic trust for purposes of section 2801 to the extent the distributions are attributable to covered gifts or covered bequests made to the foreign trust. See § 28.2801–3 for additional rules and exceptions applicable to the term *covered gift*.

(h) *Expatriate and covered expatriate*. The term *expatriate* has the same meaning for purposes of section 2801 as that term has in section 877A(g)(2). The term *covered expatriate* has the same meaning for purposes of section 2801 as that term has in section 877A(g)(1). The determination of whether an individual is a covered expatriate is made as of the expatriation date as defined in section 877A(g)(3), and if an expatriate meets the definition of a covered expatriate, the expatriate is considered a covered expatriate for purposes of section 2801 at all times after the expatriation date. However, an expatriate (as defined in section 877A(g)(2)) is not treated as a covered expatriate for purposes of section 2801 during any period beginning after the expatriation date during which such individual is subject to United States estate or gift tax (chapter 11 or chapter 12 of subtitle B) as a U.S. citizen or resident. See section 877A(g)(1)(C). An individual's status as a covered expatriate will be determined as of the date of the most recent expatriation, if there has been more than one.

(i) *Indirect acquisition of property*. An indirect acquisition of property, as referred to in the definitions of a covered gift and covered bequest, includes—

(1) Property acquired as a result of a transfer that is a covered gift or covered bequest to a corporation or other entity other than a trust or estate, to the extent of the respective ownership interest of the recipient U.S. citizen or resident in the corporation or other entity;

(2) Property acquired by or on behalf of a U.S. citizen or resident, either from a covered expatriate or from a foreign trust that received a covered gift or covered bequest, through one or more other foreign trusts, other entities, or a person not subject to the section 2801 tax;

(3) Property paid by a covered expatriate, or distributed from a foreign trust that received a covered gift or

covered bequest, in satisfaction of a debt or liability of a U.S. citizen or resident, regardless of the payee of that payment or distribution;

(4) Property acquired by or on behalf of a U.S. citizen or resident pursuant to a non-covered expatriate's power of appointment granted by a covered expatriate over property not in trust, unless the property previously was subjected to section 2801 tax upon the grant of the power or the covered expatriate had no more than a non-general power of appointment over that property; and

(5) Property acquired by or on behalf of a U.S. citizen or resident in other transfers not made directly by the covered expatriate to the U.S. citizen or resident.

(j) *Power of appointment*. The term *power of appointment* refers to both a general and non-general power of appointment. A general power of appointment is as defined in sections 2041(b) and 2514(c) of the Code and a non-general power of appointment is any power of appointment that is not a general power of appointment.

(k) *Effective/applicability date*. This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801–3 Rules and exceptions applicable to covered gifts and covered bequests.

(a) *Covered gift*. Subject to the provisions of paragraphs (c), (d), and (e) of this section, the term *gift* as used in the definition of covered gift in § 28.2801–2(g) has the same meaning as in chapter 12 of subtitle B, but without regard to the exceptions in section 2501(a)(2), (a)(4), and (a)(5), the per-donee exclusion under section 2503(b) for certain transfers of a present interest, the exclusion under section 2503(e) for certain educational or medical expenses, and the waiver of certain pension rights under section 2503(f).

(b) *Covered bequest*. Subject to the provisions of paragraphs (c), (d), and (e) of this section, property acquired “by reason of the death of a covered expatriate” as described in the definition of covered bequest in § 28.2801–2(f) includes any property that would have been includible in the gross estate of the covered expatriate

under chapter 11 of subtitle B if the covered expatriate had been a U.S. citizen at the time of death. Therefore, in addition to the items described in § 28.2801–2(f), the term *covered bequest* includes, without limitation, property or an interest in property acquired by reason of a covered expatriate's death—

(1) By bequest, devise, trust provision, beneficiary designation or other contractual arrangement, or by operation of law;

(2) That was transferred by the covered expatriate during life, either before or after expatriation, and which would have been includible in the covered expatriate's gross estate under section 2036, section 2037, or section 2038 had the covered expatriate been a U.S. citizen at the time of death;

(3) That was received for the benefit of a covered expatriate from such covered expatriate's spouse, or predeceased spouse, for which a valid qualified terminable interest property (QTIP) election was made on such spouse's, or predeceased spouse's, Form 709, "U.S. Gift (and Generation-Skipping Transfer) Tax Return," Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," or Form 706–NA, "United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Nonresident Not a Citizen of the United States," which would have been included in the covered expatriate's gross estate under section 2044 if the covered expatriate was a U.S. citizen at the time of death; or

(4) That otherwise passed from the covered expatriate by reason of death, such as—

(i) Property held by the covered expatriate and another person as joint tenants with right of survivorship or as tenants by the entirety, but only to the extent such property would have been included in the covered expatriate's gross estate under section 2040 if the covered expatriate had been a U.S. citizen at the time of death;

(ii) Any annuity or other payment that would have been includible in the covered expatriate's gross estate if the covered expatriate had been a U.S. citizen at the time of death;

(iii) Property subject to a general power of appointment held by the covered expatriate at death; or

(iv) Life insurance proceeds payable upon the covered expatriate's death that would have been includible in the covered expatriate's gross estate under section 2042 if the covered expatriate had been a U.S. citizen at the time of death.

(c) *Exceptions to covered gift and covered bequest.* The following transfers

from a covered expatriate are exceptions to the definition of covered gift and covered bequest.

(1) *Reported taxable gifts.* A transfer of property that is a taxable gift under section 2503(a) and is reported on the donor's timely filed Form 709 is not a covered gift, provided that the donor also timely pays the gift tax, if any, shown as due on that return. A transfer excluded from the definition of a taxable gift, such as a transfer of a present interest not in excess of the annual exclusion amount under section 2503(b), is not excluded from the definition of a covered gift under this paragraph (c)(1) even if reported on the donor's Form 709.

(2) *Property reported as subject to estate tax.* Property that is included in the gross estate of the covered expatriate and is reported on a timely filed Form 706 or Form 706–NA is not a covered bequest, provided that the estate also timely pays the estate tax, if any, shown as due on that return. For this purpose, estate tax imposed on distributions from or on the remainder of a qualified domestic trust (QDOT) are deemed to be reported on a timely filed Form 706, if the tax due thereon was timely paid. Thus, if the covered expatriate's gross estate is not of sufficient value to require the filing of a Form 706–NA, for example, and no Form 706–NA is timely filed, the property passing from that covered expatriate is not excluded from the definition of a covered bequest under the rule of this paragraph (c)(2). Further, this exclusion does not apply to the property not on such a form, whether or not subject to United States estate tax (that is, non U.S.- situs property that passes to U.S. citizens or residents).

(3) *Transfers to charity.* A gift to a donee described in section 2522(b) or a bequest to a beneficiary described in section 2055(a) is not a covered gift or covered bequest to the extent a charitable deduction under section 2522 or section 2055 would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer.

(4) *Transfers to spouse.* A transfer from a covered expatriate to the covered expatriate's spouse is not a covered gift or covered bequest to the extent a marital deduction under section 2523 or section 2056 would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer. To the extent that a gift or bequest to a trust (or to a separate share of the trust) would qualify for the marital deduction, the gift or bequest is not a covered gift or covered bequest. For purposes of this paragraph (c)(4), a

marital deduction is deemed not to be allowed for qualified terminable interest property (QTIP) or for property in a qualified domestic trust (QDOT) unless a valid QTIP and/or QDOT election is made. The term *covered bequest* also does not include assets in a QDOT funded for the benefit of a covered expatriate by the covered expatriate's predeceased spouse, but only if a valid election was made on the predeceased spouse's Form 706 or Form 706–NA to treat the trust as a QDOT.

(5) *Qualified disclaimers.* A transfer pursuant to a covered expatriate's qualified disclaimer, as defined in section 2518(b), is not a covered gift or covered bequest from that covered expatriate.

(d) *Covered gifts and covered bequests made in trust.* For purposes of section 2801, when a covered expatriate transfers property to a trust in a transfer that is a covered gift or covered bequest as determined under this section, the transfer of property is treated as a covered gift or covered bequest to the trust, without regard to the beneficial interests in the trust or whether any person has a general power of appointment or a power of withdrawal over trust property. Accordingly, the rules in section 2801(e)(4) and § 28.2801–4(a) apply to determine liability for payment of the section 2801 tax. The U.S. recipient of a covered gift or a covered bequest to a domestic trust or an electing foreign trust is the domestic or electing foreign trust, and the U.S. recipient of a covered gift or a covered bequest to a non-electing foreign trust is any U.S. citizen or resident receiving a distribution from the non-electing foreign trust. See § 28.2801–2(e) for the definition of a U.S. recipient.

(e) *Powers of appointment—(1) Covered expatriate as holder of power.* The exercise or release of a general power of appointment held by a covered expatriate over property, whether or not in trust (even if that covered expatriate was a U.S. citizen or resident when the general power of appointment was granted), for the benefit of a U.S. citizen or resident is a covered gift or covered bequest. The lapse of a general power of appointment is treated as a release to the extent provided in sections 2041(b)(2) and 2514(e). Furthermore, the exercise of a power of appointment by a covered expatriate that creates another power of appointment as described in section 2041(a)(3) or section 2514(d) for the benefit of a U.S. citizen or resident is a covered gift or a covered bequest.

(2) *Covered expatriate as grantor of power.* The grant by a covered expatriate to an individual who is a U.S. citizen or

resident of a general power of appointment over property not transferred in trust by the covered expatriate is a covered gift or covered bequest to the powerholder. For the rule applying to the grant by a covered expatriate of a general power of appointment over property in trust, see paragraph (d) of this section.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Transfer to spouse. In Year 1, CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have a gift tax treaty, gives \$300,000 cash to his wife, W, a U.S. resident and citizen of Country F. Under paragraph (c)(4) of this section, the \$100,000 exemption for a noncitizen spouse, as indexed for inflation in Year 1, is excluded from the definition of a covered gift under section 2801 because only that amount of the transfer would have qualified for the gift tax marital deduction if CE had been a U.S. citizen at the time of the gift. See sections 2801(e)(3) and 2523(i). The remaining amount (\$300,000 less the \$100,000 exemption for a noncitizen spouse as indexed for inflation), however, is a covered gift from CE to W. W must timely file Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates," and timely pay the tax. See §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). W also must report the transfer on Form 3520, "Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts," and any other required form. See § 28.2801-6(c)(1).

Example 2. Reporting property as subject to estate tax. (i) CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have an estate tax treaty, owns a condominium in the United States with son, S, a U.S. citizen. CE and S each contributed their actuarial share of the purchase price when purchasing the condominium and own it as joint tenants with rights of survivorship. On December 14, Year 1, CE dies. At the time of CE's death, the fair market value of CE's share of the condominium, \$250,000, is included in CE's gross estate under sections 2040 and 2103.

(ii) On September 14 of the following calendar year, Year 2, the executor of CE's estate timely files a Form 4768, "Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes," requesting a 6-month extension of time to file Form 706-NA, and a 1-year extension of time to pay the estate tax. The IRS grants both extensions but CE's executor fails to file the Form 706-NA until after March 14 of the calendar year immediately following Year 2.

(iii) S learns that the executor of CE's estate did not timely file Form 706-NA. Because CE is a covered expatriate, S received a covered bequest as defined under § 28.2801-2(f) and paragraph (b) of this section. S must timely file Form 708 and pay the section 2801 tax. See §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). S also must file Form 3520 to report a large gift or bequest from a foreign

person, and any other required form. See § 28.2801-6(c)(1).

Example 3. Covered gift in trust with grant of general power of appointment over trust property. (i) On October 20, Year 1, CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have a gift tax treaty, transfers \$500,000 in cash from an account in Country F to an irrevocable foreign trust created on that same date. Under section 2511(a), no gift tax is imposed on the transfer and thus, CE is not required to file a U.S. gift tax return. Under the terms of the foreign trust, A, CE's child and a U.S. resident, and Q, A's child and a U.S. citizen, may receive discretionary distributions of income and principal during life. At A's death, the assets remaining in the foreign trust will be distributed to B, CE's other U.S. resident child, or if B is not living at the time of A's death, then to CE's then-living issue, *per stirpes*. The terms of the foreign trust also allow A to appoint trust principal and/or income to A, A's estate, A's creditors, the creditors of A's estate, or A's issue at any time. On March 5, Year 2, A exercises this power to appoint and causes the trustee to distribute \$100,000 to Q.

(ii) On October 20, Year 1, the irrevocable foreign trust receives a covered gift for purposes of section 2801, but no section 2801 tax is imposed at that time. On March 5, Year 2, when Q receives \$100,000 from the irrevocable foreign trust pursuant to the exercise of A's power of appointment, Q has received a distribution attributable to a covered gift and section 2801 tax is imposed on Q as of the date of the distribution. See § 28.2801-4(d). Q must timely file Form 708 to report the covered gift from a foreign person (specifically, from CE). See section 6039F(a) and §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). Under section 2501, A makes a taxable gift to Q of \$100,000 when A exercises the general power of appointment for Q's benefit. See section 2514(b). Accordingly, A must report A's \$100,000 gift to Q on a timely filed Form 709. See section 6019. Because A is considered the transferor of the \$100,000 for gift and GST tax purposes, the distribution to Q is not a generation-skipping transfer under chapter 13. See § 26.2652-1(a)(1). Furthermore, because the \$100,000 is being distributed from a foreign trust, Q must report the gift on a Form 3520 as a distribution from a foreign trust. See § 28.2801-6(c)(2).

Example 4. Lapse of power of appointment held by covered expatriate. (i) A, a U.S. citizen, creates an irrevocable domestic trust for the benefit of A's issue, CE, and CE's children. CE is a covered expatriate, but CE's children are U.S. citizens. CE has the right to withdraw \$5,000 in each year in which A makes a contribution to the trust, but the withdrawal right lapses 30 days after the date of the contribution. In Year 1, A funds the trust, but CE fails to exercise CE's right to withdraw \$5,000 within 30 days of the contribution. The \$5,000 lapse is not considered to be a release of the power, so it is neither a gift for U.S. gift tax purposes, nor a covered gift for purposes of section 2801 under paragraph (e)(1) of this section.

(g) *Effective/applicability date.* This section applies on and after the date of

publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-4 Liability for and payment of tax on covered gifts and covered bequests; computation of tax.

(a) *Liability for tax—(1) U.S. citizen or resident.* A U.S. citizen or resident who receives a covered gift or covered bequest is liable for payment of the section 2801 tax.

(2) *Domestic trust—(i) In general.* A domestic trust that receives a covered gift or covered bequest is treated as a U.S. citizen and is liable for payment of the section 2801 tax. See section 2801(e)(4)(A)(i) and § 28.2801-2(b).

(ii) *Generation-skipping transfer tax.* A trust's payment of the section 2801 tax does not result in a taxable distribution under section 2621 to any trust beneficiary for purposes of the generation-skipping transfer tax to the extent that the trust, rather than the beneficiary, is liable for the section 2801 tax.

(iii) *Charitable remainder trust.* A domestic trust qualifying as a charitable remainder trust (as that term is defined in § 1.664-1(a)(1)(iii)(a)) is subject to section 2801 when it receives a covered gift or covered bequest. Section 2801(e)(3) excepts from the definition of covered gift and covered bequest property with respect to which a deduction under section 2522 or section 2055, respectively, would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer. See § 28.2801-3(c)(3). As a result, the charitable remainder interest's share of each transfer to the charitable remainder trust is not a covered gift or covered bequest. To compute the amount of covered gifts and covered bequests taxable to the charitable remainder trust for a calendar year, the charitable remainder trust will (A) calculate, in accordance with the regulations under section 664 and as of the date of the trust's receipt of the contribution, the value of the remainder interest in each contribution received in such calendar year that would have been a covered gift or covered bequest without regard to section 2801(e)(3), (B) subtract the remainder interest in each such contribution from the amount of that contribution to compute the annuity or unitrust (income) interest in

that contribution, and (C) add the total of such income interests, each of which is the portion of the contribution that constitutes a covered gift or covered bequest to the trust. The charitable remainder trust then computes its section 2801 tax in accordance with paragraph (b) of this section.

(iv) *Migrated foreign trust.* A foreign trust (other than one electing to be treated as a domestic trust under § 28.2801-5(d)) that has previously received a covered gift or covered bequest and that subsequently becomes a domestic trust as defined under section 7701(a)(30)(E) (migrated foreign trust), must file a timely Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates," for the taxable year in which the trust becomes a domestic trust. The section 2801 tax, if any, must be paid by the due date of that Form 708. On that Form 708, the section 2801 tax is calculated in the same manner as if such trust was making an election under § 28.2801-5(d) to be treated as a domestic trust solely for purposes of the section 2801 tax. Accordingly, the trustee must report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the year in which the trust becomes a domestic trust, as well as on the portion of the trust's value at the end of the year preceding the year in which the trust becomes a domestic trust that is attributable to all prior covered gifts and covered bequests. Because the migrated foreign trust will be treated solely for purposes of section 2801 as a domestic trust for the entire year during which it became a domestic trust, distributions made to U.S. citizens or residents during that year but before the date on which the trust became a domestic trust will not be subject to section 2801.

(3) *Foreign trust—(i) In general.* A foreign trust that receives a covered gift or covered bequest is not liable for payment of the section 2801 tax unless the trust makes an election to be treated as a domestic trust solely for purposes of section 2801 as provided in § 28.2801-5(d). Absent such an election, each U.S. recipient is liable for payment of the section 2801 tax on that person's receipt, either directly or indirectly, of a distribution from the foreign trust to the extent that the distribution is attributable to a covered gift or covered bequest made to the foreign trust. See § 28.2801-5(b) and (c) regarding distributions from foreign trusts.

(ii) *Income tax deduction.* The U.S. recipient of a distribution from a foreign trust is allowed a deduction against income tax under section 164 in the calendar year in which the section 2801

tax is paid or accrued. The amount of the deduction is equal to the portion of the section 2801 tax attributable to such distribution, but only to the extent that portion of the distribution is included in the U.S. recipient's gross income. The amount of the deduction allowed under section 164 is calculated as follows:

(A) First, the U.S. recipient must determine the total amount of distribution(s) from the foreign trust treated as covered gifts and covered bequests received by that U.S. recipient during the calendar year to which the section 2801 tax payment relates.

(B) Second, of the amount determined in paragraph (a)(3)(ii)(A) of this section, the U.S. recipient must determine the amount that also is includable in the U.S. recipient's gross income for that calendar year. For purposes of this paragraph (a)(3)(ii)(B), distributions from foreign trusts includable in the U.S. recipient's gross income are deemed first to consist of the portion of those distributions, if any, that are attributable to covered gifts and covered bequests.

(C) Finally, the U.S. recipient must determine the portion of the section 2801 tax paid for that calendar year that is attributable to the amount determined in paragraph (a)(3)(ii)(B) of this section, the covered gifts and covered bequests received from the foreign trust that are also included in the U.S. recipient's gross income. This amount is the allowable deduction. Thus, for a calendar year taxpayer, the deduction is determined by multiplying the section 2801 tax paid during the calendar year by the ratio of the amount determined in paragraph (a)(3)(ii)(B) of this section to the total covered gifts and covered bequests received by the U.S. recipient during the calendar year to which that tax payment relates (that is, 2801 tax liability \times [foreign trust distributions attributable to covered gifts and covered bequests that are also included in gross income/total covered gifts or covered bequests received]).

(b) *Computation of tax—(1) In general.* The section 2801 tax is computed by multiplying the net covered gifts and covered bequests (as defined in paragraph (b)(2) of this section) received by a U.S. recipient during the calendar year by the greater of—

(i) The highest rate of estate tax under section 2001(c) in effect for that calendar year; or

(ii) The highest rate of gift tax under section 2502(a) in effect for that calendar year. See paragraph (f) of this section, *Example 1*.

(2) *Net covered gifts and covered bequests.* The net covered gifts and

covered bequests received by a U.S. recipient during the calendar year is the total value of all covered gifts and covered bequests received by that U.S. recipient during the calendar year, less the section 2801(c) amount, which is the dollar amount of the per-donee exclusion in effect under section 2503(b) for that calendar year.

(c) *Value of covered gift or covered bequest.* The value of a covered gift or covered bequest is the fair market value of the property as of the date of its receipt by the U.S. recipient. See paragraph (d) of this section regarding the determination of the date of receipt. As in the case of chapters 11 and 12, the fair market value of a covered gift or covered bequest is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a covered gift is determined in accordance with the federal gift tax valuation principles of section 2512 and chapter 14 and the corresponding regulations. The fair market value of a covered bequest is determined by applying the federal estate tax valuation principles of section 2031 and chapter 14 and the corresponding regulations, but without regard to sections 2032 and 2032A.

(d) *Date of receipt—(1) In general.* The section 2801 tax is imposed upon the receipt of a covered gift or covered bequest by a U.S. recipient.

(2) *Covered gift.* The date of receipt of a covered gift is the same as the date of the gift for purposes of chapter 12 as if the covered expatriate had been a U.S. citizen at the time of the transfer. Thus, for a gift of stock, if the covered expatriate delivers a properly endorsed stock certificate to the U.S. recipient, the date of delivery is the date of receipt for purposes of this section.

Alternatively, if the covered expatriate delivers the stock certificate to the issuing corporation or its transfer agent in order to transfer title to the U.S. recipient, the date of receipt is the date the stock is transferred on the books of the corporation. For a transfer of assets by a covered expatriate to a domestic revocable trust, the trust receives the transfer on the date the covered expatriate relinquishes the right to revoke the trust. If, before the donor's relinquishment of the right to revoke the trust, the revocable trust distributes property to a U.S. citizen or resident not in discharge of a support or other obligation of the donor, then the U.S. recipient receives a covered gift on the date of that distribution. For an asset

subject to a claim of right of another involving a bona fide dispute, the date of receipt is the date on which such claim is extinguished.

(3) *Covered bequest.* The date of receipt of a covered bequest is the date of distribution from the estate or the decedent's revocable trust rather than the date of death of the covered expatriate. However, the date of receipt is the date of death for property passing on the death of the covered expatriate by operation of law, or by beneficiary designation or other contractual agreement. Notwithstanding the previous sentences, for an asset subject to a claim of right of another involving a bona fide dispute, the date of receipt is the date on which such claim is extinguished.

(4) *Foreign trusts.* The date of receipt by a U.S. citizen or resident of property from a foreign trust that has not elected to be treated as a domestic trust under § 28.2801-5(d) is the date of its distribution from the foreign trust.

(5) *Powers of appointment—(i) Covered expatriate as holder of power.* In the case of the exercise, release, or lapse of a power of appointment held by a covered expatriate that is a covered gift pursuant to § 28.2801-3(e)(1), the date of receipt is the date of the exercise, release, or lapse of the power. In the case of the exercise, release, or lapse of a power of appointment held by a covered expatriate that is a covered bequest pursuant to § 28.2801-3(e)(1), the date of receipt is (A) the date the property subject to the power is distributed from the decedent's estate or revocable trust when the power of appointment is over property in such estate or trust, or (B) the date of the covered expatriate's death when the power of appointment is over property passing on the covered expatriate's death by operation of law, by beneficiary designation, or by other contractual agreement.

(ii) *Covered expatriate as grantor of power.* The date of receipt of property subject to a general power of appointment granted by a covered expatriate to a U.S. citizen or resident over property not transferred in trust that constitutes a covered gift or covered bequest pursuant to § 28.2801-3(e)(2) is the first date on which both the power is exercisable by the U.S. citizen or resident and the property subject to the general power has been irrevocably transferred by the covered expatriate. The date of receipt of property subject to a general power of appointment over property in a domestic trust or an electing foreign trust is determined in accordance with paragraphs (d)(2) and (d)(3) of this section, and over property

in a non-electing foreign trust is determined in accordance with paragraph (d)(4) of this section. See § 28.2801-3(d) for the rule applying to covered gifts and covered bequests made in trust.

(6) *Indirect receipts.* The date of receipt by a U.S. citizen or resident of a covered gift or covered bequest received indirectly from a covered expatriate is the date of its receipt, as determined under paragraph (d)(2) or (d)(3) of this section, by the U.S. citizen or resident who is the first recipient of that property from the covered expatriate to be subject to section 2801 with regard to that property. For example, the date of receipt of property (i) subject to a non-general power of appointment over property not held in trust given by a covered expatriate to a foreign person (other than another covered expatriate) is the date that property is received by the U.S. citizen or resident in whose favor the power was exercised, and (ii) received through one or more entities not subject to section 2801 is the date of its receipt by the U.S. citizen or resident from a conduit entity.

(e) *Reduction of tax for foreign estate or gift tax paid.* The section 2801 tax is reduced by the amount of any gift or estate tax paid to a foreign country with respect to the covered gift or covered bequest. For this purpose, the term *foreign country* includes possessions and political subdivisions of foreign states. However, no reduction is allowable for interest and penalties paid in connection with those foreign taxes. To claim the reduction of section 2801 tax, the U.S. recipient must attach to the Form 708 a copy of the foreign estate or gift tax return and a copy of the receipt or cancelled check for payment of the foreign estate or gift tax. The U.S. recipient also must report, on an attachment to the Form 708:

(1) The amount of foreign estate or gift tax paid with respect to each covered gift or covered bequest and the amount and date of each payment thereof;

(2) A description and the value of the property with respect to which such taxes were imposed;

(3) Whether any refund of part or all of the foreign estate or gift tax has been or will be claimed or allowed, and the amount; and

(4) All other information necessary for the verification and computation of the amount of the reduction of section 2801 tax.

(f) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Computation of tax. In Year 1, A, a U.S. citizen, receives a \$50,000 covered

gift from B and an \$80,000 covered bequest from C. Both B and C are covered expatriates. In Year 1, the highest estate and gift tax rate is 40 percent and the section 2801(c) amount is \$14,000. A's section 2801 tax for Year 1 is computed by multiplying A's net covered gifts and covered bequests by 40 percent. A's net covered gifts and covered bequests for Year 1 are \$116,000, which is determined by reducing A's total covered gifts and covered bequests received during Year 1, \$130,000 (\$50,000 + \$80,000), by the section 2801(c) amount of \$14,000. A's section 2801 tax liability is then reduced by any foreign estate or gift tax paid under paragraph (e) of this section. Assuming A, B, and C paid no foreign estate or gift tax on the transfers, A's section 2801 tax liability for Year 1 is \$46,400 (\$116,000 × 0.4).

Example 2. Deduction of section 2801 tax for income tax purposes. In Year 1, B receives a covered bequest of \$25,000. Also in Year 1, B receives an aggregate \$500,000 of distributions from a non-electing foreign trust of which \$100,000 was attributable to a covered gift. In Year 1, the highest estate and gift tax rate is 40 percent and the section 2801(c) amount is \$14,000. Based on information provided by the trustee of the foreign trust, B includes \$50,000 of the aggregate distributions from the foreign trust in B's gross income for Year 1. Under paragraph (a)(3)(ii) of this section, B (a cash basis taxpayer) is entitled to an income tax deduction under section 164 for the calendar year in which the section 2801 tax is paid. In Year 2, B timely reports the distributions from the foreign trust and pays \$44,400 in section 2801 tax $(\$125,000 - \$14,000) \times 0.4$. In Year 2, B is entitled to an income tax deduction because B paid the section 2801 tax in Year 2 on the Year 1 covered gift and covered bequest. B's Year 2 income tax deduction is computed as follows:

(i) \$100,000 of B's total covered gifts and covered bequests of \$125,000 received in Year 1 consisted of the portion of the distributions from the foreign trust attributable to covered gifts and covered bequests received by the trust. See paragraph (a)(3)(ii)(A) of this section.

(ii) \$50,000 of the \$500,000 of trust distributions were includable in B's gross income for Year 1. This amount is deemed to consist first of distributions subject to the section 2801 tax (\$100,000). Thus, the entire amount included in B's gross income (\$50,000) also is subject to the section 2801 tax, and is used in the numerator to determine the income tax deduction available to B. See paragraph (a)(3)(ii)(B) of this section.

(iii) The portion of B's section 2801 tax liability attributable to distributions from a foreign trust is \$17,760 $(\$44,400 \times (\$50,000 / \$125,000))$. Therefore, B's deduction under section 164 is \$17,760. See paragraph (a)(3)(ii)(C) of this section.

Example 3. Date of receipt; bona fide claim. On October 10, Year 1, CE, a covered expatriate, died testate as a resident of Country F, a foreign country with which the United States does not have an estate tax treaty. CE designated his son, S, as the beneficiary of CE's retirement account. S is a U.S. citizen. CE's wife, W, who is a citizen

and resident of Country F, elects to take her elective share of CE's estate under local law. S contests whether the retirement account is property subject to the elective share. S and W agree to settle their respective claims by dividing CE's assets equally between them. On December 15 of Year 2, Country F's court enters an order accepting the terms of the settlement agreement and dismissing the case. Under paragraph (d)(3) of this section, S received a covered bequest of one-half of CE's retirement account on December 15, Year 2, when W's claim of right was extinguished.

(g) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-5 Foreign trusts.

(a) *In general.* The section 2801 tax is imposed on a U.S. recipient who receives distributions, whether of income or principal, from a foreign trust to the extent the distributions are attributable to one or more covered gifts or covered bequests made to that foreign trust. See paragraph (d) of this section regarding a foreign trust's election to be treated as a domestic trust for purposes of section 2801.

(b) *Distribution defined.* For purposes of determining whether a U.S. recipient has received a distribution from a foreign trust, the term *distribution* means any direct, indirect, or constructive transfer from a foreign trust. This determination is made without regard to whether any portion of the trust is treated as owned by the U.S. recipient or any other person under subpart E of part I, subchapter J, chapter 1 of the Code (pertaining to grantors and others treated as substantial owners) and without regard to whether the U.S. recipient of the transfer is designated as a beneficiary by the terms of the trust. For purposes of section 2801, the term *distribution* also includes each disbursement from a foreign trust pursuant to the exercise, release, or lapse of a power of appointment, whether or not a general power. In addition to the reporting requirements under this section, see section 6048(c) regarding the information reporting requirement for U.S. persons receiving a distribution or deemed distribution from a foreign trust during the year.

(c) *Amount of distribution attributable to covered gift or covered bequest—(1)*

Section 2801 ratio—(i) In general. A foreign trust may have received covered gifts and covered bequests as well as contributions that were not covered gifts or covered bequests. Under such circumstances, the fair market value of the foreign trust at any time consists in part of a portion of the trust attributable to the covered gifts and covered bequests it has received (covered portion) and in part of a portion of the trust attributable to other contributions (non-covered portion). The covered portion of the trust includes the ratable portion of appreciation and income that has accrued on the foreign trust's assets from the date of the contribution of the covered gifts and covered bequests to the foreign trust. For purposes of section 2801, the amount of each distribution from the foreign trust, whether made from the income or principal of the trust, that is considered attributable to the foreign trust's covered gifts and covered bequests is determined on a proportional basis, by reference to the section 2801 ratio (as described in paragraph (c)(1)(ii) of this section), and not by the identification or tracing of particular trust assets. Specifically, this portion of each distribution is determined by multiplying the distributed amount by the percentage of the trust that consists of its covered portion immediately prior to that distribution (section 2801 ratio). Thus, for example, the section 2801 ratio of a foreign trust whose assets are comprised exclusively of covered gifts or covered bequests and the income and appreciation thereon, would be 1 and the full amount of each distribution from that foreign trust to a U.S. citizen or resident would be subject to section 2801.

(ii) *Computation.* The section 2801 ratio, which must be redetermined after each contribution to the foreign trust, is computed by using the following fraction:

$$\text{Section 2801 ratio} = \frac{X + Y}{Z}$$

Where,

X = The value of the trust attributable to covered gifts and covered bequests, if any, immediately before the contribution (pre-contribution value); this value is determined by multiplying the fair market value of the trust assets immediately prior to the contribution by the section 2801 ratio in effect immediately prior to the current contribution. This amount will be zero for all years prior to the year in which the foreign trust receives its first covered gift or covered bequest;

Y = The portion, if any, of the fair market value of the current contribution that

constitutes a covered gift or covered bequest; and

Z = The fair market value of the trust immediately after the current contribution. See paragraph (e) of this section, *Example 1*, for an illustration of this computation.

(2) *Effect of reported transfer and tax payment.* Once a section 2801 tax has been timely paid on property that thereafter remains in a foreign trust, that property is no longer considered to be, or to be attributable to, a covered gift or covered bequest to the foreign trust for purposes of the computation described in paragraph (c)(1)(ii) of this section. For purposes of the prior sentence, a section 2801 tax is deemed to have been timely paid on amounts for which no section 2801 tax was due as long as those amounts were reported as a covered gift or covered bequest on a timely filed Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates."

(3) *Inadequate information to calculate section 2801 ratio.* If the trustee of the foreign trust does not have sufficient books and records to calculate the section 2801 ratio, or if the U.S. recipient is unable to obtain the necessary information with regard to the foreign trust, the U.S. recipient must proceed upon the assumption that the entire distribution for purposes of section 2801 is attributable to a covered gift or covered bequest.

(d) *Foreign trust treated as domestic trust—(1) Election required.* To be considered an electing foreign trust, so that the foreign trust is treated as a domestic trust solely for purposes of the section 2801 tax, a valid election is required.

(2) *Effect of election.* (i) A valid election subjects the electing foreign trust to the section 2801 tax on (A) all covered gifts and covered bequests received by the foreign trust during that calendar year, (B) the portion of the trust attributable to covered gifts and covered bequests received by the trust in prior years, as determined in paragraph (d)(3)(iii) of this section, and (C) all covered gifts and covered bequests received by the foreign trust during calendar years subsequent to the first year in which the election is effective, unless and until the election is terminated. To the extent that covered gifts and covered bequests are subject to the section 2801 tax under the prior sentence, those trust receipts are no longer treated as a covered gift or covered bequest for purposes of determining the portion of the trust attributable to covered gifts and covered bequests. Therefore, upon making a valid election, the foreign trust's section 2801 ratio described in paragraph

(c)(1)(ii) of this section will be zero until the effective date of any termination of the election and the subsequent receipt of any covered gift or covered bequest, and a distribution made from the foreign trust while this election is in effect is not taxable under section 2801 to the recipient trust beneficiary.

(ii) This election has no effect on any distribution from the foreign trust that was made to a U.S. recipient in a calendar year prior to the calendar year for which the election is made. Thus, even after a valid election is made, a distribution to a U.S. recipient in a calendar year prior to the calendar year for which the election is made that was attributable to one or more covered gifts or covered bequests continues to be a distribution attributable to one or more covered gifts or covered bequests and the section 2801 ratio in place at the time of the distribution continues to apply to that distribution. Furthermore, an election under this section does not relieve the U.S. recipient from the information reporting requirements of section 6048(c).

(3) *Time and manner of making the election*—(i) *When to make the election.* The election is made on a timely filed Form 708 for the calendar year for which the foreign trust seeks to subject itself to the section 2801 tax as described in paragraph (d)(2)(i) of this section. The election may be made for a calendar year whether or not the foreign trust received a covered gift or covered bequest during that calendar year. See § 28.6071–1.

(ii) *Requirements for a valid election.* To make a valid election to be treated as a domestic trust for purposes of section 2801, the electing foreign trust must timely file a Form 708 and must, on such form—

(A) Make the election, timely pay the section 2801 tax, if any, as determined under paragraph (d)(3)(iii) of this section, and include a computation illustrating how the trustee of the electing foreign trust calculated both the section 2801 ratio described in paragraph (c)(1)(ii) of this section and the section 2801 tax;

(B) Designate and authorize a U.S. agent as provided in paragraph (d)(3)(iv) of this section;

(C) Agree to file Form 708 annually;

(D) List the amount and year of all prior distributions attributable to covered gifts and covered bequests made to a U.S. recipient and provide the name, address, and taxpayer identification number of each U.S. recipient; and

(E) Notify each permissible distributee that the trustee is making the election under this paragraph (d) and provide to

the IRS a list of the name, address, and taxpayer identification number of each permissible distributee. For this purpose, a permissible distributee is any U.S. citizen or resident who:

(1) Currently may or must receive distributions from the trust, whether of income or principal;

(2) May withdraw income or principal from the trust, regardless of whether the right arises or lapses upon the occurrence of a future event; or

(3) Would have been described in paragraph (d)(3)(ii)(E)(1) of this section if either the interests of all persons described in (d)(3)(ii)(E)(1) or (E)(2) had just terminated or the trust had just terminated.

(iii) *Section 2801 tax payable with the election.* To make a valid election to be treated as a domestic trust for purposes of section 2801, the electing foreign trust must timely pay the section 2801 tax on all covered gifts and covered bequests received by the electing foreign trust in the calendar year for which the Form 708 is being filed. In some cases, an electing foreign trust may have received covered gifts or covered bequests in prior calendar years during which no such election was in effect. In those cases, the trustee must also, at the same time, report and pay the tax on the fair market value, determined as of the last day of the calendar year immediately preceding the year for which the Form 708 is being filed, of the portion of the trust attributable to covered gifts and covered bequests received by such trust in prior calendar years (except as provided in paragraph (d)(6)(iii) of this section with regard to an imperfect election). That portion is determined by multiplying the fair market value of the trust, as of the December 31 immediately preceding the year for which the election is made, by the section 2801 ratio in effect on that date, as calculated under paragraph (c)(1)(ii) of this section. If the trustee does not have sufficient books and records to determine what amount of the corpus and undistributed income is attributable to undistributed prior covered gifts and covered bequests, then that amount is deemed to be the entire fair market value of the trust as of that December 31. See paragraph (c)(3) of this section.

(iv) *Designation of U.S. agent*—(A) *In general.* The trustee of an electing foreign trust must designate and authorize a U.S. person, as defined in section 7701(a)(30), to act as an agent for the trust solely for purposes of section 2801. By designating a U.S. agent, the trustee of the foreign trust agrees to provide the agent with all information necessary to comply with any

information request or summons issued by the Secretary. Such information may include, without limitation, copies of the books and records of the trust, financial statements, and appraisals of trust property.

(B) *Role of designated agent.* Acting as an agent for the trust for purposes of section 2801 includes serving as the electing foreign trust's agent for purposes of section 7602 ("Examination of books and witnesses"), section 7603 ("Service of summons"), and section 7604 ("Enforcement of summons") with respect to—

(1) Any request by the Secretary to examine records or produce testimony related to the proper identification or treatment of covered gifts or covered bequests contributed to the electing foreign trust and distributions attributable to such contributions; and

(2) Any summons by the Secretary for records or testimony related to the proper identification or treatment of covered gifts or covered bequests contributed to the electing foreign trust and distributions attributable to such contributions.

(C) *Effect of appointment of U.S. agent.* An electing foreign trust that appoints such an agent is not considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the agent's activities as an agent pursuant to this section.

(4) *Annual certification or filing requirement.* The trustee of an electing foreign trust must file a timely Form 708 annually either to report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the calendar year, or to certify that the electing foreign trust did not receive any covered gifts or covered bequests during the calendar year.

(5) *Duration of status as electing foreign trust*—(i) *In general.* A valid election (one that meets all of the requirements of paragraph (d)(3) of this section) is effective as of January 1 of the calendar year for which the Form 708 on which the election is made is filed. The election, once made, applies for all calendar years until the election is terminated as described in paragraph (d)(5)(ii) of this section.

(ii) *Termination.* An election to be treated as a domestic trust for purposes of section 2801 is terminated either by the failure of the foreign trust to make the annual filing, together with any payment of the section 2801 tax, as required by paragraph (d)(4) of this section, or by the failure of the foreign trust to timely pay any additional amount of section 2801 tax (in

accordance with the requirements of paragraph (d)(6)(ii) of this section) with respect to recalculations described in paragraph (d)(6) of this section (a failure that results in an imperfect election). A termination, if any, is effective as of the beginning of the calendar year for which the trustee fails to make the annual filing required by paragraph (d)(4) of this section or for which the trustee fails to pay any of the amounts described in this paragraph (d)(5)(ii). In the case of a terminated election, the trustee should notify promptly each permissible distributee, as defined in paragraph (d)(3)(ii)(E) of this section, that the foreign trust's election was terminated as of January 1 of the applicable year (with the actual year of the termination being set forth in the notice), and that each U.S. recipient of a distribution made from the foreign trust on and after that date is subject to the section 2801 tax on the portion of each such distribution that is attributable to covered gifts and covered bequests. See paragraph (d)(6)(iii)(B) of this section for an additional notification requirement in the case of an imperfect election.

(iii) *Subsequent elections.* If a foreign trust's election is terminated under paragraph (d)(5)(ii) of this section, the foreign trust is not prohibited from making another election in a future year, subject to the requirements of paragraph (d)(3) of this section.

(6) *Dispute as to amount of section 2801 tax owed by electing foreign trust—(i) Procedure.* If the Commissioner disputes the value of a covered gift or covered bequest, or otherwise challenges the computation of the section 2801 tax, that is reported on the electing foreign trust's timely filed Form 708 for any calendar year, the Commissioner will issue a letter (but not a notice of deficiency as defined in section 6212) to the trustee of the electing foreign trust and the appointed U.S. agent that details the disputed information and the proper amount of section 2801 tax as recalculated. The foreign trust must pay the additional amount of section 2801 tax including interest and penalties, if any, in accordance with the requirements of paragraph (d)(6)(ii) of this section, on or before the due date specified in the letter to maintain its election.

(ii) *Effect of timely paying the additional section 2801 tax amount.* If the trustee of the foreign trust timely pays the additional amount(s) specified in the Commissioner's letter, or such other amount as agreed to by the Commissioner, and enters into a closing agreement with the IRS as described in section 7121, then the foreign trust's election to be treated as a domestic trust

under paragraph (d) of this section remains in effect. In addition, in the absence of fraud, malfeasance, or misrepresentation of a material fact, that payment, in conjunction with the closing agreement, will be deemed to render any determination of value to which the closing agreement applies as final and binding on both the IRS and the foreign trust. Thus, subsequently, the IRS will not be able to challenge the section 2801 tax due from either the foreign trust or any of its beneficiaries who are U.S. citizens or residents for the year for which that Form 708 was filed by the foreign trust, except with respect to any covered gifts or covered bequests not reported on that return, and neither the foreign trust nor any of its beneficiaries will be able to file a claim for refund with respect to section 2801 tax paid by the foreign trust on the covered gifts and covered bequests reported on that Form 708.

(iii) *Effect of failing to timely pay the additional section 2801 tax amount (imperfect election)—(A) In general.* If the foreign trust fails to timely pay the additional amount of section 2801 tax with interest and penalties, if any, claimed to be due by the IRS in accordance with the requirements of paragraph (d)(6)(ii) of this section, then the foreign trust's valid election is terminated and becomes an imperfect election. The foreign trust's election is terminated, and is converted into an imperfect election, retroactively as of the first day of the calendar year for which was filed the Form 708 with respect to which the additional amount of section 2801 tax is claimed to be due by the IRS. Thus, the value the foreign trust has reported on the Form 708 and on which the trust has paid the section 2801 tax is no longer considered to be attributable to covered gifts or covered bequests when computing the section 2801 ratio described in paragraph (c)(1)(ii) of this section applicable to distributions made by the foreign trust to U.S. recipients during the calendar year for which the Form 708 was filed and thereafter. The U.S. recipients of distributions from the foreign trust, however, should take into consideration the additional value determined by the IRS, on which the foreign trust did not timely pay the section 2801 tax, when computing the section 2801 ratio to be applied to a distribution from the trust. See paragraph (c) of this section. Any disagreement with regard to that additional value will be an issue to be resolved as part of the review of that U.S. recipient's own Form 708 reporting a distribution.

(B) *Notice to permissible beneficiaries.* If the trustee of the foreign

trust fails to remit the additional payment of the section 2801 tax including all interest and penalties, if any, in accordance with the requirements of paragraph (d)(6)(ii) of this section, by the due date stated in the IRS letter, the trustee should notify promptly each permissible distributee, as defined in paragraph (d)(3)(ii)(E) of this section, of the amount of additional value on which the foreign trust did not timely pay the section 2801 tax as determined by the IRS and that:

(1) The foreign trust's election was terminated as of January 1 of the applicable year (with the actual year of the termination being set forth in the notice); and

(2) Each U.S. recipient of a distribution made from the foreign trust on and after that termination date is subject to the section 2801 tax on the portion of each such distribution attributable to covered gifts and covered bequests.

(C) *Reasonable cause.* If a U.S. recipient received a distribution from such trust on or after January 1 of the year for which the election was terminated and the election became an imperfect election, provided the U.S. recipient files a Form 708 and pays the section 2801 tax within a reasonable period of time after being notified by the trustee of the foreign trust or otherwise becoming aware that a valid election was not in effect when the distribution was made, the U.S. recipient's failure to timely file and pay are due to reasonable cause and not willful neglect for purposes of section 6651. For this purpose, a reasonable period of time is not more than six months after the U.S. recipient is notified by the trustee or the U.S. recipient otherwise becomes aware that a valid election is not in effect.

(D) *Interim period.* If a foreign trust's valid election is terminated and becomes an imperfect election, there is a period of time (interim period) after the effective date of the termination of the election during which both the foreign trust and its U.S. beneficiaries are likely to continue to comply with section 2801 as it applies to an electing foreign trust with a valid election in place. The interim period begins on the effective date of the termination of the foreign trust's election that resulted in an imperfect election as described in paragraph (d)(6)(iii)(A) of this section, and ends on December 31 of the calendar year immediately preceding the calendar year in which the additional section 2801 tax claimed by the IRS is due. As under the rule in paragraph (d)(6)(iii)(A) of this section regarding imperfect elections, the covered gifts and covered bequests

received by the foreign trust during this interim period, which the foreign trust has reported on its timely filed Form 708 and on which the foreign trust has timely paid the section 2801 tax, are no longer considered to be covered gifts and covered bequests for purposes of computing the section 2801 ratio described in paragraph (c)(1)(ii) of this section as it applies to distributions made by non-electing foreign trusts to their U.S. beneficiaries. In addition, each distribution made by the foreign trust to a U.S. citizen or resident during this interim period must be reported on that U.S. recipient's Form 708 by applying the section 2801 ratio to that distribution. Once the interim period has ended, the foreign trust has no election in place and the rules of section 2801(e)(4)(B)(i) will apply until the foreign trust subsequently (if ever) makes another valid election to be treated as a domestic trust for purposes of section 2801.

(7) *No overpayment caused solely by virtue of defect in election.* Any remittance of section 2801 tax made by a foreign trust electing to be treated as a domestic trust does not become an overpayment solely by virtue of a defect in the election. Instead, if at some subsequent time the IRS determines that the election was not in fact a valid election, then the election shall be considered valid only with respect to the covered gifts or covered bequests on which the section 2801 tax was timely paid by the foreign trust and each covered gift and covered bequest on which the section 2801 tax has been timely paid is no longer treated as a covered gift or covered bequest for purposes of determining the portion of the foreign trust attributable to covered gifts and covered bequests. See paragraphs (d)(2)(i) and (d)(6)(iii) of this section.

(e) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Computation of section 2801 ratio. A and B each contribute \$100,000 to a foreign trust. A (but not B) is a covered expatriate and A's contribution is a covered gift. The section 2801 ratio immediately after these two contributions is 0.50, computed as follows: The pre-contribution value of the trust (\$0) times the pre-contribution section 2801 ratio (-0-), plus the current covered gift (\$100,000), divided by the post-contribution fair market value of the trust (\$200,000). See § 28.2801-5(c). Therefore, 50 percent of each distribution from the trust is subject to the section 2801 tax until the next contribution is made to the trust. If the trustee distributes \$40,000 to C, a U.S. citizen, before the trust receives any other contributions, then \$20,000 ($\$40,000 \times 0.5$) is a covered gift to C.

Example 2. Computation of section 2801 ratio when multiple contributions are made to foreign trust. (i) In 2005, A, a U.S. citizen, established and funded an irrevocable foreign trust with \$200,000 and reported the transfer as a completed gift. On January 1 of each of the following three years (2006 through 2008), A contributed an additional \$100,000 to the foreign trust. A reported A's contributions to the foreign trust as completed gifts on timely filed Forms 709, for calendar years 2005 through 2008. On August 8, 2008, a date after the effective date of section 2801 (June 17, 2008), A expatriated and became a covered expatriate. On January 1 of a year after 2008 (Year X), A makes an additional \$100,000 contribution to the trust. The aggregate \$600,000 contributed to the trust by A, both before and after expatriation, are the only contributions to the trust. Each year, the trustee of the foreign trust provides beneficiary B, a U.S. citizen, with an accounting of the trust showing each receipt and disbursement of the trust during that year, including the date and amount of each contribution by A.

(ii) The fair market value of the trust was \$610,000 immediately prior to A's contribution to the trust on January 1, Year X. Therefore, upon the Year X contribution of A's first and only covered gift, the portion of the trust attributable to covered gifts and covered bequests (covered portion) changed from zero to 0.14 ($[(\text{section 2801 ratio of } 0 \times \$610,000 \text{ fair market value pre-contribution}) + \text{the } \$100,000 \text{ covered gift}] / \$710,000 \text{ fair market value post-contribution}$). See paragraph (c) of this section.

(iii) In February of Year X, B received a distribution of \$225,000 from the foreign trust. Although A contributed a total of \$600,000 to the foreign trust, A contributed only \$100,000 while A was a covered expatriate. Under paragraph (c) of this section, the portion of the \$225,000 distribution from the foreign trust attributable to a covered gift is \$31,500 ($\$225,000 \times 0.14$ (section 2801 ratio)) because the distribution is made proportionally from the covered and non-covered portions of the trust. See paragraph (c)(1) of this section. Accordingly, B received a covered gift of \$31,500.

(iv) Pursuant to the terms of the foreign trust, the trust made a terminating distribution on August 5, Year X, when B turned 35, and B received the balance of the appreciated trust, \$505,000. The portion of this distribution attributable to covered gifts and covered bequests is \$70,700 ($\$505,000 \times 0.14$). Therefore, B has received covered gifts from the foreign trust during Year X in the total amount of \$102,200 ($\$31,500 + \$70,700$).

Example 3. Termination of foreign trust election. The trustee of a foreign trust that received a covered gift makes a valid election to be treated as a domestic trust under § 28.2801-5(d) for Year 1. However, the trustee fails to file timely the Form 708 for the next year, Year 2. The foreign trust election is terminated as of January 1, Year 2, under paragraph (d)(5)(ii) of this section. Thus, any distributions made to U.S. recipients during Year 1 have a section 2801 ratio of zero and are not subject to the section

2801 tax. However, any such distributions made during Year 2 are subject to the section 2801 tax to the extent the distributions are attributable to a covered gift or covered bequest received by the trust during Year 2. Unless the trustee makes a new election as described in paragraph (d)(5)(iii) of this section, beginning in Year 2, the foreign trust's section 2801 ratio must be recomputed each time the foreign trust receives a contribution.

Example 4. Imperfect election by foreign trust. (i) In Year 1, CE, a covered expatriate, gives a 20 percent limited partnership interest in a closely held business to a foreign trust created for the benefit of CE's child, A, who is a U.S. citizen. The limited partnership interest is a covered gift. The trustee of the foreign trust makes a valid election to have the trust treated as a domestic trust for purposes of section 2801, trustee timely files a Form 708, and timely pays the section 2801 tax on the reported fair market value of the covered gift (\$500,000). Later in Year 1, the trust makes a \$100,000 distribution to A.

(ii) In Year 2, CE contributes \$200,000 in cash to the foreign trust. The cash is a covered gift. The trustee of the foreign trust timely files a Form 708 reporting the transfer and pays the section 2801 tax. The trust does not make a distribution to any beneficiary during Year 2. Late in Year 3, the IRS disputes the reported value of the partnership interest transferred in Year 1 and determines that the proper valuation on the date of the gift was \$800,000. In Year 3, the IRS issues a letter to the trustee of the foreign trust detailing its finding of the increased valuation and of the resulting additional section 2801 tax including accrued interest, if any, due on or before a later date in Year 3 specified in the letter. The foreign trust fails to pay the additional section 2801 tax liability on or before that due date.

(iii) Under paragraph (d)(6)(iii) of this section, the foreign trust's election for Year 1 is an imperfect election; although it timely filed its return reporting the transfer and paid the tax, it failed to timely pay the additional section 2801 tax when the IRS notified the trust of an additional amount of section 2801 tax claimed to be due. Accordingly, the foreign trust's election is deemed to have terminated as of January 1 of Year 1. In computing the foreign trust's section 2801 ratio upon the receipt of the covered gift in Year 1, the \$500,000 of value on which the section 2801 tax was timely paid is no longer deemed to be a covered gift. See paragraph (d)(6)(iii) of this section. When the trustee advises A of the letter from the IRS, A must file a late Form 708 reporting the portion of the Year 1 distribution attributable to covered gifts and covered bequests. Although A may owe section 2801 tax and interest, A will not owe any penalties under section 6651 as long as A files the Form 708 and pays the tax within a reasonable period of time after A receives notice of the termination of the election from the trustee of the foreign trust or otherwise becomes aware of the termination of the election. See paragraph (d)(6)(iii)(C) of this section.

(iv) When A files the Form 708, the IRS will verify whether A treated the \$300,000 undervaluation claimed by the IRS as a

covered gift in computing the section 2801 ratio. As with any other item reported on that return, A has the burden to prove the value of the covered gift to the foreign trust, and the IRS may challenge that value. If A treats the \$300,000 as a covered gift to the trust, under paragraph (c)(1)(ii) of this section, the section 2801 ratio after the Year 1 contribution is 0.375 $(\$0 + (\$300,000)/\$800,000)$. Thus, 37.5 percent of all distributions made to A from the foreign trust during Year 1 are subject to the section 2801 tax.

(v) The foreign trust's timely filing of the Form 708 for Year 2 and the timely payment of the section 2801 tax shown on that return is not a valid election under paragraph (d)(5)(iii) of this section because the trust did not timely pay the section 2801 tax on all covered gifts and covered bequests in prior years as required in paragraph (d)(3) of this section; that is, the tax on the additional \$300,000 of value of the Year 1 transfer. However, under paragraph (d)(6)(iii)(D) of this section, because the foreign trust timely filed and paid the section 2801 tax on the Year 2 covered gift of \$200,000, and the additional unpaid tax was not due until Year 3, the \$200,000 amount is no longer considered a covered gift for purposes of computing the section 2801 ratio.

Example 5. Subsequent election after termination of foreign trust election. The facts are the same as in *Example 4*. In Year 3, the foreign trust does not receive a covered gift or covered bequest. However, the trustee decides that making another election to be treated as a domestic trust would be in the best interests of the trust's beneficiaries. Accordingly, by the due date for the Form 708 for Year 3, the trustee timely files the return and pays the section 2801 tax on the portion of the trust attributable to covered gifts and covered bequests. See paragraph (d)(5)(iii) of this section. The trustee calculates the portion of the trust attributable to covered gifts and covered bequests received by the trust in prior calendar years by multiplying the fair market value of the trust on December 31, Year 2, by the section 2801 ratio in effect on that date. See paragraph (d)(3)(iii) of this section. The foreign trust is an electing foreign trust in Year 3.

(f) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-6 Special rules and cross-references.

(a) *Determination of basis.* For purposes of determining the U.S. recipient's basis in property received as a covered gift or covered bequest, see

sections 1015 and 1014, respectively. However, section 1015(d) does not apply to increase the basis in a covered gift to reflect the tax paid under this section. For purposes of determining a U.S. recipient's basis in property received as a covered bequest from a decedent who died during 2010 and whose executor elected under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 not to have the estate tax provisions apply, see section 1022.

(b) *Generation-skipping transfer tax.* Transfers made by a nonresident not a citizen of the United States (NRA transferor) are subject to generation-skipping transfer (GST) tax only to the extent those transfers are subject to federal estate or gift tax as defined in § 26.2652-1(a)(2). In applying this rule, taxable distributions from a trust and taxable terminations are subject to the GST tax only to the extent the NRA transferor's contributions to the trust were subject to federal estate or gift tax as defined in § 26.2652-1(a)(2). See § 26.2663-2. A transfer is subject to federal estate or gift tax, regardless of whether a federal estate or gift tax return reporting the transfer is timely filed and regardless of whether chapter 15 applies because of a covered expatriate's failure to timely file and pay the section 2801 tax, if applicable.

(c) *Information returns—(1) Gifts and bequests.* Pursuant to section 6039F and the corresponding regulations, and to the extent provided in Notice 97-34, 1997-1 CB 422, and Form 3520, Part IV, each U.S. person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) who treats an amount received from a foreign person (other than through a foreign trust) as a gift or bequest (including a covered gift or covered bequest) must report such gift or bequest on Part IV of Form 3520 if the value of the total of such gifts and bequests exceeds a certain threshold. A U.S. citizen or resident, as defined in § 28.2801-2(b) but not including a foreign trust that elects to be treated as a domestic trust, is included within the definition of a U.S. person for purposes of section 6039F.

(2) *Foreign trust distributions.* Pursuant to section 6048(c) and the corresponding regulations, and to the extent provided in Notice 97-34 and Part III of Form 3520, U.S. persons must report each distribution received during the taxable year from a foreign trust on Part III of Form 3520. Under section 6677(a), a penalty of the greater of \$10,000 or 35 percent of the gross value of the distribution may be imposed on

a U.S. person who fails to timely report the distribution. A U.S. citizen or resident as defined in § 28.2801-2(b), but not including a foreign trust that elects to be treated as a domestic trust, generally is required to report such a distribution under section 6048(c).

(3) *Penalties and use of information.* The filing of Form 706, Form 706-NA, Form 708, or Form 709 does not relieve a U.S. citizen or resident who is required to file Form 3520 from any penalties imposed under section 6677(a) for failure to comply with section 6048(c), or from any penalties imposed under section 6039F(c) for failure to comply with section 6039F(a). Pursuant to section 6039F(c)(1)(A), the Secretary may determine the tax consequences of the receipt of a purported foreign gift or bequest.

(d) *Application of penalties—(1) Accuracy-related penalties on underpayments.* The section 6662 accuracy-related penalty may be imposed upon any underpayment of tax attributable to—

- (i) A substantial valuation understatement under section 6662(g) of a covered gift or covered bequest; or
- (ii) A gross valuation misstatement under section 6662(h) of a covered gift or covered bequest.

(2) *Penalty for substantial and gross valuation misstatements attributable to incorrect appraisals.* The section 6695A penalty for substantial and gross valuation misstatements attributable to incorrect appraisals may be imposed upon any person who prepares an appraisal of the value of a covered gift or covered bequest.

(3) *Penalty for failure to file a return and to pay tax.* See section 6651 for the application of a penalty for the failure to file Form 708, or the failure to pay the section 2801 tax.

(e) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-7 Determining responsibility under section 2801.

(a) *Responsibility of recipients of gifts and bequests from expatriates.* It is the responsibility of the taxpayer (in this case, the U.S. citizen or resident receiving a gift or bequest from an expatriate or a distribution from a

foreign trust funded at least in part by an expatriate) to ascertain the taxpayer's obligations under section 2801, which includes making the determination of whether the transferor is a covered expatriate and whether the transfer is a covered gift or covered bequest.

(b) *Disclosure of return and return information*—(1) *In general.* In certain circumstances, the Internal Revenue Service (IRS) may be permitted, upon request of a U.S. citizen or resident in receipt of a gift or bequest from an expatriate, to disclose to the U.S. citizen or resident return or return information of the donor or decedent expatriate that may assist the U.S. citizen or resident in determining whether the donor or decedent was a covered expatriate and whether the transfer was a covered gift or covered bequest. The U.S. citizen or resident may not rely upon this information, however, if the U.S. citizen or resident knows, or has reason to know, that the information received from the IRS is incorrect. The circumstances under which such information may be disclosed to a U.S. citizen or resident, and the procedures for requesting such information from the IRS, will be as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

(2) *Rebuttable presumption.* Unless a living donor expatriate authorizes the disclosure of his or her relevant return or return information to the U.S. citizen or resident receiving the gift, there is a rebuttable presumption that the donor is a covered expatriate and that the gift is a covered gift. A taxpayer who reasonably concludes that a gift or bequest is not subject to section 2801 may file a protective Form 708 in accordance with § 28.6011-1(b) to start the period for the assessment of any section 2801 tax.

(c) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.6001-1 Records required to be kept.

(a) *In general.* Every U.S. recipient as defined in § 28.2801-2(e) subject to taxation under chapter 15 of the Internal Revenue Code must keep, for the purpose of determining the total amount of covered gifts and covered bequests, such permanent books of account or

records as are necessary to establish the amount of that person's aggregate covered gifts and covered bequests, and the other information required to be shown on Form 708, "United States Return of Tax for Gifts and Bequests from Covered Expatriates." All documents and vouchers used in preparing the Form 708 must be retained by the person required to file the return so as to be available for inspection whenever required.

(b) *Supplemental information.* In order that the Internal Revenue Service (IRS) may determine the correct tax, the U.S. recipient as defined in § 28.2801-2(e) must furnish such supplemental information as may be deemed necessary by the IRS. Therefore, the U.S. recipient must furnish, upon request, copies of all documents relating to the covered gift or covered bequest, appraisals of any items included in the aggregate amount of covered gifts and covered bequests, copies of balance sheets and other financial statements obtainable by that person relating to the value of stock or other property constituting the covered gift or covered bequest, and any other information obtainable by that person that may be necessary in the determination of the tax. See section 2801 and the corresponding regulations. For every policy of life insurance listed on the return, the U.S. recipient must procure a statement from the insurance company on Form 712 and file it with the IRS office where the return is filed. If specifically requested by the Commissioner, the insurance company must file this statement directly with the Commissioner.

§ 28.6011-1 Returns.

(a) *Return required.* The return of any tax to which this part 28 applies must be made on Form 708, "United States Return of Tax for Gifts and Bequests from Covered Expatriates," according to the instructions applicable to the form. With respect to each covered gift and covered bequest received during the calendar year, the U.S. recipient as defined in § 28.2801-2(e) must include on Form 708 the information set forth in § 25.6019-4. The U.S. recipient must file Form 708 for each calendar year in which a covered gift or covered bequest is received. The U.S. recipient who receives the covered gift or covered bequest during the calendar year is the person required to file the return. A U.S. recipient is not required to file such form, however, for a calendar year in which the total fair market value of all covered gifts and covered bequests received by that person during that calendar year is less than or equal to the

section 2801(c) amount, which is the dollar amount of the per-donee exclusion in effect under section 2503(b) for that calendar year.

(b) *Protective return.* (i) A U.S. citizen or resident (as defined in § 28.2801-2(b)) that receives a gift or bequest from an expatriate and reasonably concludes that the gift or bequest is not a covered gift or a covered bequest from a covered expatriate may file a protective Form 708 in order to start the period for assessment of tax. To be a protective Form 708, it must provide all of the information otherwise required on Form 708, along with an affidavit, signed under penalties of perjury, setting forth the information on which that U.S. citizen or resident has relied in concluding that the donor or decedent, as the case may be, was not a covered expatriate, or that the transfer was not a covered gift or a covered bequest, as well as that person's efforts to obtain other information that might be relevant to these determinations. If that U.S. citizen or resident has obtained information from the Internal Revenue Service (IRS) (as described in § 28.2801-7(b)(1)), it must attach a copy of such information. The U.S. citizen or resident also must attach a copy of a completed Form 3520, Part III, for all trust distributions, or Part IV for all gifts and bequests, if applicable. If the return meets the requirements of this paragraph (b)(i), and if the IRS does not assess a section 2801 tax liability for that tax year within the limitations period for assessment stated in section 6501, the IRS may not later assess a section 2801 tax with regard to any transfer reported on that Form 708.

(ii) A U.S. citizen or resident who receives a gift or bequest from an expatriate and who files a protective Form 708 meeting the requirements of paragraph (b)(i) of this section showing no tax due, absent fraud or other special factors, will not be subject to any additions to tax for late filing under section 6651(a)(1) or for late payment under section 6651(a)(2), even if the gift or bequest is determined to be a covered gift or covered bequest from a covered expatriate within the limitations period for assessment stated in section 6501. Notwithstanding the foregoing, however, if a U.S. citizen or resident knows, or has reason to know, that the information provided by the IRS or any other source is incorrect or incomplete, that U.S. citizen or resident may not rely on that information, and except as provided in the preceding paragraph (b)(i) of this section, may be subject to all of the generally applicable provisions governing assessment of tax,

collection of tax, and penalties. See sections 6501, 6502, 6651 and 6662.

(c) *Effective/applicability dates.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more signing tax return preparers to prepare a return or claim for refund of any tax to which this part 28 applies, other than for the person, at any time during a return period, must satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6071–1 Time for filing returns.

(a) *In general*—(1) A U.S. recipient as defined in § 28.2801–2(e) must file Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates,” on or before the fifteenth day of the eighteenth calendar month following the close of the calendar year in which the covered gift or covered bequest was received. Notwithstanding the preceding sentence, the due date for a Form 708 reporting a covered bequest that is not received on the decedent’s date of death under § 28.2801–4(d)(3) is the later of—

(i) The fifteenth day of the eighteenth calendar month following the close of the calendar year in which the covered expatriate died; or

(ii) The fifteenth day of the sixth month of the calendar year following the close of the calendar year in which the covered bequest was received.

(2) If a U.S. recipient receives multiple covered gifts and covered bequests during the same calendar year, the rule in paragraph (a)(1) of this section may result in different due dates and the filing of multiple returns reporting the different transfers received during the same calendar year.

(b) *Migrated foreign trust.* The due date for a Form 708 for the year in which a foreign trust becomes a domestic trust is the fifteenth day of the sixth month of the calendar year following the close of the calendar year in which the foreign trust becomes a domestic trust.

(c) *Certain returns by foreign trusts*—(1) *Election under § 28.2801–5(d) for calendar year in which no covered gift or covered bequest received.* A foreign trust making an election to be treated as

a domestic trust for purposes of section 2801 under § 28.2801–5(d) for a calendar year in which the foreign trust received no covered gifts or covered bequests must file a Form 708 on or before the fifteenth day of the sixth month of the calendar year following the close of the calendar year for which the election is made.

(2) *Certification to maintain election under § 28.2801–5(d) for calendar year in which no covered gift or covered bequest received.* An electing foreign trust filing a Form 708 to certify that the electing foreign trust did not receive any covered gifts or covered bequests during the calendar year must file the Form 708 on or before the fifteenth day of the sixth month of the calendar year following the close of that calendar year. See § 28.2801–5(d)(4).

(d) *Transition period.* The Form 708 reporting covered gifts or covered bequests received on or after June 17, 2008, and before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, will be due within a reasonable period of time after the date of that publication as specified in the final regulations, but in no event before the due date of the first return required under the final regulations for covered gifts or covered bequests received after the final regulations are published.

(e) *Effective/applicability dates.* This section applies to each Form 708 filed on or after the date on which a Treasury decision is published adopting these rules as final regulations in the **Federal Register**.

§ 28.6081–1 Automatic extension of time for filing returns reporting gifts and bequests from covered expatriates.

(a) *In general.* A U.S. recipient as defined in § 28.2801–2(e) may request an extension of time to file a Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates,” by filing Form 7004, “Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.” A U.S. recipient must include on Form 7004 an estimate of the amount of section 2801 tax liability and must file Form 7004 with the Internal Revenue Service office designated in the Form’s instructions (except as provided in § 301.6091–1(b) of this chapter for hand-carried documents).

(b) *Automatic extension.* A U.S. recipient as defined in § 28.2801–2(e) will be allowed an automatic six-month extension of time beyond the date prescribed in § 28.6071–1 to file Form 708 if Form 7004 is filed on or before the due date for filing Form 708 in

accordance with the procedures under paragraph (a) of this section.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (b) of this section will not extend the time for payment of any tax due with such return.

(d) *Penalties.* See section 6651 regarding penalties for failure to file the required tax return or failure to pay the amount shown as tax on the return.

(e) *Effective/applicability dates.* This section applies to applications for an extension of time to file Form 708 filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6091–1 Place for filing returns.

A U.S. recipient as defined in § 28.2801–2(e) must file Form 708, “U.S. Return of Gifts and Bequests from Covered Expatriates,” with the Internal Revenue Service office designated in the instructions applicable to the Form.

§ 28.6101–1 Period covered by returns.

See § 28.6011–1 for the rules relating to the period covered by the return.

§ 28.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of any tax to which this part 28 applies must furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability dates.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund of the tax under chapter 15 of subtitle B of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6151-1 Time and place for paying tax shown on returns.

The tax due under this part 28 must be paid at the time prescribed in § 28.6071-1 for filing the return, and at the place prescribed in § 28.6091-1 for filing the return.

§ 28.6694-1 Section 6694 penalties applicable to return preparer.

(a) *In general.* For general rules regarding section 6694 penalties applicable to preparers of returns or claims for refund of the tax under chapter 15 of subtitle B of the Internal Revenue Code (Code), see § 1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Code is subject to penalties under section 6694(a) in the manner stated in § 1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Code is subject to penalties under section 6694(b) in the manner stated in § 1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of the period of collection when a tax return preparer who prepared a return or claim for refund of tax under chapter 15 of subtitle B of the

Code pays 15 percent of a penalty for understatement of taxpayer's liability, and for procedural matters relating to the investigation, assessment, and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694-4 of this chapter apply.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Internal Revenue Code (Code) is subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6696-1 Claims for credit or refund by tax return preparers and appraisers.

(a) *In general.* For rules regarding claims for credit or refund by a tax return preparer who prepared a return or claim for refund for any tax under chapter 15 of subtitle B of the Internal Revenue Code (Code), or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A of the Code, the rules under § 1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, appraisals, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.7701-1 Tax return preparer.

For the definition of the term *tax return preparer*, see § 301.7701-15 of this chapter.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015-22574 Filed 9-9-15; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2009-0805; FRL-9933-66-Region 5]

Wisconsin; Disapproval of Infrastructure SIP With Respect to Oxides of Nitrogen as a Precursor to Ozone Provisions for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove an element of State Implementation Plan (SIP) submissions from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to an infrastructure requirement for states to correctly address oxides of nitrogen (NO_x) as a precursor to ozone in their respective prevention of significant deterioration (PSD) programs.

DATES: Comments must be received on or before October 13, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0805 by one of the following methods:

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

2. *Email:* aburano.douglas@epa.gov.

3. *Fax:* (312) 408-2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and

Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA-R05-OAR-2009-0805. 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 docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m.,

Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we", "us", or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of this SIP submission?
- III. What is EPA's review of this SIP submission?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews.

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of this SIP submission?

This rulemaking addresses a January 24, 2011, submission supplemented on June 29, 2012, from the Wisconsin Department of Natural Resources (WDNR) intended to address all applicable infrastructure requirements for the 2006 PM_{2.5} NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rulemaking is only taking action on a specific requirement of PSD, NO_x as a precursor to ozone, which is a component under the infrastructure elements described in CAA sections 110(a)(2)(C), (D)(i)(II), and (J). The majority of the other infrastructure elements were approved in an October 29, 2012 (77 FR 65478) rulemaking.

III. What is EPA's review of this SIP submission?

On September 13, 2013, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (2013 Memo). As noted in the 2013 Memo, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. WDNR provided public comment opportunities on both its January 24, 2011 and October 29, 2012 submittals. EPA is also soliciting comments on the specific requirement we are evaluating in this proposed rulemaking. WDNR provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2006 PM_{2.5} NAAQS, as applicable. The following review only evaluates the state's submissions for PSD provisions that explicitly identify NO_x as a precursor to ozone in the PSD program.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005

(see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including those identifying NO_x as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683, November 29, 2005).

During the comment period following the proposed approval for the infrastructure requirements of the 1997 ozone and PM_{2.5} NAAQS (76 FR 23757), two commenters observed that although EPA proposed to approve Wisconsin's infrastructure SIP as meeting the correct requirements for NO_x as a precursor to ozone in the State's PSD program, Wisconsin's PSD SIP does not contain the most recent PSD program revisions required by EPA for this purpose. A subsequent review of Wisconsin's PSD SIP indicated that the commenters were correct in their assertion. Specifically, Wisconsin had not made necessary revisions to its PSD program with respect to the identification of NO_x as a precursor to ozone, consistent with the explicit requirements of the Phase 2 Rule. This led EPA to disapprove Wisconsin's infrastructure SIP in June 2012 for this narrow portion of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} (77 FR 35870).

This final disapproval triggered the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the effective date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan revision before the Administrator promulgates such FIP. Wisconsin has taken multiple steps to address NO_x as a precursor to ozone in its PSD rules, starting in June 2012 with a note in rule. The state followed up with rule changes, effective August 2014, and SIP approved on October 6, 2014. (79 FR 60064) Prior to the effective date of the August 2014 rules, four additional areas requiring updated language were identified by EPA. Wisconsin was too far in the rule process to add additional changes at that point. Wisconsin immediately started a new rule package to address these additional areas, but these changes will not be effective until approximately August 2016 due to the length of the administrative rule process in Wisconsin.

In our initial rulemaking on Wisconsin's 2006 PM_{2.5} infrastructure SIP, we did not take action on this

provision because of our previous disapproval. However, a proposed consent decree¹ between the Sierra Club and EPA requires EPA to take action on this portion of Wisconsin's submittal by November 30, 2015. Today's disapproval does not trigger a new FIP clock because the missing provisions are the same as those disapproved in the 1997 ozone and PM_{2.5} action. The evaluation of a state's PSD program is a requirement under the elements described in section 110(a)(2)(C) and (J), and the most common way to comply with section 110(a)(2)(D)(i)(II). Therefore, EPA is proposing to narrowly disapprove the PSD provision of NO_x as a precursor to ozone in the PSD portion of these three elements.

IV. What action is EPA taking?

EPA is proposing to narrowly disapprove portions of a submission from Wisconsin certifying that its current SIP is sufficient to meet required infrastructure elements. Specifically, EPA is proposing to disapprove the NO_x as a precursor to ozone provisions for the PSD portions of infrastructure elements under CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 2006 PM_{2.5} NAAQS.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

¹ Case 3:12-cv-06472-CRB, filed on January 21, 2015.

Unfunded Mandates Reform Act

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 proposed rule does not have tribal implications and would not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 28, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015-22863 Filed 9-9-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0198; FRL-9933-38-
Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Connecticut regarding the infrastructure requirements of Clean Air Act (CAA or Act) for the 2008 lead (Pb), 2008 8-hr ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to convert conditional approvals for several infrastructure requirements for the 1997 8-hour ozone NAAQS and for the 1997 and 2006 fine particle (PM_{2.5}) NAAQS to full approval under the CAA. Furthermore, we are proposing to newly conditionally approve elements of

Connecticut's infrastructure requirements of the Clean Air Act regarding prevention of significant deterioration requirements to treat nitrogen oxides as a precursor to ozone and to establish a minor source baseline date for PM_{2.5} emissions. Lastly, EPA is proposing to approve three statutes submitted by Connecticut in support of their demonstration that the infrastructure requirements of the CAA have been met.

The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before October 13, 2015.

ADDRESSES: Submit your comments, identified by the appropriate Docket ID number as indicated in the instructions section below, by one of the following methods:

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

2. *Email: arnold.anne@epa.gov.*

3. *Fax: (617) 918-0047.*

4. *Mail:* Anne Arnold, Manager, Air Quality Planning Unit, Air Programs Branch, Mail Code OEP05-2, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912.

5. *Hand Delivery:* Anne Arnold, Manager, Air Quality Planning Unit, Air Programs Branch, Mail Code OEP05-2, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA-R01-OAR-2015-0198. 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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, EPA New England Regional Office, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Alison Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912; (617) 918-1684; *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we", "us", or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of these State Implementation Plan submissions?
 - A. What Connecticut SIP submissions does this rulemaking address?
 - B. Why did the state make these SIP submissions?
 - C. What is the scope of this rulemaking?
- III. What guidance is EPA using to evaluate these SIP submissions?
- IV. What is the result of EPA's review of these SIP submissions?
 - A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

- B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
- C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
 - i. Sub-Element 1: Enforcement of SIP measures
 - ii. Sub-Element 2: Prevention of Significant Deterioration Program for Major Sources and Major Modifications
 - iii. Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications
- D. Section 110(a)(2)(D)—Interstate Transport
 - i. Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)
 - ii. Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)
 - iii. Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)
 - iv. Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement
 - v. Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement
- E. Section 110(a)(2)(E)—Adequate Resources
- F. Section 110(a)(2)(F)—Stationary Source Monitoring System
- G. Section 110(a)(2)(G)—Emergency Powers
- H. Section 110(a)(2)(H)—Future SIP Revisions
- I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
- J. Section 110(a)(2)(J)—Consultation with Government Officials; Public Notifications; PSD; Visibility Protection
 - i. Sub-Element 1: Consultation With Government Officials
 - ii. Sub-Element 2: Public notification
 - iii. Sub-Element 3: PSD
 - iv. Sub-Element 4: Visibility Protection
- K. Section 110(a)(2)(K)—Air Quality Modeling/Data
- L. Section 110(a)(2)(L)—Permitting Fees
- M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
- N. Connecticut Statutes for Inclusion into the Connecticut SIP
- V. What action is EPA taking?
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these State Implementation Plan submissions?

A. What Connecticut SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Connecticut Department of Energy and Environmental Protection (CT DEEP). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—October 13, 2011; 2008 ozone—December 28, 2012; 2010 NO₂—January 2, 2013; and, 2010 SO₂—May 30, 2013. This rulemaking also addresses certain infrastructure SIP elements for the 1997 and 2006 PM_{2.5}¹ NAAQS for which EPA previously issued a conditional approval. See 77 FR 63228 (October 16, 2012). The state submitted these infrastructure SIPs on September 4, 2008, and September 18, 2009, respectively. Lastly, this rulemaking addresses one infrastructure SIP element for the 1997 8-hour ozone NAAQS for which EPA previously issued a conditional approval. See 76 FR 40248 (July 8, 2011). The state submitted this infrastructure SIP on December 28, 2007.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 and 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or

¹PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as “fine” particles.

certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011, “Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, and to elements of Connecticut’s infrastructure SIP submittals for the 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS which we previously conditionally approved. See 77 FR 63228 (October 16, 2012). To the extent that the PSD program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone NAAQS, will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Connecticut that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Additionally, we are proposing to convert conditional approvals for several infrastructure requirements for the 1997 8-hour ozone NAAQS (see 76 FR 40248 (July 8, 2011)) and for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR 63228 (October 16, 2012)) to full approval, proposing approval of three statutes submitted by Connecticut that support the infrastructure SIP submittals, and proposing to conditionally approve certain aspects of the infrastructure SIP which pertain to the State’s PSD program.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2).

Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.” This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA’s taking any other action. Section 110(a)(2) includes the specific elements that “each such plan” must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA’s “Final New Source Review (NSR) Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA’s approach to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” See 79 FR 27241 at 27242–27245 (May 13, 2014).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states’ development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 PM_{2.5} NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA’s review of these SIP submissions?

Pursuant to section 110(a), and as noted in the 2011 Memo and the 2013 Memo, states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. CT DEEP held public hearings for each infrastructure SIP on the following dates: 2008 Pb—September 20, 2011; 2008 ozone—December 20, 2012; 2010 NO₂—December 20, 2012; and, 2010 SO₂—May 1, 2013. Connecticut received comments from EPA on each of its proposed infrastructure SIPs, and also received comments from a U.S. Army Regulatory Affairs Specialist on its proposed ozone and NO₂ infrastructure SIPs, and from a consultant with Enhesa in Washington, DC on its proposed SO₂ infrastructure SIP. EPA is also soliciting comment on our evaluation of the state’s infrastructure SIP submissions in this notice of proposed rulemaking. Connecticut provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, as applicable. The following review evaluates the state’s submissions in light of section 110(a)(2) requirements and relevant EPA guidance. The review also

evaluates certain infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS for which EPA previously issued conditional approvals. See 76 FR 40248 (July 8, 2011) and 77 FR 63228 (October 16, 2012.)

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.² In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state’s SIP has basic structural provisions for the implementation of the NAAQS.

Connecticut Public Act No. 11–80 established the Connecticut Department of Energy and Environmental Protection (CT DEEP), and Connecticut General Statutes (CGS) Section 22a–6(a)(1) provides the Commissioner of CT DEEP authority to adopt, amend or repeal environmental standards, criteria and regulations. It is under this general grant of authority that the Commissioner has adopted emissions standards and control measures for a variety of sources and pollutants. Connecticut also has SIP-approved provisions for specific pollutants. For example, CT DEEP has adopted primary and secondary ambient air quality standards for each of these pollutants in Regulations of Connecticut State Agencies (RCSA) Section 22a–174–24 as follows: For SO₂, Section 22a–174–24(d); for PM_{2.5}, Section 22a–174–24(f); for ozone, Section 22a–174–24(i); for NO₂, 22a–174–24(k); and for lead, Section 22a–174–24(l). As noted in EPA’s approval of Connecticut’s Section 22a–174–24, *Ambient Air Quality Standards*, on June 24, 2015 (80 FR 36242), Connecticut’s standards are consistent with the current federal NAAQS. Therefore, EPA proposes that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

In addition, we previously issued a conditional approval for Connecticut’s infrastructure SIP submittal made for the 1997 and 2006 PM_{2.5} NAAQS because portions of Connecticut’s

² See, e.g., EPA’s final rule on “National Ambient Air Quality Standards for Lead,” 73 FR 66964, 67034 (Nov. 12, 2008).

section 22a–174–24, Ambient Air Quality Standards were outdated. See 77 FR 63228 (October 16, 2012). However, as noted in our June 24, 2014 action mentioned above, Connecticut has revised their standards and they are now consistent with the federal NAAQS. In light of this, we propose to convert the conditional approval for this infrastructure requirement for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR 63228 (October 16, 2012)) to full approval. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

CT DEEP continues to operate a monitoring network, and EPA approved the state's 2015 Annual Air Monitoring Network Plan for PM_{2.5}, Pb, ozone, NO₂, and SO₂ on July 10, 2015. Furthermore, CT DEEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that CT DEEP has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA

(sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and, (iii) permitting program for minor sources and minor modifications. A discussion of GHG permitting and the "Tailoring Rule"³ is included within our evaluation of the PSD provisions of Connecticut's submittals.

i. Sub-Element 1: Enforcement of SIP Measures

CT DEEP staffs and implements an enforcement program pursuant to CGS section 22a. Specifically, CGS section 22a–6 authorizes the Commissioner of CT DEEP to inspect and investigate to ascertain whether violations of any statute, regulation, or permit may have occurred and to impose civil penalties. CGS section 22a–171 requires the Commissioner to "adopt, amend, repeal, and enforce regulations . . . and do any other act necessary to enforce the provisions of" CGS sections 22a–170 through 22a–206, which provide CT DEEP with the authority to, among other things, enforce its regulations, issue orders to correct violations of regulations or permits, impose state administrative penalties, and seek judicial relief. EPA proposes that Connecticut has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

ii. Sub-Element 2: Prevention of Significant Deterioration Program for Major Sources and Major Modifications

Prevention of significant deterioration (PSD) permitting requirements apply to new major sources or major modifications made to major sources, for pollutants where the area in which

the source is located is in attainment with, or unclassifiable with regard to, the relevant NAAQS. CT DEEP's EPA-approved PSD rules in RCSA sections 22a–174–1, 22a–174–2a, and 22a–174–3a contain provisions that address the majority of the applicable infrastructure SIP requirements related to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (see 70 FR 71612 at 71679, 71699–71700 (November 29, 2005)). This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat nitrogen oxides (NO_x) as a precursor to ozone. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. See 70 FR 71612 at 71683 (November 29, 2005).

Connecticut's PSD rules do not currently contain the provisions needed to ensure that NO_x be treated as a precursor to ozone, and the State's PSD rules must be changed in the future to meet this requirement. To correct this deficiency, the CT DEEP has committed, by letter dated August 5, 2015, to submit for EPA approval into the SIP provisions that meet the requirements at 40 CFR 51.166(b)(1) and (b)(2) relating to the requirement to treat NO_x as a precursor pollutant to ozone. Accordingly, as we articulate further on in our discussion of this sub-element, while the majority of Connecticut's submittals pertaining to section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS are consistent with the federal requirements, we are proposing to conditionally approve Connecticut's PSD regulations as to those specific regulatory provisions that will need to be amended by Connecticut in order to treat NO_x emissions as precursor emissions to ozone formation.

On October 20, 2010 (75 FR 64864), EPA issued a final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments,

³ In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM_{2.5} NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM_{2.5}, including adding the required elements for PM_{2.5} into a state's existing system of "increment analysis," which is the mechanism used in the PSD permitting program to estimate significant deterioration of ambient air quality for a pollutant in relation to new source construction or modification. The maximum allowable increment increases for different pollutants are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule described in the preceding paragraph revised the existing system for determining increment consumption by establishing a new "major source baseline date" for PM_{2.5} of October 20, 2010, and by establishing a trigger date for PM_{2.5} in relation to the definition of "minor source baseline date." These revisions to the federal PSD rules are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM_{2.5}. This change is codified in 40 CFR 51.166(b)(15)(i) and 52.21(b)(15)(i). States were required to revise their SIPs consistent with these changes to the federal regulations.

On October 9, 2012, Connecticut submitted revisions to its PSD program incorporating two of the four changes addressed by the 2010 NSR Rule. The two changes were 1) a revised definition of "Major source baseline date" that included a date for PM_{2.5} specifically; and 2) the addition of the maximum allowable increment for PM_{2.5}. EPA approved Connecticut's October 9, 2012 SIP revision on July 24, 2015 (80 FR 43960). Therefore, we propose to convert to a full approval the earlier conditional approval as it applies to these two elements of the EPA's 2010 rulemaking in the context of the infrastructure requirements for the 1997 and 2006 PM_{2.5} NAAQS. See 77 FR 63228 (October 16, 2012).

CT DEEP's October 9, 2012 SIP revision did not specifically address the two other changes EPA made to the PSD rules in 2010, and for the following reasons EPA did not intend for those two issues to be part of the conditional approval described in our October 16, 2012 notice. One of those changes is the requirement that a State's definition of "minor source baseline date" be amended to include a trigger date for PM_{2.5} emissions (see EPA's definition

for "minor source baseline date" at 40 CFR 51.166(b)(14)(ii)). Instead of using a specific date, EPA's definition for minor source baseline date provides that the minor source baseline date is triggered by a state's receipt of its first complete PSD application. At the time CT DEEP made its October 9, 2012 SIP revision, it would not have been possible for the State to have amended its regulation to include a specific minor source baseline date because no source had submitted a complete PSD application for PM_{2.5}. This is also true for CT DEEP's other infrastructure SIPs addressed in this action. This is so because CT DEEP's PSD regulations are structured in a way that uses actual specific dates based on submission of a first complete PSD application for a particular pollutant. (The approach contained in EPA's regulations is somewhat different in the sense that instead of using actual specific dates, EPA articulates the concept of a first complete PSD application as the minor source baseline date trigger.) EPA understands that CT DEEP did not receive a complete PSD application for a source subject to PSD for PM_{2.5} emissions until September 24, 2014. Consequently, the State could not have included an actual date in its definition of "minor source baseline date" within its October 9, 2012 SIP revision.

Although Connecticut could not establish an actual date for PM_{2.5} in its definition of "minor source baseline date," at the time of its October 9, 2012 SIP revision, Connecticut is now able to revise this definition to include a specific date that is consistent with EPA's definition because a complete PSD application has been submitted to CT DEEP for a major new source of PM_{2.5} emissions. Accordingly, the CT DEEP has committed by letter dated August 5, 2015, to submit for EPA approval into the SIP a minor source baseline date for PM_{2.5} that meets the requirements at 40 CFR 51.166(b)(14)(ii)(c). Consequently, we propose to conditionally approve Connecticut's submittals for this sub-element pertaining to section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Consistent with our reasoning above, we are also proposing to newly conditionally approve Connecticut's submittals for this sub-element with respect to the 1997 and 2006 PM_{2.5} NAAQS.

The fourth change to the PSD regulations that EPA made in 2010 was to add "equal or greater than 0.3 µg/m³ (annual average) for PM_{2.5}" to the definition of "baseline area." This requires states to determine whether

another baseline area, other than the baseline area where the PSD subject source is locating, needs to be analyzed based on the air quality impact predicted from the new PSD source. The impact on another baseline area is limited to any impacts above the defined thresholds contained within the definition of "baseline area" on another area within Connecticut. In other words, under EPA's PSD requirements the baseline area evaluation does not include within it analysis of a new source's impacts in another state.

Connecticut's current SIP and State PSD rules do not contain a definition of "baseline area." EPA has confirmed in communications with CT DEEP that it treats the entire state as a single baseline area, which obviates the need to have a definition for this term. EPA agrees that the language EPA added to the federal definition of "baseline area" in the federal PSD requirements is not necessary in Connecticut because there is no other baseline area within the State.

Moreover, EPA has concluded that the lack of such a specific definition of "baseline area" does not in theory, and has not in fact over many years, preclude CT DEEP from ensuring that emissions from a major new source or major modification will not consume more increment than would be available or allowable even had CT DEEP adopted a definition that was exactly the same as EPA's definition of baseline area. In other words, CT DEEP has a regulatory structure that it has used over many years to ensure that increment consumption arising from new construction comports as a practical matter with federal PSD requirements and is functionally equivalent. EPA last approved CT DEEP's increment calculation methodology on February 27, 2003 (68 FR 9009).

Based on actual emissions data from the most recent National Emission Inventory emissions data base (2011), there are only 15 existing major stationary sources in Connecticut, all of which are major due to NO_x emissions. None of these sources emitted 100 tons per year or more of PM₁₀, PM_{2.5}, or VOC emissions. Further, 10 of these NO_x sources are the only such source in their city or town, two are located in Middletown, and three are located in Bridgeport. Typically, the determination of whether a new or modified source's emissions could potentially consume more than the available increment in an area depends on whether other significant sources of air emissions impact the same area. The facts described above show how unlikely this would be, even if theoretically possible.

EPA has determined that the differences between Connecticut's mechanism for determining if emissions from the new or modified source will exceed the available increment and EPA's mechanism is negligible, if different at all, in terms of emissions. Connecticut's and EPA's mechanisms both take into account, in a manner sufficiently protective of air quality, consumption of available increment from nearby sources.

In addition to the above, once CT DEEP addresses the conditional approval discussed earlier regarding the State's definition of "minor source baseline date," the impact of Connecticut's approved mechanism for determining available increment most likely will result in a *more* conservative or protective approach than EPA's increment structure. This is because all growth within Connecticut after September 24, 2014, that would result in any increase in PM_{2.5} emissions will be consuming the available increment for a new or modified source required to obtain a PSD permit for PM_{2.5} emissions *anywhere within the State*. Under EPA's mechanism for determining available increment, because there has, to date, only been a PSD application submitted for a new source that constructed in New Haven County, changes to the available increment would only be evaluated from sources in New Haven County. Put differently, EPA's mechanism would allow some of the future growth in PM_{2.5} emissions *outside* of New Haven County to be considered part of the baseline concentration and, therefore, would not consume increment elsewhere in Connecticut.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that directly emit PM_{2.5} emissions and sources that emit other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursor pollutants. In the 2008 rule, EPA identified precursors to PM_{2.5} for the PSD program to be SO₂ and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that volatile organic

compounds (VOCs) are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area *are* significant contributors to that area's ambient PM_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i) define "significant" for PM_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. See 73 FR 28321 at 28341 (May 16, 2008).⁴

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as "condensables", in

⁴ EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM₁₀ nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, the EPA's approval of Connecticut's infrastructure SIP as to elements C, D(i)(III), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 2011. See 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

On October 9, 2012, Connecticut submitted revisions to its PSD program incorporating the necessary changes required by the 2008 NSR Rule with respect to provisions that explicitly identify precursors to PM_{2.5}. EPA approved Connecticut's October 9, 2012 SIP revision on July 24, 2015 (80 FR 43960).

Connecticut's SIP-approved PSD program does not contain a specific provision that explicitly contains the language in 40 CFR 51.166(b)(49)(i) addressing the inclusion of the gaseous, condensable fraction of PM_{2.5} and PM₁₀ for the purpose of PSD applicability or establishing permit emissions limits conditions.

However, by letter submitted to EPA Region 1 and dated August 5, 2015 Connecticut explained that its major stationary source preconstruction permitting program does, in fact, require inclusion of the condensable portion of PM₁₀ and PM_{2.5} for PSD applicable purposes and establishing permit emissions limits and conditions, because Section 22a–174–1 of the State's regulations defines those two pollutants in terms of an amount measured at *ambient air conditions*. Consequently, because the gaseous, condensable portions of PM₁₀ and PM_{2.5} are, in fact, condensed at ambient air conditions, Connecticut's requirements meet the corresponding federal requirements.

Therefore, we are proposing that Connecticut has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS regarding the requirements of EPA's 2008 NSR Rule. Additionally, we are also proposing to convert our prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR 63228 (October 16, 2012)) to a full approval.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group*

v. Environmental Protection Agency, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

The EPA is planning to take additional steps to revise federal PSD rules in light of the Supreme Court opinion and subsequent D.C. Circuit judgment. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, the EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both court decisions.

At present, the EPA has determined that Connecticut's SIP is sufficient to

satisfy this sub-element of section 110(a)(2)(C) (as well as sub-elements (D)(i)(II) and (J)(iii)) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the application of BACT.

The approved Connecticut PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements C, D (sub-element (i)(II)), and J. The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from "anyway sources" that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Connecticut's infrastructure SIP as to the requirements of Element C (as well as sub-elements (D)(i)(II) and (J)(iii)).

For the purposes of the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for Connecticut.

In summary, we are proposing to approve the majority of Connecticut's submittals for this sub-element pertaining to section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO_x, and 2010 SO₂ NAAQS, but to conditionally approve the aspects pertaining to treating NO_x as a precursor to ozone and to establishing a minor source baseline date for PM_{2.5}. We are also proposing to newly conditionally approve Connecticut's submittals for this sub-element with respect to the 1997 and 2006 PM_{2.5} NAAQS for these same PSD requirements.

iii. Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP

submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approved Connecticut's minor NSR program, as well as updates to that program, with the most recent approval occurring on February 28, 2003 (68 FR 9009). Since this date, Connecticut and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

We are proposing to find that Connecticut has met the requirement to have a SIP approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must comply with. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

i. Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM_{2.5} or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit

Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state, EPA anticipates that this would be a rare situation (e.g., sources emitting large quantities of Pb in close proximity to state boundaries). The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Connecticut's infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no sources of Pb emissions located in close proximity to any of the state's borders with neighboring states. Additionally, Connecticut's submittal and the emissions data the state collects from its sources indicate that there is no single source of Pb, or group of sources, anywhere within the state that emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of data within our National Emissions Inventory (NEI) database confirms this, and, therefore, we propose that Connecticut has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

With respect to the 2010 NO₂ NAAQS, on February 17, 2012, EPA designated the entire country as "unclassifiable/attainment" for this standard, explaining that this designation means that "available information does not indicate that the air quality in these areas exceeds the 2010 NO₂ NAAQS." See 77 FR 9532 (February 17, 2012). In other words, Connecticut and all neighboring states are currently designated as "unclassifiable/attainment" for the 2010 NO₂ NAAQS.

NO_x emissions in Fairfield and New Haven Counties in Connecticut are projected to decrease by more than 50 percent between 2007 and 2025, further reducing any impacts from Connecticut on other states. Similar reductions are expected throughout the rest of the state (see Connecticut's PM_{2.5} Redesignation Request and Maintenance Plan, Technical Support Document, June 22, 2012 included in the docket for this notice). Furthermore, EPA examined the design values from NO₂ monitors in Connecticut and neighboring states based on data collected between 2011 and 2013. In Connecticut, the highest

design value was 55 parts per billion (ppb) (versus the NO₂ standard of 100 ppb) at a monitor in New Haven. The highest design values in neighboring states were 60 ppb in New York (Bronx site 360050133), 52 ppb in Massachusetts (Worcester site 250270023), and 43 ppb in Rhode Island (Providence site 440070012). EPA believes that, with the continued implementation of Connecticut's SIP-approved PSD and NNSR regulations found in RCSA section 22a-174-3a, the state's low monitored values of NO₂ will continue. In other words, the NO₂ emissions from Connecticut are not expected to cause or contribute to a violation of the 2010 NO₂ NAAQS in another state,⁵ and these emissions are not likely to interfere with the maintenance of the 2010 NO₂ NAAQS in another state. Therefore, EPA proposes that Connecticut has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO₂ NAAQS.

In summary, we are proposing that Connecticut has met section 110(a)(2)(D)(i)(I) for the 2008 Pb and 2010 NO₂ NAAQS. Connecticut made a SIP submission with respect to section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS on June 15, 2015 and the 2010 SO₂ NAAQS on May 30, 2013. EPA is reviewing these SIP submissions and will take actions on this infrastructure requirement for both the 2008 ozone NAAQS and the 2010 SO₂ NAAQS at a later date.

ii. Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. One way for a state to meet this requirement is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. As has already been discussed in the paragraphs addressing the PSD sub-element of Element C, Connecticut has satisfied the majority, though not all, of the applicable PSD implementation rule requirements.

States also have an obligation to ensure that sources located in

⁵ The highest design value for the 1 hr NO₂ standard for a monitor in an adjacent state and is located nearby Connecticut is 60 ppb at a monitor in Bronx, New York.

nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state. EPA approved Connecticut's NNSR regulations on February 27, 2003 (68 FR 9009). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51.

As noted above and in Element C, Connecticut's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules, although Connecticut has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Connecticut's infrastructure submissions. Consequently, we are proposing to conditionally approve this sub-element for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Additionally, we are proposing to convert our prior conditional approval of this sub-element as it relates to certain PSD implementation rules described under Element C above for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR 63228 (October 16, 2012)) to a full approval. We are also proposing to newly conditionally approve this sub-element for the 1997 and 2006 PM_{2.5} NAAQS for certain other implementation rule requirements for the reasons discussed under Element C above.

iii. Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

Connecticut's Regional Haze SIP was approved by EPA on July, 10, 2014 (79 FR 39322). Accordingly, EPA proposes that Connecticut has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

iv. Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement.

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

EPA approved revisions to Connecticut's PSD program on July 24, 2015 (80 FR 43960), including the element pertaining to notification to neighboring states of the issuance of PSD permits. Therefore, we propose to approve Connecticut's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. EPA also proposes to convert the previous conditional approvals for this infrastructure requirement for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR 63228 (October 16, 2012)) and the 1997 ozone NAAQS (see 76 FR 40255 (July 8, 2011)) to full approval. Connecticut has no obligations under any other provision of section 126.

v. Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Connecticut does not have any pending obligations under section 115 for the 2008 Pb, 2008 ozone, 2010 NO₂, or 2010 SO₂ NAAQS. Therefore, EPA is proposing that Connecticut has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related

issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because Connecticut does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Connecticut, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. CGS section 22a–171 authorizes the Commissioner of the CT DEEP to enforce the state's air laws, accept and administer grants, and exercise incidental powers necessary to carry out the law. The Connecticut SIP, as originally submitted on March 3, 1972, and subsequently amended, provides additional descriptions of the organizations, staffing, funding and physical resources necessary to carry out the plan. EPA proposes that Connecticut has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

Sub-element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In Connecticut, no board or body approves permits or enforcement orders; these are approved by the Commissioner of CT DEEP. Thus, Connecticut is

subject only to the requirements of paragraph (a)(2) of section 128 of the CAA. Infrastructure SIPs submitted by Connecticut include descriptions of conflict-of-interest provisions in CGS section 1–85, which applies to all state employees and public officials. Section 1–85 prevents the Commissioner from acting on a matter in which the Commissioner has an interest that is “in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of” Connecticut. Connecticut submitted CGS section 1–85 for incorporation into the SIP on December 28, 2012 with its infrastructure SIP for the 2008 ozone NAAQS,⁶ and we are herein proposing to approve this statute into the Connecticut SIP.

Upon approval of CGS section 1–85 into the SIP, EPA proposes that Connecticut has met the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. In addition, EPA previously issued a conditional approval to Connecticut for this infrastructure requirement for the 1997 and 2006 PM_{2.5} NAAQS. See 77 FR 63228 (October 16, 2012). Given that Connecticut has now addressed this issue, we are also proposing to convert the prior conditional approval for this infrastructure requirement for the 1997 and 2006 PM_{2.5} NAAQS to full approval.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

CGS section 22a–6(a)(5) authorizes the Commissioner to enter at all reasonable times, any public or private property (except a private residence) to investigate possible violations of any

⁶ CT DEEP also requested approval into the SIP of CGS section 1–85 in its January 2, 2013 infrastructure SIP for the 2002 NO₂ NAAQS.

statute, regulation, order or permit. Additionally, CGS section 22a–174 authorizes the Commissioner to require periodic inspection of sources of air pollution and to require any person to maintain, and to submit to CT DEEP, certain records relating to air pollution or to the operation of facilities designed to abate air pollution. For monitoring possible air violations, CT DEEP implements RCSA section 22a–174–4, “*Source monitoring, record keeping and reporting*,” to require the installation, maintenance, and use of emissions monitoring devices and to require periodic reporting to the Commissioner of the nature and extent of the emissions. Section 22a–174–4 has been approved into the SIP (see 79 FR 41427 (July 16, 2014)). Additionally, CT DEEP implements RCSA section 22a–175–5, “*Methods for sampling, emissions testing, sample analysis, and reporting*,” which provides, among other things, specific test methods to be used to demonstrate compliance with various aspects of Connecticut’s air regulations, and this rule has also been approved into the SIP (see 46 FR 43418 (December 19, 1980)). Furthermore, under RCSA section 22a–174–10, emissions data are to be available to the public and are not entitled to protection as a trade secret (see 37 FR 23085 (October 28, 1972)). EPA recognizes that Connecticut routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA, therefore, proposes that Connecticut has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” Section 303 further authorizes the Administrator to issue “such orders as may be necessary to protect public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection . . . by commencement of such civil action.”

We propose to find that Connecticut’s submittals and certain state statutes provide for authority comparable to that in section 303. Connecticut’s submittals

specify that CGS section 22a–181, *Emergency Action*, authorizes the Commissioner of the CT DEEP to issue an order requiring any person to immediately reduce or discontinue air pollution as required to protect the public health or safety. In a letter dated August 5, 2015, Connecticut also specified that CGS section 22a–7 grants the Commissioner the authority, whenever he finds “that any person is causing, engaging in or maintaining, or is about to cause, engage in or maintain, any condition or activity which, in his judgment, will result in or is likely to result in imminent and substantial damage to the environment, or to public health within the jurisdiction of the commissioner under the provisions of chapter [] . . . 446c [Air Pollution Control] . . . [to] issue a cease and desist order in writing to such person to discontinue, abate or alleviate such condition or activity.” This section further provides the Commissioner with the authority to seek a court “to enjoin any person from violating a cease and desist order issued pursuant to [sec. 22a–7] and to compel compliance with such order.”

Section 110(a)(2)(G) also requires that, for any NAAQS, except Pb, Connecticut have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. See 40 CFR part 51 subpart H. Classifications for the four AQCRs in Connecticut can be found at 40 CFR 52.371. Connecticut’s portion of the New Jersey–New York–Connecticut Interstate AQCR is classified as a Priority I area for SO_x, NO₂, and ozone. In addition, Connecticut’s portion of the Hartford–New Haven–Springfield Interstate AQCR is classified as a Priority I area for SO_x and ozone. Consequently, Connecticut’s SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152, as appropriate, with respect to these pollutants. As noted in Connecticut’s infrastructure SIP submittals for ozone, NO₂, and SO₂, Connecticut has adopted “*Air pollution emergency episode procedures*” at RCSA section 22a–174–6. This regulation, originally numbered RCSA 19–508–6, was initially approved into the Connecticut SIP on May 31, 1972 (37 FR 23085), with amendments to the rule approved on December 23, 1980 (45 FR 84769).

As stated in Connecticut’s infrastructure SIP submittals under the discussion of public notification (Element J), Connecticut also, as a

matter of practice, posts on the internet daily forecasted ozone and fine particle levels through the EPA AirNow and EPA EnviroFlash systems. Information regarding these two systems is available on EPA’s Web site at www.airnow.gov. Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone or 24-hour PM_{2.5} standard. In addition, when levels are expected to exceed the ozone or PM_{2.5} standard in Connecticut, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system.

Connecticut’s participation in the AirNow and EnviroFlash programs addresses several of the public announcement and communications procedures and coordination with the National Weather Service included in the discussion of contingency plans in subpart H. See 40 CFR 51.152(a)(2), (b)(1), and (b)(3).

In addition, Connecticut’s infrastructure SIP submittals reference CGS section 22a–174(c) under Element F, regarding the inspection of sources. This statute, which provides the Commissioner of CT DEEP with the authority to require periodic inspection of sources of air pollution, is also relevant under Element G, since 40 CFR 51.152(b)(2) requires each contingency plan to provide for the inspection of sources to be sure they are complying with any required emergency control actions.

Finally, with respect to Pb, we note that Pb is not explicitly included in the contingency plan requirements of subpart H. In addition, we note that there are no large sources of Pb in Connecticut. Specifically, a review of the National Emission Inventory shows that there are no sources of Pb in Connecticut that exceed EPA’s reporting threshold of 0.5 tons per year. Although not expected, if that situation were to change, as noted previously, Connecticut does have general authority (e.g., CGS sections 22a–7 and 22a–181) to restrain any source from causing imminent and substantial endangerment.

Therefore, EPA proposes that Connecticut through the combination of statutes, regulations, and participation in EPA’s AirNow program discussed above, has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to: changes in the NAAQS; availability of improved methods for attaining the NAAQS; or an EPA finding that the SIP is substantially inadequate.

Connecticut certifies that its SIP may be revised should EPA find that it is substantially inadequate to attain a standard or to comply with any additional requirements under the CAA and notes that CGS section 22a–174(d) grants the Commissioner all incidental powers necessary to control and prohibit air pollution. EPA proposes that Connecticut has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submissions from Connecticut with respect to the requirements of CAA section 110(a)(2)(J) are described below.

i. Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

CGS section 22a–171, *Duties of Commissioner of Energy and Environmental Protection*, directs the Commissioner to consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in matters relating to air quality. Additionally, CGS section 22a–171 directs the Commissioner to initiate and supervise state-wide programs of air pollution control education and to adopt, amend, repeal and enforce air regulations. Furthermore, RCSA section 22a–174–2a, which has been approved into Connecticut's SIP (see 80 FR 43960 (July 24, 2015)), directs CT DEEP to

notify relevant municipal officials and FLMs, among others, of tentative determinations by CT DEEP with respect to certain permits. In its SO₂ infrastructure SIP submittal, CT DEEP submits CGS section 22a–171 for inclusion into the SIP. EPA proposes to approve this statute into the SIP and proposes that Connecticut has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

ii. Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

As part of the fulfillment of CGS section 22a–171, *Duties of Commissioner of Energy and Environmental Protection*, Connecticut issues press releases and posts warnings on its Web site advising people what they can do to help prevent NAAQS exceedances and avoid adverse health effects on poor air quality days. Connecticut is also an active partner in EPA's AirNow and Enviroflash air quality alert programs. EPA proposes that Connecticut has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

iii. Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Connecticut's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs above addressing section 110(a)(2)(C), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Our proposed actions are reiterated below.

As noted above in Element C, Connecticut's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules, although Connecticut has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Connecticut's infrastructure submissions. Consequently, we are proposing to conditionally approve this sub-element for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Additionally, we are proposing to convert our prior conditional approval of this sub-element as it relates to certain PSD implementation rules described under Element C above for the 1997 and 2006 PM_{2.5} NAAQS (see 77 FR

63228 (October 16, 2012)) to a full approval. We are also proposing to newly conditionally approve this sub-element for the 1997 and 2006 PM_{2.5} NAAQS for certain other implementation rule requirements for the reasons discussed under Element C above.

iv. Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request.

Connecticut reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, "Guidelines on Air Quality Models." The modeling data are sent to EPA along with the draft major permit. Pursuant to CGS section 22a–5, the Commissioner is directed to "promote and coordinate management of . . . air resources to assure their protection, enhancement and proper allocation and utilization" and to "provide for the prevention and abatement of all . . . air pollution including, but not limited to, that related to particulates, gases, dust, vapors, [and] odors." Under RCSA section 22a–174–3a(i), *Ambient Air Quality Analysis*, which has been approved into the Connecticut SIP on February 27, 2003 (68 FR 3009), the Commissioner is authorized to request any owner or operator to submit an ambient air quality impact analysis using CT DEEP approved air quality models and modeling protocols. The state also collaborates with the Ozone Transport Commission (OTC), and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban airshed

modeling. EPA proposes that Connecticut has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

EPA's full approval of Connecticut's Title V program became effective on May 31, 2002. See 67 FR 31966 (May 13, 2002). Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. CGS section 22a-174(g) directs the Commissioner of CT DEEP to require the payment of a fee sufficient to cover the reasonable cost of reviewing and acting upon an application for, and monitoring compliance with, any state or federal permit, license, registration, order, or certificate. CT DEEP implements this directive through state regulations at RCSA sections 22a-174-26 and 22a-174-33, which contain specific requirements related to permit fees, including fees for Title V sources. EPA proposes that Connecticut has met the infrastructure SIP requirements of

section 110(a)(2)(L) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

Pursuant to element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP.

CGS section 4-168, *Notice prior to action on regulations*, provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and an opportunity for public hearing for all SIP-related actions. EPA proposes that Connecticut has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

N. Connecticut Statutes for Inclusion Into the Connecticut SIP

As noted above in the discussion of elements E and J, Connecticut submitted, and EPA is proposing to approve, CGS sections 1-85 and 22a-171 for approval into the SIP. In addition, in its May 30, 2013 infrastructure SIP for the 2010 SO₂ NAAQS, Connecticut submitted CGS section 16a-21a "*Sulfur content of home heating oil and off-road diesel*

fuel. Suspension of requirements for emergency," effective July 1, 2011. EPA previously approved a prior version of this statute, which had been included as a component of Connecticut's Regional Haze SIP, into the Connecticut SIP on July 10, 2014 (79 FR 39322). The updated version of the statute includes an additional provision limiting the sulfur content of number two heating oil. The sulfur content restrictions in the updated statute are more stringent than those in the previously approved version, thus meeting the anti-backsliding requirements of CAA section 110(J). Therefore, EPA is proposing to approve the updated statute into the Connecticut SIP.

V. What action is EPA taking?

EPA is proposing to approve SIP submissions from Connecticut certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of certain aspects relating to PSD which we are proposing to conditionally approve. EPA's proposed actions regarding these infrastructure SIP requirements are contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON CT INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

Element	2008 Pb	2008 Ozone	2010 NO ₂	2010 SO ₂
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	A*	A*	A*	A*
(C)(iii): Permitting program for minor sources and minor modifications	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	A	No action	A	No action
(D)(i)(II): PSD (prong 3)	A*	A*	A*	A*
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A
(D)(ii): Interstate Pollution Abatement	A	A	A	A
(D)(ii): International Pollution Abatement	A	A	A	A
(E)(i): Adequate resources	A	A	A	A
(E)(ii): State boards	A	A	A	A
(E)(iii): Necessary assurances with respect to local agencies	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+
(J)(i): Consultation with government officials	A	A	A	A
(J)(ii): Public notification	A	A	A	A
(J)(iii): PSD	A*	A*	A*	A*
(J)(iv): Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A

Key to Table 1: Proposed action on CT infrastructure SIP submittals for various NAAQS:
 A—Approve.
 A*—Approve, but conditionally approve aspect of PSD program relating to NO_x as a precursor to ozone and minor source baseline date for PM_{2.5}.
 +—Not germane to infrastructure SIPs.
 No action—EPA is taking no action on this infrastructure requirement.⁷
 NA—Not applicable.

With respect to the 1997 and 2006 PM_{2.5} NAAQS, EPA is proposing to convert conditional approvals for infrastructure requirements pertaining to Elements A, D(ii) (interstate pollution abatement), and E(ii) (state boards) to full approval. Also with respect to the 1997 and 2006 PM_{2.5} NAAQS, EPA is proposing to newly conditionally approve Connecticut's submittals pertaining to Elements C(ii), D(i)(II), and J(iii) for the requirements to treat NO_x as a precursor to ozone and to establish a minor source baseline date for PM_{2.5} in the PSD program.

With respect to the 1997 8-hour ozone NAAQS, EPA is proposing to convert the conditional approval for the infrastructure SIP requirements of 110(a)(2)(D)(ii) pertaining to interstate pollution abatement to a full approval.

In addition, EPA is proposing to approve, and incorporate into the Connecticut SIP, the following Connecticut statutes which were included for approval in Connecticut's infrastructure SIP submittals:

CGS Section 1–85 (Formerly Sec. 1–68), Interest in conflict with discharge of duties, effective in 1979.

CGS Section 22a–171, Duties of Commissioner of Energy and Environmental Protection, effective in 1971; and

CGS Section 16a–21a, Sulfur content of home heating oil and off-road diesel fuel, effective July 1, 2011.

As noted in Table 1, we are proposing to conditionally approve portions of Connecticut's infrastructure SIP submittals pertaining to the state's PSD program. The outstanding issues with the PSD program concern properly treating NO_x as a precursor to ozone and establishing a minor source baseline date for PM_{2.5} emissions.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the requirements mentioned above. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Connecticut SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval converted to a disapproval. If the State meets its commitment, within

the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements will also be disapproved at that time. In addition, a final disapproval would trigger the Federal Implementation Plan (FIP) requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference into the Connecticut SIP the three Connecticut statutes referenced in Section V above. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov> and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, 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 proposed 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 proposed 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 (see 65 FR 67249 (November 9, 2000)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: August 13, 2015.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2015–22027 Filed 9–9–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY
Coast Guard
46 CFR Parts 401, 403, and 404
[USCG–2015–0497]
RIN 1625–AC22
Great Lakes Pilotage Rates—2016 Annual Review and Changes to Methodology
AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; public meeting.

SUMMARY: The Coast Guard proposes revisions to the annual ratemaking methodology (“procedural changes”) and several Great Lakes pilotage regulations, and proposes new base pilotage rates and surcharges (“rate changes”), using that proposed revised methodology. The changes would take effect 30 days after publication of a final rule. Rates for pilotage services on the Great Lakes were last revised in February 2015 and by law must be reviewed annually. The Coast Guard intends for the proposed revised methodology to be understandable and transparent, and to encourage investment in pilots, infrastructure, and training while helping ensure safe, efficient, and reliable service on the Great Lakes. In addition, the Coast Guard announces a public meeting on September 17, 2015, at which the public may ask questions about the proposals and comment on them. This rulemaking promotes the Coast Guard’s maritime safety and stewardship (environmental protection) missions by promoting safe shipping on the Great Lakes.

DATES: Comments and related material must either be submitted to the online docket via www.regulations.gov on or before November 9, 2015 or reach the Docket Management Facility by that date. The public meeting will be held on September 17, 2015, from 1:00 p.m. to 4:00 p.m., but may end sooner depending on the extent to which the public has questions or comments.

ADDRESSES: The September 17, 2015 public meeting will be held at the Detroit Metro Airport Marriott, 30559 Flynn Dr., Romulus, MI 48174 (telephone 734–729–7555 or Marriott.com). Submit written comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online*—<http://www.regulations.gov> following Web site instructions.
- *Fax*—202–493–2251.

- *Mail or hand deliver*—Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hand delivery hours: 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email Todd.A.Haviland@uscg.mil, or fax 202–372–1914. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:
Executive Summary

The purpose of this rulemaking is to amend the Coast Guard’s Great Lakes pilotage regulations by revising the current methodology by which the Coast Guard sets base rates for U.S. pilotage service. The legal basis for the rulemaking is provided by Great Lakes pilotage statutes in 46 U.S.C. chapter 93. The proposed changes would take effect 30 days after publication of a final rule; this would coincide closely with the start of the 2016 shipping season and be several months earlier than in past rulemakings, which set changes that took effect on August 1 of each year.

The Coast Guard is proposing a complete revision of the current methodology for two reasons. First, over many years both pilots and industry have identified certain methodology issues that they believe significantly distort ratemaking calculations. Pilot associations believe those distortions result in low rates that contribute to their difficulty in retaining pilots and attracting applicant pilots. Second, only one union’s contract data has ever been made available to the Coast Guard for the purpose of determining the benchmark for pilot compensation. The union now regards that data as proprietary and will no longer disclose it to the Coast Guard. The union is not subject to our Great Lakes pilotage regulatory oversight and therefore we respect and accept their decision. However, as a result of this decision, the Coast Guard no longer has access to the detailed breakdown of compensation calculations that our current methodology relies on, and the public cannot review the union’s calculations or the manner in which we apply those calculations in setting pilotage rates.

Therefore, we have decided we must select another benchmark for our ratemaking purposes. In 2014, the Coast Guard’s Great Lakes Pilotage Advisory Committee (GLPAC) recommended significant changes to address stakeholder issues with the current methodology and to adapt to the unavailability of benchmark contract data.¹ This rulemaking would build a new ratemaking methodology around the GLPAC recommendations, the 2013 Bridge Hour Study, and numerous comments we have received over the past decade from previous rulemakings to revise this proposed methodology. Also, we believe the proposed methodology addresses the issues raised with the 2014 Appendix A Final Rule lawsuit, *St. Lawrence Seaway Pilots Association, Inc., et al., v. U.S. Coast Guard*.² The pilots successfully challenged the 2014 Appendix A Final Rule and their recommendation for target pilot compensation is discussed in this proposed rule.

As is done in the current ratemaking methodology, the proposed new methodology would follow a series of steps, which we describe in Part V. Step 1 reviews and recognizes previous operating expenses based on audits of records provided by the pilot associations. Step 2 projects each association’s future operating expenses, adjusting for inflation or deflation. Step 3 projects the number of pilots needed based on each area’s peak pilotage demand data and the pilot work cycle. Step 4 sets target pilot compensation using a compensation benchmark. Step 5 projects each association’s return on investment by adding the projected adjusted operating expenses from Step 2 and the total target pilot compensation from Step 4 and multiplying by the preceding year’s average annual rate of return for new issues of high grade corporate securities. Step 6 calculates each association’s needed revenue by adding the projected adjusted operating expenses from Step 2, the total target pilot compensation from Step 4 and the projected return on investment from Step 5. Step 7 calculates initial base rates based on the preceding steps. Step 8 adjusts the Step 7 initial rates if necessary and reasonable to do so for supportable circumstances, and sets final rates.

In Part VI, the Coast Guard uses the proposed methodology described in Part V to calculate proposed base rates for the 2016 shipping season.

In Step 1 we propose accepting the independent accountant’s final findings

¹ See 46 U.S.C. 9307.

² Docket No. 1:14–cv–00392–TSC.

from the 2013 audits of each association's expenses.

In Step 2 we project next year's operating expenses and adjust them for inflation, using actual inflation data for 2014 and 2015 and the Federal Reserve target inflation rate as a proxy for actual 2016 inflation.

In Step 3, we determine that 50 pilots are needed next year, up from the 36 pilots we currently authorize. This number is based on data for four shipping seasons, 2010 through 2013, instead of the normal five seasons, because we do not have reliable source data for 2009 or 2014. The number is also based average pilot assignment cycle time based on our 2013 Bridge Hour Definition and Methodology Final Report though we intend to use Great Lakes Pilotage Management System (GLPMS) source data in the future.

In Step 4 we propose individual target pilot compensation of \$312,500 and total target pilot compensation for 42 pilots of \$13,125,000. Though we find that 50 pilots are needed over the period for which 2016 base rates would be in effect, based on our best current information we project there to be only 42 fully working and fully compensated pilots ("working pilots") in 2016. The figures were set after considering various possible compensation benchmarks, including the compensation figures proposed by the pilot associations, and selecting 2013 Canadian Great Lakes Pilotage Authority (GLPA) registered pilot compensation as the most appropriate benchmark.

In Steps 5 and 6 we calculate the return on investment and project each pilot association's needed revenue.

In Step 7, we calculate initial base rates using the multi-year base period used above, covering the 2010 through 2013 shipping seasons.

Finally, in Step 8, we finalize the Step 7 rates, but propose imposing a temporary surcharge of \$300,000 per district in 2016. The surcharge would reimburse pilot associations for the anticipated expenses of providing necessary training for current pilots and applicant pilots.

In addition to the proposed methodology revisions and proposed 2016 rates, we also propose an additional location for beginning and ending pilot assignments (a "change point") at Iroquois Lock. This would enhance safety by mitigating fatigue associated with long pilotage runs of 10 hours or more in the St. Lawrence River.

The proposed rule would not be economically significant under E.O. 12866. It would affect 36 U.S. Great Lakes pilots, 3 pilot associations, and the owners and operators of an average

of 126 vessels that journey the Great Lakes on an average 396 visits to various ports annually. The Coast Guard estimates that the proposed rate changes would result in shippers paying pilot associations a net 2016 shipping season increase from 2015 of \$6,521,205. The proposed \$6,521,205 represents a roughly 50% increase over the revenue the 2015 Appendix A Final Rule should generate. The Coast Guard also proposes authorizing temporary surcharges to reimburse pilot associations for training costs. These surcharges would add an estimated \$900,000 in costs, for a total 2016 cost increase from 2015 of \$7,421,205. Since the Coast Guard must review and prescribe rates for Great Lakes Pilotage annually, the effects are estimated as single year costs rather than annualized over a ten-year period. This rulemaking would not result in a change to Coast Guard's budget and it would not increase Federal spending. A summary of the regulatory analysis can be found in Part VII.

Table of Contents for Preamble

- I. Public Participation and Request for Comments
- II. Abbreviations
- III. Basis and Purpose
- IV. Background
- V. Discussion of Proposed Procedural Changes
 - A. Summary
 - B. Discussion of Methodology
- VI. Discussion of Proposed Rate Changes
- VII. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Public Participation and Request for Comments

We encourage you to submit comments (or related material) on this rulemaking. We will consider all submissions and may adjust our final action based on your comments. Comments should be marked with docket number USCG-2015-0497 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be

searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this proposed rule and all public comments are in our online docket at <http://www.regulations.gov> and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

On September 17, 2015, members of the public are invited to attend a meeting in Detroit, Michigan, at which we will answer questions and take comments on this NPRM. See **DATES** and **ADDRESSES** for further information on the meeting. A transcript of the meeting will be prepared and placed in the docket for this rulemaking.

II. Abbreviations

AMOU	American Maritime Officers Union
APA	American Pilots Association
BLS	Bureau of Labor Statistics
CAD	Canadian dollars
CFR	Code of Federal Regulations
GLPA	Great Lakes Pilotage Authority (Canadian)
CPA	Certified public accountant
E.O.	Executive Order
GLPAC	Great Lakes Pilotage Advisory Committee
GLPMS	Great Lakes Pilotage Management System
LPA	Laurentian Pilotage Authority (Canadian)
MISLE	Marine Information for Safety and Law Enforcement
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section symbol
U.S.C.	United States Code
USD	United States dollars

III. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 ("the Act"),³ which requires U.S. vessels operating "on register"⁴ and

³Public Law 86-555, 74 Stat. 259, as amended; currently codified as 46 U.S.C. Chapter 93.

⁴"On register" means that the vessel's certificate of documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

foreign vessels to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.⁵ For the U.S. registered Great Lakes pilots (“pilots”), the Act requires the Secretary to “prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.”⁶ The Act requires that rates be established or reviewed and adjusted each year, not later than March 1.⁷ The Act requires that base rates be established by a full ratemaking at least once every 5 years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted.⁸ The Secretary’s duties and authority under the Act have been delegated to the Coast Guard.⁹

The purpose of this notice of proposed rulemaking (NPRM) is to propose revisions to the annual ratemaking methodology and several Great Lakes pilotage regulations; to propose the addition of a new pilot change point; and to propose new base pilotage rates and surcharges, using the proposed revised ratemaking methodology.

IV. Background

The vessels affected by this NPRM are those engaged in foreign trade upon the U.S. waters of the Great Lakes. United States and Canadian “lakers,” which account for most commercial shipping on the Great Lakes, are not affected.¹⁰

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage (“the Director”) to operate a pilotage pool. The Coast Guard does not control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S.

waters of the St. Mary’s River; Sault Ste. Marie Locks, and Lakes Huron, Michigan, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the United States pilotage rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. While working in those undesignated areas, pilots must “be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.”¹¹

The Coast Guard is required¹² to establish new pilotage rates by March 1 of each year, employing a “full ratemaking . . . at least once every 5 years,” and an annual review and adjustment in the intervening years. Currently, the methodology for an “every 5 years” full ratemaking appears in 46 CFR part 404, appendix A, and the methodology for annual review and adjustment appears in part 404, appendix C. Definitions and formulas applicable to both methodologies appear in part 404, appendix B. We have not used the appendix C methodology since the 2011 ratemaking, and instead we have conducted a full appendix A ratemaking each year.

V. Discussion of Proposed Changes to Ratemaking Methodology

As we do each year, the NPRM for the 2016 ratemaking proposes new rates. In addition, this year’s NPRM must also propose procedural changes to the ratemaking methodology, for two reasons.

First, each year our ratemakings draw pilot and industry comments urging fundamental changes in our current ratemaking methodology.¹³ Based on our review of such comments over many years, we understand that these stakeholders believe the current methodology is unnecessarily complex and based on an inaccurate understanding of how pilotage actually operates within the Great Lakes system. The stakeholders believe the

methodology produces improper rates, and wide annual rate variations that frustrate long term planning. In response, in 2009 we solicited public comments to better understand stakeholder perceptions of the ratemaking methodology,¹⁴ and promised to refer those comments to the Great Lakes Pilotage Advisory Committee (GLPAC),¹⁵ a stakeholder group that advises us on Great Lakes pilotage matters, for GLPAC’s review and recommendations. Ever since, we have worked closely with GLPAC to identify ways in which the methodology might be improved.

Second, we seek to ensure a safe, efficient, and reliable pilotage system for the Great Lakes and to eliminate possible barriers to achieving that goal. According to the pilot associations, the variance between projected revenue and actual revenue represents a significant challenge, because failure to achieve published revenue projections deprives them of the resources they need to provide safe, efficient, and reliable pilotage service. The associations cite challenges in making capital investments, recruiting and retaining adequately qualified pilots, achieving professional development and training schedules recommended by the American Pilots Association, updating technology, and achieving target compensation goals. The associations say that as a result, several experienced pilots have left the system, and that other desirable mariners have been discouraged from applying to become pilots. In this rulemaking, we propose specific regulatory changes intended to address these issues.

The procedural changes we propose here were discussed in general at GLPAC’s public meetings on July 23 and 24, 2014. Many of the specific changes we propose in this NPRM were submitted for GLPAC consideration at those meetings, and GLPAC unanimously recommended them for adoption.¹⁶ We consider GLPAC recommendations to have significant weight because the three pilot associations members represent pilots’ interest and three U.S. shipping agent members represent owners. Although foreign citizens may not serve on GLPAC and therefore the foreign vessel

⁵ 46 U.S.C. 9302(a)(1).

⁶ 46 U.S.C. 9303(f).

⁷ *Id.*

⁸ *Id.*

⁹ DHS Delegation No. 0170.1, para. II (92.f).

¹⁰ 46 U.S.C. 9302. A “laker” is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes. The vessels affected by this rule are commonly known as “salties.”

¹¹ 46 U.S.C. 9302(a)(1)(B).

¹² 46 U.S.C. 9303(f).

¹³ The current methodology was first proposed in 1989 (54 FR 11930), and made final in 1995 (60 FR 18366). It has not been significantly amended in the subsequent 20 years. For a discussion of the most recent cycle of public comments on our ratemaking methodology, and Coast Guard responses to those comments, see the 2015 final rule, 80 FR 10365 (Feb. 26, 2015), beginning at p. 10366, col. 3.

¹⁴ 74 FR 35838 (July 21, 2009).

¹⁵ Statutorily mandated by 46 U.S.C. 9307 and operating pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

¹⁶ See full transcript in our docket and also available at <http://www.facadatabase.gov>. Under 46 U.S.C. 9307(d)(1), the Coast Guard “shall, whenever practicable, consult with the Committee before taking any significant action relating to Great Lakes pilotage.”

owners are not GLPAC members, we believe the U.S. shipping agents are aware of and can adequately represent their interests. Also, the foreign vessel owners can and do to attend GLPAC meetings and raise their concerns during each meeting's public comment period.

Please note that we propose making the following procedural and rate changes effective 30 days after publication of a final rule, almost half a year earlier than the August 1 effective date we have used in previous rulemakings. We specifically request comments on this proposed change. The change is justified for two reasons. First, the traditional August 1 date was tied to the August 1 effective date for annual changes in benchmark union contract rates. As we subsequently discuss, we are no longer using the contract in question and hence there is no inherent reason why we should continue following the traditional practice. Second, annual Great Lakes pilotage rate adjustments are required by law¹⁷ to be set by March 1 of the year in which those adjustments take effect. By applying the normal Administrative Procedure Act effective date, 30 days following publication of a final rule,¹⁸ we will ensure that new rates will be announced prior to the usual early spring opening of the annual Great Lakes shipping season, and take effect near the opening date, thereby providing a single rate scheme for all shipping traffic affected by the adjusted rates.

We propose the following procedural changes. Please note that, for each of the amended sections in the following discussion, we propose extensive rewording in the interest of greater clarity and to remove unnecessary verbiage.

46 CFR 401.405, 401.407, and 401.410. These sections contain rate tables and additional charges for specified Great Lakes waters. These rates and charges are subject to our annual rate reviews and revisions. Currently, the rate tables calculate rates differently for each area. Most of the pilotage costs charged in designated waters are for transits between two specified points. For example, as shown in current § 401.407(b), the current charge for transiting Lake Erie between Toledo and Southeast Shoal is \$2,637. However, in undesignated waters, most of the pilotage charges are set at an hourly rate. For example, current § 401.407(a) shows that the cost for 6 hours of pilotage service on the

undesignated waters of Lake Erie is \$934. In addition, rates are set in designated and undesignated waters for miscellaneous services like vessel docking or undocking, cancellation of service, or the use of pilot boarding points other than those specified in § 401.450.

This mixed approach complicates an otherwise simple transaction of paying for a pilot's service, either when the pilot is piloting on a vessel's bridge, or is at the vessel master's disposal to provide piloting. We propose eliminating the mixed approach in favor of setting, for each district, one hourly rate for designated waters, and another hourly rate for undesignated waters. Those rates would be different for each district based on differences across the districts in the infrastructure maintained by each district association (for example, differences in numbers and types of pilot boat, or in office arrangements) and in the distances that pilots must travel to and from assignments.

Currently, some rates published in 46 CFR part 401 are based on hours, and others are based on the distance between two geographical points. GLPAC recommended re-baselining this billing scheme by a 5–1 vote in July 2014, and we propose doing so by basing all rates on hours.¹⁹ In addition to simplifying billing, an hourly-based approach recognizes the scarcity of pilots as a resource, and charges shippers for drawing on the limited number of these trained professionals.

Proposed § 401.405 would set each district's new base hourly rates. The proposed changed to § 401.405 would replace the current text in §§ 401.407 and 401.410 so those section would be removed.

46 CFR 401.420 and 401.428. We propose amending § 401.420 (charges for a vessel's canceling, delaying, or interrupting pilotage service) and § 401.428 (charges for picking up or discharging a pilot other than at a pilot change point designated in § 401.450), and basing those charges on the applicable hourly rates we would specify in § 401.405. Billing under § 401.420 would preclude any additional charges for pilotage service during the hours in question.

¹⁹ Transcript, "United States Coast Guard—Great Lakes Pilotage Advisory Committee—Thursday, July 24, 2014" (7/24/2014), p. 16. Discussion of this change, referred to by GLPAC members as "re-baselining" of rates, begins on July 23, 2014. See Transcript (7/23/2014), "United States Coast Guard—Great Lakes Pilotage Advisory Committee—Wednesday, July 23, 2014," p. 277. Discussion resumes: Transcript, "United States Coast Guard—Great Lakes Pilotage Advisory Committee—Thursday, July 24, 2014" (7/24/2014), p. 5.

We would not retain § 401.428's current per diem allowance for a pilot who is picked up or discharged at a point other than a designated change point. Instead, if the pilot is kept aboard for the convenience of or at the request of the ship, the pilot would bill the vessel for the extra time involved, at the § 401.405 hourly rates, in addition to reasonable travel costs. If the pilot is kept aboard for circumstances outside of the ship's control, for example because a pilot boat is out of service, the pilot would bill the vessel only for reasonable travel costs. Finally, we would specify that for both sections, the "reasonable travel costs" cover travel to and from the pilot's base.

In both sections we propose maintaining a similar calendar-based authorization for delays and charges associated with weather, traffic and ice. These are expected conditions at the beginning and end of the season; thus, our rate structure allows them as acceptable charges after November 30th or before May 1st each year.

46 CFR 401.450. We propose adding the Iroquois Lock in the St. Lawrence Seaway as a new pilot change point, joining those currently listed in this section. The St. Lawrence Seaway transit often requires pilots to spend more than ten hours aboard a vessel. Such long assignments contribute to pilot fatigue, and have led the National Transportation Safety Board to recommend that we amend our Great Lakes pilotage regulations to promulgate "hours-of-service rules that prevent fatigue resulting from extended hours of service, insufficient rest within a 24-hour period, and disruption of circadian rhythms."²⁰ We currently authorize a pilot to request a new pilot at the Iroquois Lock for overnight assignments, but our proposed addition of the Iroquois Lock as a permanent pilot change point would further help mitigate the problem of long assignments in the St. Lawrence Seaway. We would closely monitor the impact of the proposed change on the number of pilots needed in District One.

46 CFR 403.120. We propose removing this section, which discusses notes to financial reports. Under our current financial reporting system those notes are not necessary.

46 CFR 403.300. The accuracy of our pilotage rates depends on the accuracy of our information on each pilotage association's expenses and revenue. In the past, we have had difficulty

²⁰ Letter of June 29, 2015, Christopher A. Hart, Chairman of the National Transportation Safety Board to Adm. Paul F. Zukunft, Commandant, U.S. Coast Guard.

¹⁷ 46 U.S.C. 9303(f).

¹⁸ 5 U.S.C. 553(d).

validating the accuracy of this information, because some associations did not use a uniform financial reporting system. Therefore, we would require each association to use the current Coast Guard-approved and provided financial reporting system to certify their financial data annually. Currently, we approve the GLPMS for this purpose. We would continue to require an annual audit prepared by an independent certified public accountant.

46 CFR 403.400. Currently, this section details how forms must be filled out to report pilot transaction records. Although GLPMS allows for paper reporting, in the near future it will also provide an electronic reporting feature. Therefore we would amend the section to remove language that could suggest paper reporting is required. We accept reports made in any medium supported by our currently-approved financial reporting system.

46 CFR 404.1. Currently, this section explains the purpose of part 404, and summarizes ratemaking procedures that are described in the part 404 appendices. Because the remainder of part 404 would describe our procedures in detail, we propose removing these provisions. Instead, § 404.1 would state that our intention is to provide maximum ratemaking transparency and simplicity. It would state that the goal of ratemaking is to promote safe, efficient, and reliable pilotage service on the Great Lakes, by generating for each pilotage association sufficient revenue to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate reserve to use for improvements. The section would provide for the annual audit of association expenses, which we have conducted for many years. It would also require annual audits of association revenue. Revenue audits promote transparency and help us gauge, and if necessary adjust, the way in which we try to align our revenue projections with an association’s actual revenue. GLPAC endorsed revenue audits in July 2014,²¹

and they were first used in our 2015 ratemaking.

The section would also provide for a full ratemaking to establish base pilotage rates at least once every five years, with annual rate reviews and adjustments in the interim years, in accordance with the procedures described in part 404.

46 CFR 404.2. We would close the numbering gap between current §§ 404.1 and 404.5, and redesignate § 404.5 as § 404.2. Section 404.5 currently describes which pilot association expenses can or cannot be recognized as appropriate to recover through the charging of pilotage rates. New § 404.2 would do the same thing, and make no substantive changes except with respect to the recognition of pilot benefits as an element of pilot compensation. Current § 404.5 states that the amounts paid for benefits will be recognized to the extent benefits are included in “the most recent union contract for first mates on Great Lakes vessels.” Sufficiently detailed and itemized access to relevant union contracts is no longer available for Coast Guard or public review. Therefore, instead of linking benefits to union contracts, we would recognize pilot compensation as covering all association-paid pilot benefits, including medical and pension benefits and profit sharing.

46 CFR 404.100. We propose redesignating current § 404.10 as § 404.100. Section 404.10 currently provides a general introduction to the part 404 appendices on ratemaking methodology, but it contains no substantive requirements. It also currently describes the seven areas of the Great Lakes that are covered by the three pilotage districts, but since that information already appears in part 401, subpart D, it need not be repeated. We would replace this current content with general rules for the conduct of full ratemakings and rate reviews.

Currently, and as we have done since 2012, each year we conduct a full appendix A ratemaking to establish base pilotage rates. However, we believe establishing base rates for multi-year periods would produce more

predictable rates for both pilots and industry. GLPAC recommended this approach in July 2014.²²

Under our proposed multi-year approach, we would conduct full ratemakings to establish base rates at least once every 5 years, with base rate reviews and necessary adjustments in interim years.²³ In the interim years the Director would review the existing rates to ensure that they continue to promote safe, efficient, and reliable pilotage service. If interim-year adjustments are needed, they would be set either through automatic annual adjustments, pre-set during the previous full ratemaking in anticipation of economic trends over the multi-year term; or to reflect U.S. Bureau of Labor Statistics (BLS) Consumer Price Index (CPI-U); or, if neither of those methods would produce appropriate adjustments, through a new full ratemaking. Reviews and adjustments would be proposed for public comment.

For a transitional period over the next several years, we would conduct annual reviews of the rate and change the base rates, as needed, to ensure the new methodology’s efficacy. This would also allow time for the pilots and industry to become familiar with the new ratemaking methodology (including the new hourly billing scheme). Following the transitional period, we would propose interim-year adjustments using any of the three methods described in the preceding paragraph.

Ratemaking methodology. We propose simplifying the current appendix A ratemaking methodology, and replacing it with new §§ 404.101 through 404.108. In part, the new sections are similar to the “Steps” described in appendix A, but they would depart from those Steps in significant respects. We also propose removing current appendix B (ratemaking definitions and formulas) and appendix C (annual rate reviews; which has not been used since 2011) as these are no longer necessary. Table 1 shows how we propose to change appendix A’s Steps in the new regulatory text.

TABLE 1—PROPOSED TREATMENT OF APPENDIX A STEPS IN 446 CFR 404.101–404.108

Appendix A step	Proposed change	Comments
1	Omit	Unnecessary summary of substeps.
1.A	Omit	Move substance to § 404.2.
1.B	Reword and move	Move substance to new § 404.101 and move Step 1.B’s second sentence to § 404.2.
1.C	Reword and move	Add similar language to § 404.102.

²¹ Transcript (7/23/2014), p. 180.

²² Transcript (7/23/2014), p. 274. Discussion begins on p. 258.

²³ Per 46 U.S.C. 9303(f), full ratemakings are required at least once every 5 years, with reviews

and adjustments of the base rate in the intervening years.

TABLE 1—PROPOSED TREATMENT OF APPENDIX A STEPS IN 446 CFR 404.101–404.108—Continued

Appendix A step	Proposed change	Comments
1.D	Reword and move	Add similar language to § 404.102.
2	Omit	Unnecessary summary of substeps.
2.A	Reword and move	Add similar language to § 404.104.
2.B	Reword and move	Add similar language to § 404.103.
2.C	Reword and move	Add similar language to § 404.104.
3	Omit	Unnecessary summary of substep 3.A.
3.A	Reword and move	Cover substance in § 404.106.
4	Omit	Per recommendation approved by GLPAC ²⁴
5 .....	.....	Add similar language to § 404.105.
6	Reword and move	Per recommendation approved by GLPAC. ²⁵ Add similar language to § 404.106.
7, except last sentence of first paragraph	Reword and move	Add similar language to § 404.107.
7, last sentence of first paragraph	Reword and move	Add similar language to § 404.108.

In the discussion that follows, we explain how our proposed new methodology would replace each Step of the appendix A methodology. Our calculations for 2016 rates, using the proposed methodology, appear in Part VI.

46 CFR 404.101—Recognize previous operating expenses. Section 404.101 would correspond generally to current Steps 1.A and 1.B (pilot association submission of financial information and Coast Guard recognition of costs). We would describe our criteria for recognizing costs in § 404.2. The section proposes that the recognition of costs be based on independent third party audits, as has been the case for many years.

46 CFR 404.102—Project operating expenses, adjusting for inflation or deflation. Section 404.102 would correspond to current Steps 1.C and 1.D and describe, as those Steps do, how we calculate an association's projected base non-compensation operating expenses. As we do today, we would apply a cost change factor for inflation or deflation, based on BLS Midwest Region CPI-U changes, to any of the operating expenses recognized under § 404.101 that could be affected by inflation or deflation.

This NPRM proposes base rates to take effect in 2016. It considers audited pilot association expenses from 2013, the last full year for which reported and audited financial information is available. Current Step 1.C allows us to apply a cost change factor only for the first year after that (2014). This does not take into account consumer price index changes in subsequent years (2015 and 2016). In July 2014 GLPAC recommended that we take the

subsequent years into account,²⁶ and we propose doing so, using BLS, and the target inflation rate set by the Federal Reserve as a proxy for the Midwest Region CPI-U if BLS projection data is unavailable.

46 CFR 404.103—Determine number of pilots needed. Section 404.103 would correspond to current Step 2.B, which determines how many pilots are needed based on our projections of the bridge hours that pilots will serve during the upcoming shipping season. Because bridge hours represent only the time that a pilot is on board a vessel and providing basic pilotage service, pilots frequently have commented in previous years' ratemaking rules that we should also take into account necessary demands on pilot time that go beyond bridge hours. They have also commented that Step 2.B does not specify sources for our bridge hour projections and that inaccurate projections distort the rest of our ratemaking calculations. We agree and propose changing how we calculate the number of pilots needed.

Instead of projecting future bridge hours to calculate the number of pilots needed, we would rely on an average of actual past data, as recommended by GLPAC in July 2014.²⁷ Also as recommended by GLPAC,²⁸ we would identify the number of pilots needed to meet each shipping season's peak pilotage demand periods without interruption to service. To do this, we would determine each area's peak demand over an historical multi-year base period, and the pilot assignment cycle time to determine how many pilots would have been needed to meet that peak demand. For both determinations, we use averages to

compensate for normal year-to-year fluctuation in traffic and pilot availability over the historical multi-year base period. We would divide the peak demand figures by the per-pilot cycle time to determine the number of pilots needed to meet peak demand.

Historical multi-year base period. Normally, the base period would cover the five most recent full shipping seasons, and our data source would be pilot association entries in a system approved under proposed § 403.300. Using a five year period should give us a reliable picture of recent Great Lakes traffic trends, and taking data from an approved system should ensure the use of consistent data across the three districts.

If within the five most recent seasons data are unavailable or unreliable, we would consider substituting available and reliable data from another past shipping season or from a source other than an approved system, such as pilot association submitted data or Canadian GLPA data. Examples of unavailable or unreliable data are situations where data have not been recorded in an approved system, or come from an outlier year in which traffic was abnormally low or high and so could significantly distort our calculations. Generally, a traffic distortion of significant proportion, one that we would not expect be replicated within the next decade, would form the basis of this determination. That year's NPRM would explain, for public comment, our determination that normal data sources are unavailable or unreliable, and our selection of an alternate source. We specifically request public comment on whether there is an objective standard that we can and should use in each annual ratemaking, to determine whether a particular shipping season should be treated as an "outlier."

For our first historical multi-year base period, we do not think we have sufficient reliable data for five recent

²⁴ Transcript (7/23/2014), p. 255. Discussion begins on p. 237.

²⁵ Id.

²⁶ Transcript (7/23/2014), p. 200. Discussion begins on p. 192.

²⁷ Transcript (7/23/2014), p. 258. Discussion begins on p. 255.

²⁸ Transcript (7/23/2014), p. 237. Discussion begins on p. 201.

shipping seasons, and therefore we propose using only four seasons' data, as we explain in Part VI.

Base seasonal work standard. This standard is intended to ensure that we consider all the time reasonably needed for a pilot to provide safe, efficient, and reliable pilotage service. We start by recognizing that pilots must provide pilotage whenever traffic demands it, and that the timing of this traffic is often unpredictable. Current regulations ensure only a minimum 10-hour rest period between a pilot's assignments.²⁹ Historically, peak traffic demand is concentrated at the beginning of a shipping season, to handle the traffic buildup created by the previous season's closure, and at the end of the season, when vessels seek to complete their voyages before closure. During these peak periods, pilots are often on assignment nearly continuously. However, even in off-peak months, pilots frequently provide pilotage over many weeks without any significant rest, which over time threatens to degrade their ability to provide safe service. The pilots, GLPAC, and the Coast Guard agree that proper rest is an important concern to address.

In July 2014, GLPAC recommended that we "take a serious look" at scheduling monthly 10 day recuperative rest periods for pilots.³⁰ We believe a reasonable goal is to provide each pilot with 10 days' recuperative rest each month during the off-peak months of the season, if it is possible to do so and still meet traffic demands safely, efficiently, and reliably. A typical shipping season runs 270 or more days of availability; 10 days scheduled time off each month is line with other pilot associations that require pilot availability of 180–200 days per year. Many pilot associations work a multi-team concept of 2 weeks on followed by 2 weeks off but we find this problematic because of the compressed shipping season in the Great Lakes. Thus, we propose building into our base seasonal work standard only 200 workdays per pilot per season. The 70-day difference should facilitate a 10-day recuperative rest period for each pilot in each of the seven months (mid-April to mid-November) between peak traffic periods.

In addition, we would determine, based on our analysis of best available

data³¹ and for each area, the reasonably necessary average work cycle associated with each pilot assignment. We propose including in the work cycle not only the pilot assignment itself ("bridge hours"), but also time for pilot travel time from the pilot's home or other base to and from assignments (including time spent on pilot boats to and from assignments), vessel delays and detention, the 10-hour mandatory rest between assignments,³² and administrative time for district association presidents who also serve as pilots.³³

Adjustment of results. Dividing peak demand figures by per-pilot assignment figures usually will result in a fractional number that we would round either up or down, as seems most reasonable, to the nearest whole integer. Area totals would be added to determine each district's needed pilots. We could also make reasonable and necessary adjustments to take into account anticipated supportable circumstances that could affect the district's need for pilotage over the years for which base pilotage rates are being established.

Needed vs. projected working pilots. In addition to showing the number of pilots needed in each district, we would also project the number of pilots we expect to be actually working full-time and fully compensated during the first shipping season of the new base period for which rates are being established. This projection becomes a key component of our calculations under proposed § 404.104. We believe the projection will closely match the first shipping season's actual pilot population, because our regulatory role gives us accurate data on the number of current applicant pilots and on the progress of those applicants through the application, training, and certificating processes,³⁴ and because the continuous communication between the Coast Guard and the pilot association ensures

³¹ Figures for 2016 are based on analysis from the June 28, 2013 Bridge Hour Definition and Methodology Final Report conducted for the Coast Guard by MicroSystems Integration, Inc., available in the docket and at <http://www.uscg.mil/hq/cg5/cg552/pilotage.asp>. This analysis is detailed in Appendix B, on page B–10 and presented in the Part VI calculations for proposed § 404.103.

³² 46 CFR 401.451. Note that this is not the same rest allowance as the previously-discussed 10 days' recuperative rest per month.

³³ This time is necessary to ensure effective and efficient association management and communication with industry and the Coast Guard.

³⁴ These processes are described in 46 CFR part 401, subpart B, and are sufficiently time-consuming that the number of new pilots likely to enter the system in the year for which base rates are being established can be ascertained with reasonable accuracy when we issue the NPRM proposing those rates. The NPRM's projections, of course, can be modified in the final rule, in response to public comments on the NPRM.

that we are aware of its near-term hiring expectations.

46 CFR 404.104—Determine target pilot compensation. This step would correspond to current Steps 2.A (individual target compensation) and 2.C (total target compensation) except in three respects.

First, Step 2.A sets two different target compensation figures, one for undesignated waters and the other for designated waters. Although we propose (in § 401.405) to set different rates for each district's designated and undesignated waters, we see no reasonable basis for discriminating between the target compensation of pilots on the basis of the distinction between designated or undesignated waters. In any waters and in any district, pilots need the same skills, and therefore we propose a single individual target pilot compensation figure across all three districts.

Second, as we explained in discussing § 404.2, our compensation benchmark can no longer rely (as it does under Step 2.A) on contract compensation information that now is treated as proprietary and therefore not fully available for Coast Guard or public review. Instead, we propose considering only the most relevant current data that are available for Coast Guard and public review. Sources for such data may vary from one full ratemaking to another, and for supportable circumstances we would be able to make reasonable and necessary adjustments to the data. We review the sources we considered for this NPRM in Part VI.

Third, we propose changing the way in which Step 2.C determines total pilot compensation in each district, which currently is to multiply individual target pilot compensation by the number of *pilots needed*. That assumes that a district has a full complement of pilots to share the district's target compensation, and it incorrectly increases the district's total compensation when not fully staffed. This may act as a disincentive for the district to reach the full complement that we think necessary for providing safe, efficient, and reliable pilotage. Instead, we propose multiplying individual target pilot compensation by the number of pilots we project, in § 404.103, to be *working full time*³⁵ and compensated fully in the first shipping season of the new base period for which rates are being established.

46 CFR 404.105—Project return on investment. Currently, appendix A

³⁵ At various times during the season, typically during seasonal peaks, associations engage contract registered pilots to temporarily increase staffing and meet traffic demand requirements.

²⁹ 46 CFR 401.451.

³⁰ Transcript (7/24/2014), p. 240. Discussion begins on p. 225. The seven non-peak months run from mid-April to mid-November. Recuperative rest would be available "up to" 10 days per month during those months, dependent on actual traffic patterns and the need to provide reliable pilotage service. Our goal is to regulate the pilotage system to maximize the likelihood of providing the full 10 days per month.

contains three complex steps related to a district association's return on investment: Steps 4 (calculation of investment base), 5 (determination of target rate of return on investment), and 6 (adjustment determination). In July 2014, GLPAC recommended eliminating Steps 4 and 6 entirely, as being unclear and having minimal effect on the final rates, and revising Step 5 as we now propose.³⁶ We would project an association's return on investment by taking the sum of operating expenses from § 404.102 and target pilot compensation from § 404.104, and multiplying that sum by the preceding year's average annual rate of return for new high grade corporate securities (the same multiplier used in Step 5).

46 CFR 404.106—Project needed revenue. As discussed in connection with proposed § 404.105, we are not replicating the current Step 6 procedure for projecting each association's needed revenue for the next year. Instead, we propose calculating base needed revenue by adding projected base operating expenses from proposed § 404.102, the total base target pilot compensation from proposed § 404.104, and the base return on investment from proposed § 404.105. We believe this is a more transparent procedure and that it adequately projects an association's needed revenue.

46 CFR 404.107—Initially calculate base rates. This would correspond to current Step 7 of appendix A and initially set base rates for the designated and undesignated waters of each district, subject to modification or finalization under proposed § 404.108.

Currently, Step 7 takes projected revenue needed and divides it by projected revenue. The resulting rate multiplier is the percentage by which rates should be changed, subject to adjustment as explained in the last sentence of Step 7's first paragraph (we propose discussing that adjustment in § 404.108). This bases the rate multiplier

on a calculation that depends on the accuracy of our revenue projection.

Instead, we propose initially calculating rates by dividing the projected needed revenue (§ 404.106) by available and reliable data for actual hours worked by pilots in each district's designated and undesignated waters during a multi-year base period. We would average this data to compensate for normal traffic fluctuation from one season to another.

As we propose for § 404.103, the base period would normally consist of the five most recent full shipping seasons. Normally, our data source would be pilot association entries in the GLPMS, or another system we would approve under proposed § 403.300. If, within the five most recent seasons, data are unavailable or unreliable, we would substitute available and reliable data from another past shipping season or from a source other than GLPMS, including pilot association data or Canadian GLPA data. For example, if data has not been recorded in a system approved under § 403.300, or comes from an outlier year in which traffic was abnormally low or high it could significantly distort our calculations; we would look to an alternative source of available shipping data.

In some years and in some districts, dividing needed revenue by the multi-year average hours could produce significantly higher rates for designated waters than for undesignated waters. This imbalance could create unnecessary financial risk to the pilot associations by focusing revenue generation too narrowly in designated waters at the expense of undesignated waters. To ensure safe, efficient, and reliable pilotage in all Great Lakes waters whether designated or undesignated, we therefore propose applying a ratio to adjust the balance between rates, limiting the designated-water rate to no more than twice the undesignated-water rate. This would

correct the undesirable rate imbalance, without affecting the total needed revenue projected for each district.

46 CFR 404.108—Review and finalize rates. This would correspond to the last sentence in the first paragraph of appendix A's Step 7, which for "supportable circumstances" permits discretionary adjustments to initial rate calculations. Supportable circumstances include factors defined in current U.S.-Canadian agreements relating to Great Lakes pilotage.³⁷ Pilots and industry have commented unfavorably on past exercises of "Step 7 discretion." We propose specifying that any modification to the initial rates set under § 404.107 must be necessary and reasonable, as well as justified by supportable circumstances. Under proposed § 404.100, we would continue to submit any proposed adjustment for public comment, which could result in our omitting or modifying the proposed adjustment. Any adjustment would be subject to § 404.107's limitation on the disparity between rates for designated and undesignated waters.

VI. Discussion of Proposed Rate Changes

We propose new rates and 46 CFR 401.401 surcharges for 2016. We reviewed the independent accountant's financial reports for each association's 2013 expenses and revenues. Those reports, which include pilot comments on draft versions and the accountant's response to those comments, appear in the docket.³⁸

The following discussion applies the proposed ratemaking methodology that is discussed in section V of this preamble.

Recognize previous year's operating expenses (proposed § 404.101). We reviewed and accepted the accountant's final findings on the 2013 audits of association expenses.

Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2013	District one			Total
	Area 1 designated	Area 2 undesignated		
	St. Lawrence River	Lake Ontario		
Operating Expenses:				
Other Pilotage Costs:				
Pilot subsistence/Travel	\$281,488	\$168,508		\$449,996
License insurance	26,976	25,010		51,986
Payroll taxes	65,826	51,244		117,070

³⁶ Transcript (7/23/2014), p. 255. Discussion begins on p. 237.

³⁷ The Memorandum of Understanding can be viewed at <http://www.uscg.mil/hq/cg5/cg552/docs/2013%20MOU%20English.PDF>

³⁸ See "Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses."

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

Reported expenses for 2013	District one		
	Area 1 designated	Area 2 undesignated	Total
	St. Lawrence River	Lake Ontario	
Other	6,925	5,460	12,385
Total other pilotage costs	381,215	250,222	631,437
Pilot Boat and Dispatch Costs:			
Pilot boat expense	131,193	102,077	233,270
Dispatch expense			
Payroll taxes	9,169	7,230	16,399
Total pilot and dispatch costs	140,362	109,307	249,669
Administrative Expenses			
Legal—general counsel	631	498	1,129
Legal—shared counsel (K&L Gates)	12,736	10,040	22,776
Insurance	22,525	17,756	40,281
Employee benefits	11,063	7,868	18,931
Payroll taxes	5,190	4,093	9,283
Other taxes	22,175	17,486	39,661
Travel	524	413	937
Depreciation/auto leasing/other	42,285	33,333	75,618
Interest	15,151	11,943	27,094
APA Dues	13,680	10,830	24,510
Dues and subscriptions	280	220	500
Utilities	4,920	3,878	8,798
Salaries	54,153	42,691	96,844
Accounting/Professional fees	5,091	4,009	9,100
Pilot Training			
Other	8,834	6,954	15,788
Total Administrative Expenses	219,238	172,012	391,250
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	740,815	531,541	1,272,356
Proposed Adjustments (Independent CPA)			
Payroll taxes	(1,855)	(1,750)	(3,605)
TOTAL CPA ADJUSTMENTS	(1,855)	(1,750)	(3,605)
Proposed Adjustments (Director):			
Dues and subscriptions	(280)	(220)	(500)
APA Dues	(2,052)	(1,625)	(3,677)
Legal—shared counsel (K&L Gates)	(12,736)	(10,040)	(22,776)
Dock Adjustment *	11,936	9,409	21,345
Surcharge Adjustment **	(54,481)	(42,948)	(97,429)
TOTAL DIRECTOR'S ADJUSTMENTS	(57,613)	(45,424)	(103,037)
Total Operating Expenses (OpEx + Adjustments)	681,347	484,368	1,165,715

* Based on the discussion without objection in the 2014 GLPAC meeting on this subject, this adjustment allocates \$21,345 to District 1 to ensure complete recoupment of costs associated with upgrading the dock in Cape Vincent. Revenue projection shortfalls, confirmed by the revenue audits, resulted in District 1 not fully recouping the costs of the dock through previous rulemakings.

** District One collected \$146,424.01 with an authorized 3% surcharge in 2014. The adjustment represents the difference between the collected amount and the authorized amount of \$48,995 authorized in the 2014 final rule.

Note: Numbers may not total due to rounding.

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2013	District Two		
	Area 4 undesignated	Area 5 designated	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Operating Expenses:			
Other Pilotage Costs:			
Pilot subsistence/Travel	\$84,164	\$126,246	\$210,410
License insurance	6,168	9,252	15,420
Payroll taxes	44,931	67,397	112,328
Other	33,021	49,532	82,553
Total other pilotage costs	168,284	252,427	420,711

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported expenses for 2013	District Two		
	Area 4 undesignedated	Area 5 designated	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Pilot Boat and Dispatch Costs:			
Pilot boat expense	142,936	214,405	357,341
Dispatch expense	7,080	10,620	17,700
Employee benefits	60,665	90,997	151,662
Payroll taxes	8,316	12,474	20,790
Total pilot and dispatch costs	218,997	328,496	547,493
Administrative Expenses:			
Legal—general counsel	3,414	5,122	8,536
Legal—shared counsel (K&L Gates)	7,304	10,956	18,260
Legal—USCG litigation	231	346	577
Office rent	26,275	39,413	65,688
Insurance	9,175	13,762	22,937
Employee benefits	20,586	30,879	51,465
Payroll taxes	4,899	7,349	12,248
Other taxes	14,812	22,217	37,029
Depreciation/auto leasing/other	22,956	34,434	57,390
Interest	3,439	5,159	8,598
APA Dues	8,208	12,312	20,520
Utilities	14,310	21,465	35,775
Salaries	42,633	63,949	106,582
Accounting/Professional fees	9,294	13,940	23,234
Pilot Training			
Other	9,757	14,638	24,395
Total Administrative Expenses	197,293	295,941	493,234
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	584,574	876,864	1,461,438
Proposed Adjustments (Independent CPA):			
Insurance	(2,362)	(3,544)	(5,906)
Employee benefits	(360)	(541)	(901)
Depreciation/auto leasing/other	(6,391)	(9,587)	(15,978)
TOTAL CPA ADJUSTMENTS	(9,113)	(13,672)	(22,785)
Proposed Adjustments (Director):			
APA Dues	(1,231)	(1,847)	(3,078)
Legal—shared counsel (K&L Gates)	(7,304)	(10,956)	(18,260)
Legal—USCG litigation	(231)	(346)	(577)
TOTAL DIRECTOR'S ADJUSTMENTS	(8,766)	(13,149)	(21,915)
Total Operating Expenses (OpEx + Adjustments)	566,695	850,043	1,416,738

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

Recognizable expenses	District Three		
	Areas 6 and 8 undesignedated	Area 7 Designated	Total
	Lakes Huron, Michigan, and Superior	St. Mary's River	
Reported expenses for 2013			
Operating Expenses:			
Other Pilotage Costs:			
Pilot subsistence/Travel	\$337,978	\$112,660	\$450,638
License insurance	13,849	4,616	18,465
Payroll taxes			
Other	15,664	5,221	20,885
Total other pilotage costs	367,491	122,497	489,988
Pilot Boat and Dispatch Costs:			
Pilot boat expense	435,353	145,118	580,471
Dispatch expense	140,440	46,814	187,254
Payroll taxes	15,680	5,227	20,907
Total pilot and dispatch costs	591,473	197,159	788,632

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Recognizable expenses	District Three		
	Areas 6 and 8 undesignated	Area 7 Designated	Total
		Lakes Huron, Michigan, and Superior		St. Mary's River
Reported expenses for 2013			
Administrative Expenses:			
Legal—general counsel	567	189	756
Legal—shared counsel (K&L Gates)	20,260	6,754	27,014
Office rent	7,425	2,475	9,900
Insurance	8,098	2,699	10,797
Employee benefits	123,002	41,001	164,003
Payroll taxes	10,272	3,424	13,696
Other taxes	1,383	461	1,844
Depreciation/auto leasing/other	24,237	8,079	32,316
Interest	2,403	801	3,204
APA Dues	18,895	6,299	25,194
Dues and subscriptions	4,275	1,425	5,700
Utilities	32,672	10,891	43,563
Salaries	89,192	29,731	118,923
Accounting/Professional fees	20,682	6,894	27,576
Pilot Training			
Other	11,260	3,753	15,013
Total Administrative Expenses	374,623	124,876	499,499
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,333,587	444,532	1,778,119
Proposed Adjustments (Independent CPA):			
Pilot subsistence/Travel	(5,183)	(1,728)	(6,911)
Payroll taxes	103,864	34,621	138,485
Dues and subscriptions	(4,275)	(1,425)	(5,700)
TOTAL CPA ADJUSTMENTS	94,406	31,468	125,874
Proposed Adjustments (Director):			
APA Dues	(2,834)	(945)	(3,779)
Legal—shared counsel (K&L Gates)	(20,260)	(6,754)	(27,014)
TOTAL DIRECTOR'S ADJUSTMENTS	(23,094)	(7,699)	(30,793)
Total Operating Expenses (OpEx + Adjustments)	1,404,899	468,301	1,873,200

Project next year's operating expenses, adjusting for inflation or deflation (proposed § 404.102). We based our 2014 and 2015 inflation

adjustments on BLS data from the Consumer Price Index for the Midwest Region of the United States,³⁹ and projected it for 2016 based on the target

inflation rate set by the Federal Reserve.⁴⁰ The adjustments are shown in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

	District 1		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	\$681,347	\$484,368	\$1,165,715
2014 Inflation Modification (@1.4%)	9,539	6,781	16,320
2015 Inflation Modification (@1.5%)	10,363	7,367	17,731
2016 Inflation Modification (@2%)	14,025	9,970	23,995
Adjusted 2016 Operating Expenses	715,274	508,486	1,223,760

³⁹ Available at <http://www.bls.gov/data>. Select "One Screen Data Search" under "All Urban Consumers (Current Series) (Consumer Price Index—CPI)". Then select "Midwest urban" from Box 1 and "All Items" from Box 2. Our numbers

for 2014 and 2015 are generated through this query and formatted to show annual percentage changes.

⁴⁰ Further discussion available on the Federal Reserve target inflation rate is on their Web site at

<http://www.federalreserve.gov/newsevents/press/monetary/20120125c.htm> and http://www.federalreserve.gov/faqs/money_12848.htm.

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

	District 2		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	\$566,695	\$850,043	\$1,416,738
2014 Inflation Modification (@1.4%)	7,934	11,901	19,834
2015 Inflation Modification (@1.5%)	8,619	12,929	21,549
2016 Inflation Modification (@2%)	11,665	17,497	29,162
Adjusted 2016 Operating Expenses	594,913	892,370	1,487,283

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

	District 3		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	\$1,404,899	\$468,301	\$1,873,200
2014 Inflation Modification (@1.4%)	19,669	6,556	26,225
2015 Inflation Modification (@1.5%)	21,369	7,123	28,491
2016 Inflation Modification (@2%)	28,919	9,640	38,558
Adjusted 2016 Operating Expenses	1,474,855	491,620	1,966,474

Determine number of pilots needed (proposed § 404.103). We first consider if reliable data are available from the five most recent full shipping seasons, in this case the 2010–2014 seasons, to populate a five-season historical multi-year base period. For the reasons we have discussed extensively with stakeholders, we consider 2014 to have been an unreliable outlier season, because of an abnormal 17% increase in shipping traffic, extended ice conditions,⁴¹ and associated significant delays. The 2014 season also made extensive use of double pilotage, the practice of assigning two pilots to a vessel, normally because of unusually hazardous conditions such as ice and the seasonal removal of aids to

navigation. We then consider 2009, the most recent season before 2010. Again based on discussions with stakeholders, we must consider 2009 to have been an outlier too, because of abnormally low traffic from the 2008 global recession.⁴² We then consider if reliable source data is available before 2009, and conclude that it is not available for years prior to the introduction of GLPMS in 2009. We specifically request public comment on other possible sources of available and reliable data for shipping seasons prior to 2009. Pending receipt of such information, we restrict our multi-year base period to the four shipping seasons 2010 through 2013.

Next, we calculate the average cycle time associated with each pilot

assignment, in each area, over the 2010–2013 base period. In the future, we intend to use GLPMS data to track cycle time, but that data is not available for 2010 through 2014. We consider our best source for that base period’s cycle time to be the Bridge Hour Definition and Methodology Final Report prepared on the Coast Guard’s behalf in June 2013.⁴³ Although we expect GLPMS data to produce better data in the future, the 2013 report relied heavily on pilot input and drafts were made widely available to the pilots for their review and comment. Table 8 shows the 2013 report’s calculation of the pilot work cycle for each area.

TABLE 8—CYCLE TIME, 2013 REPORT

	Trip time (hrs)	Travel (hrs)	Pilot boat transit (hrs)	Delay (hrs)	Admin (hrs)	Total time on assignment (hrs)	Mandatory rest (hrs)	Pilot assignment cycle (hrs)
D1								
Area 1	7.7	2.9	0.3	0.7	0.5	12.1	10	22.1
Area 2	10.4	4.0	0.6	0.9	0.5	16.4	10	26.4
Area 3	Welland Canal Exclusive to Canadian Pilots							
D2								
Area 4	11.1	4.2	0.4	0.7	0.5	16.9	10	26.9
Area 5	6.1	2.3	0.9	0.4	0.5	10.2	10	20.2

⁴¹The Canadian Great Lakes Pilotage Authority’s Annual Report for 2014 states, p. 3: “Traffic in 2014 increased by 17% over 2013 mainly due to the significant movement of the 2013 Western Canadian grain crop to export markets overseas. The economic recovery of the American economy has also accounted for increased trade in the Great Lakes corridor.” The Annual Report also states, p. 7, “[d]elays due to shortages in pilots experienced

in 2014 was directly attributable to the increase in traffic being serviced by the existing pool of pilots as well as a higher level of over carried pilots due to the extreme ice conditions experienced at the start of the navigation season.”

⁴² See [Canadian] Great Lakes Pilotage Authority, Annual Report 2009, p. 2: “The world economic recession which began in late 2008 and manifested itself in 2009 had a significant effect on ship traffic

in the St. Lawrence Seaway/Great Lakes Region where traffic and cargo volumes decreased by 25% from the previous year.”

⁴³ Bridge Hour Definition and Methodology Final Report, MicroSystems Integration, Inc. (June 25, 2013), available in the docket and at <http://www.uscg.mil/hq/cg5/cg552/pilotage.asp>. This analysis is detailed in Appendix B of the report, on page B–10.

TABLE 8—CYCLE TIME, 2013 REPORT—Continued

	Trip time (hrs)	Travel (hrs)	Pilot boat transit (hrs)	Delay (hrs)	Admin (hrs)	Total time on assignment (hrs)	Mandatory rest (hrs)	Pilot assignment cycle (hrs)
D3								
Area 6	22.5	1.6	0.8	1.0	0.5	26.4	10	36.4
Area 7	7.1	1.4	2.2	0.3	0.5	11.5	10	21.5
Area 8	21.6	1.8	1.9	3.3	0.5	29.1	10	39.1

We then determine the average peak late-season traffic demand over the base period, as shown in Table 9. Table 9 also shows the average number of pilots

that would have been needed to meet the peak demand, and for comparison purposes shows the average number of needed pilots for the 2010–2013 time

period (38) authorized for the pilot associations.

TABLE 9—AVERAGE PEAK TRAFFIC DEMAND AND PILOT REQUIREMENTS, 2010–2013

	District 1		District 2		District 3		
	Area 1 (designated)	Area 2 (undesignated)	Area 4 (undesignated)	Area 5 (designated)	Area 6 (undesignated)	Area 7 (designated)	Area 8 (undesignated)
Average late-season peak assignments per day	5	5	5	5	4	4	4
Average number of pilots needed to meet peak demand (total = 50)	10	5	5	10	6	8	6
Average authorized pilots, 2010–2013 (total = 38)	6	5	4	6	7	4	6
Authorized pilots, 2015 (total = 36)	6	5	4	6	6	4	5

As shown in Table 8, according to the 2013 report cycle time for pilots in designated waters is a little over 20 hours. This implies that, on average in late seasons over the base period, one pilot could move one vessel per day. However, to fully meet peak season demand, the pilot associations must be staffed to provide double pilotage, and Table 9 reflects that doubling in the number of pilots needed in the designated waters of Areas 1, 5, and 7.

Except in extreme circumstances, double pilotage is not required in the open and undesignated waters of Areas 2, 4, 6, and 8, and Table 9 shows no doubling in those areas. However, the Table does show a 50% increase from the one pilot-one vessel standard in

undesignated Areas 6 and 8, which are located in the large western Great Lakes. Areas 6 and 8 are not contiguous, but both flank the designated waters of Area 7. Travel times in Areas 6 and 8 are greater than they are in the undesignated waters of smaller Lakes Erie and Ontario, and on average a pilot needs 1.5 days per vessel, not just 1, to move a vessel. Therefore, Table 9 shows 6 pilots, not 4, in each of Areas 6 and 8. This number will ensure that the four ships shown as moving daily through Area 7 could be moved through the undesignated waters at the same rate.

Please note that the addition of Iroquois Lock to the District One change points, previously discussed in connection with our proposed

amendment to § 401.450, could eventually support adding pilots in that district, but is not factored into Table 9.

Based on our Table 9 figures, and as shown in Table 10, we find that 50 pilots are needed over the period for which 2016 base rates would be in effect, as opposed to the 36 currently authorized pilots shown in Table 9. Table 10 also shows that based on our best current information we project there to be only 42 fully working and fully compensated pilots (“working pilots”) in 2016. Our goal is to help the pilot associations close the gap between needed pilots and working pilots as soon as possible.

TABLE 10—PILOTS NEEDED; PILOTS PROJECTED TO BE WORKING

	District One	District Two	District Three
Needed pilots, period for which 2016 rates are in effect (total = 50)	15	15	20
Working pilots projected for 2016 (total = 42)	13	12	17

At this time, we see no need to adjust the number of pilots shown in Table 10.

Determine target pilot compensation (proposed § 404.104). Our discussion of

our calculations under this section contains two sections, the first section limited to the Coast Guard’s own analysis, and the second section

discussing target compensation figures proposed by the pilot associations.

Coast Guard analysis and calculations. For this 2016 ratemaking,

we considered three sources for possible benchmark compensation data that provide compensation data for occupations similar to that of a Great Lakes pilot. All of these sources provide current and available data that is open for public review: Canadian Laurentian

Pilotage Authority (LPA) pilot compensation data; masters, mates and pilots wage data from the BLS, and Canadian GLPA registered pilot compensation. We specifically request public comments suggesting any other current, reliable, and publicly available

sources we should consider in setting the 2016 season's target pilot compensation.

Table 11 presents average recent compensations for each of these three sources.

TABLE 11—COMPARING PILOT COMPENSATION AND WAGE INFORMATION

	Average Canadian registered pilot compensation ⁴⁴ (CAD)	Average Laurentian pilot compensation (CAD) ⁴⁵	Bureau of Labor Statistics Wages ⁴⁶ (USD)
2011	\$233,567	\$335,864	\$73,590
2012	247,145	347,615	78,030
2013	268,552	349,022	80,960
2014	323,641	.....	75,000
Average	268,226	344,167	76,895

We evaluated the suitability of each of these sources as a benchmark for setting our target pilot compensation.

The LPA services all vessels that ultimately transit through the Saint Lawrence River and Great Lakes. The majority of their pilotage service is provided primarily to vessels that stop in Montreal, which are typically larger than vessels that proceed upbound into the Great Lakes. The LPA also provides service throughout the year, whereas Great Lakes navigation is closed for a portion of the year due to ice conditions and lock maintenance. Due to these differences between LPA and U.S. Great Lakes pilotage conditions, we find LPA compensation information unsuitable as a benchmark for setting target U.S. pilot compensation.

BLS data for masters, mates, and pilots cover officers whose duties and responsibilities are different from those of a U.S. Great Lakes pilot. For example,

unlike U.S. Great Lakes pilots, most of these officers are not directly responsible for the safe navigation of vessels of any tonnage through restricted waters. Further, this data is skewed downward by the higher number of lower wage mates, who do not hold the same licenses as masters and pilots. Therefore, we find this information is also unsuitable as a benchmark for setting target pilot compensation.

Canadian GLPA pilots provide service that is almost identical to the service provided by U.S. Great Lakes pilots. However, unlike the U.S. pilots, Canadian GLPA pilots are Canadian government employees and therefore have guaranteed minimum compensation with increases for high-traffic periods, retirement, healthcare and vacation benefits, and limited professional liability. In addition, GLPA

pilots have guaranteed time off while U.S. pilots must be available for service throughout the shipping season and without any guaranteed time off; and due to historic staffing differences U.S. pilots get less time off than GLPA pilots. Nevertheless, because they work under the same conditions, months, and vessels (sometimes concurrently) as the U.S. pilots, we find that GLPA compensation information is the most suitable available benchmark for establishing target pilot compensation.

The calculations shown in Tables 12 through 14 take the last four years of GLPA data (covering actual compensation, 2011 through 2014), adjust for foreign exchange differences and inflation,⁴⁷ and project future GLPA compensation for 2015 and 2016.

Table 12 shows GLPA compensation for 2011 through 2014, adjusted for exchange rates in each year.

TABLE 12—RECENT HISTORY OF CANADIAN GLPA PILOT COMPENSATION

Year	Canadian Great Lakes pilot compensation (CAD)	Average annual currency conversion (CAD to USD)*	Canadian Great Lakes pilot compensation (USD)
2014	\$323,641	1.149	\$281,672
2013	268,552	1.071	250,749
2012	247,145	1.04	237,639,639
2011	233,567	1.029	226,984

*All figures reflect annual average currency conversions for the time periods provided. CAD is divided by the listed currency conversion factor to convert to USD. A complete table of these exchange rates is provided by the Internal Revenue Service here: <http://www.irs.gov/Individuals/International-Taxpayers/Yearly-Average-Currency-Exchange-Rates>.

Table 13 takes the figures from Table 12 and adjusts them for inflation in each year, similar to way Tables 5–7 adjust

U.S. pilot association operating expenses.

⁴⁴ http://www.glpapl.com/annualReports_e.asp.

⁴⁵ http://www.pilotagestlaurent.gc.ca/publications_e.asp.

⁴⁶ <http://www.bls.gov/oes>—Captains, Mates, and Pilots of Water Vessels (http://www.bls.gov/oes/current/naics4_483100.htm—53–5021).

⁴⁷ Based on Midwest CPI-U from BLS. Available at <http://www.bls.gov/data>. Select “One Screen Data Search” under “All Urban Consumers (Current

Series) (Consumer Price Index—CPI)”. Then select “Midwest urban” from Box 1 and “All Items” from Box 2. Our numbers for 2011–2014 are generated through this query and formatted to show annual percentage changes.

TABLE 13—INFLATION ADJUSTMENTS

Year	USD (from Table 11)	2012 Inflation adjustment (@3.2%)	2013 Inflation adjustment (@2%)	2014 Inflation adjustment (@1.4%)	2015 Inflation adjustment (@1.5%)	2016 Inflation projection (@2%)*	Total (2016 USD)
2014	\$281,672				\$4,225	\$5,633	\$291,531
2013	250,749			\$3,510	3,761	5,015	263,036
2012	237,639		\$4,753	3,327	3,565	4,753	254,036
2011	226,984	\$7,263	4,540	3,178	3,405	4,540	249,909

See footnote 44 on previous page for supporting inflation data.

*See previous discussion on Federal Reserve target inflation rate for 2016 projections. See also policy statement of the Bank of Canada regarding their 2% target inflation rate at <http://www.bankofcanada.ca/core-functions/monetary-policy/inflation/>.

Using this data, converted to 2016 USD, we then review the percentage change in Canadian compensation.

TABLE 14—ANALYSIS OF CANADIAN GLPA PILOT COMPENSATION

Year	Canadian Great Lakes pilot compensation (from Table 12)	Percent change
2014	\$291,531	10.8
2013	63,036	3.5
2012	254,037	1.7
2011	249,910	

We are basing our target pilot compensation calculations on 2013 GLPA compensation. We think 2013 provides more reliable current benchmark information than 2014. There is a moderate annual growth in compensation between 2011 and 2013, but a significant nearly 11% increase in 2014. We believe that increase is attributable to a 17% Canadian traffic increase in 2014, compounded by extended ice conditions.

Table 14 shows that, from the 2013 figure of \$263,036, we project forward an annual 2.6% increase to align with the general trend of compensation

increases for Canadian pilots. This is an average of the increases from 2012 and 2013. Table 15 shows the results of these calculations:

TABLE 15—PROJECTED INCREASES IN CANADIAN GREAT LAKES PILOT COMPENSATION

Year	Projected Canadian Great Lakes pilot compensation (2016 USD)*
2016	\$284,091
2015	276,892
2014	269,875
2013	263,036

*All figures from 2014 forward are projections only for the purposes of this rulemaking and do not reflect actual Canadian compensation. Each year is increased 2.6% in line with average compensation increases in 2012 and 2013.

As previously discussed, the difference in status between GLPA employees and independent U.S. pilots creates significant differences in their relative compensation. These differences constitute supportable circumstances for adjusting U.S. target

pilot compensation by increasing it 10% over our projected 2016 GLPA compensation figure, taking our proposed U.S. individual target pilot compensation to \$312,500. Although the appropriateness of 10% as an adjustment figure was not put to a vote, that figure and no other was cited by several speakers at GLPAC's July 2014 meeting⁴⁸ as balancing the different status of the U.S. and GLPA pilots. We invite public comment on whether the 10% adjustment figure is appropriate for the 2016 rate.

Table 16 shows the total target compensation for each district, the result of multiplying our proposed individual target compensation of \$312,500 by the number of working pilots shown in Table 10. Our proposed total target pilot compensation for 2016 is \$13,125,000.

TABLE 16—TOTAL TARGET PILOT COMPENSATION PER DISTRICT

	District One	District Two	District Three
Target compensation per pilot	\$312,500	\$312,500	\$312,500
Number of working pilots	13	12	17
Total target pilot compensation (total, all districts = \$13,125,000)	\$4,062,500	\$3,750,000	\$5,312,500

At this time, and subject to the public comments that we specifically request on this point, we find no economic data that supplies supportable circumstances for additional adjustments to target pilot compensation.

Pilot association proposals. Prior to preparing this NPRM, we discussed the

determination of target pilot compensation with GLPAC and with the pilot associations. At its July 2014 meetings, GLPAC considered and rejected, by a vote of 4 to 2 with no abstentions, a proposed individual target pilot compensation starting at \$295,000. We interpreted the \$295,000

figure to represent total compensation, including both wages and benefits.⁴⁹

On May 8, 2015, the pilot associations requested that we consider \$355,000 as an individual target pilot compensation figure, which they said would not guarantee, but might ensure, a sufficient amount to attract reasonable pilot

⁴⁸ Transcript (7/24/2014), pp. 43–45.

⁴⁹ Transcript (7/24/2014), p. 45. Discussion begins on p. 20. Under 46 U.S.C. 9307(d)(3), GLPAC recommendations require approval by “at least all

but one of the members then serving on the committee;” hence a 4–2 vote does not pass. For the Coast Guard’s grounds for interpreting “compensation” to include both wages and

benefits, and not wages alone, see pp. 43–45 of the transcript.

candidates and retain current pilots. This request was accompanied by an enclosure supporting a minimum target figure of almost \$394,000.⁵⁰ In support of the \$394,000 figure, the pilots cite the \$295,000 compensation that a majority (but not the required super-majority)⁵¹ of GLPAC members supported in July 2014. The pilots interpreted the \$295,000 figure to include wages only, not benefits. To that figure, they add the benefit amounts used in our 2012 ratemaking, which ranged from \$64,678 in undesignated waters to \$73,639 in designated waters. They then adjust the wage and benefit figures for inflation to arrive at a total minimum compensation of approximately \$394,000.

At this time, we decline to adopt either of the pilots' proposed amounts. To the extent they rely on the \$295,000 compensation figure considered, and majority-approved but officially rejected by GLPAC, we do not accept the pilots' contention that GLPAC discussed that figure in the context of wages only, and not benefits; we believe the discussion considered total compensation, both wages and benefits. We also note that our proposed individual target pilot compensation, \$312,500, is 10% higher than what we project as 2016 GLPA individual pilot compensation. By contrast, \$355,000 would be about 25% higher than the GLPA compensation, and \$394,000 would be about 39%

higher; we question whether such large disparities can be justified. We specifically request public comment and supporting data on the pilot associations' proposal for setting the 2016 individual target pilot compensation.

Determine return on investment (proposed § 404.105). The 2013 average annual rate of return for new issues of high-grade corporate securities was 4.24 percent.⁵² We apply that rate to each district's projected total operating and compensation expenses (from §§ 404.102 and 404.104) to determine the allowed return on investment for the shipping season, as shown in Table 17.

TABLE 17—DETERMINATION OF RETURN ON INVESTMENT

	District 1		District 2		District 3	
	Designated	Undesignated	Undesignated	Designated	Undesignated	Designated
Adjusted Operating Expenses (Step 2) ...	\$715,274	\$508,486	\$594,913	\$892,370	\$1,474,855	\$491,620
Total Target Pilot Compensation (Step 4)	2,187,500	1,875,000	1,562,500	2,187,500	3,437,500	1,875,000
Total 2016 Expenses	2,902,774	2,383,486	2,157,413	3,079,870	4,912,355	2,366,620
Return on Investment (4.24%)	123,078	101,060	91,474	130,587	208,284	100,345

Project needed revenue for next year (proposed § 404.106). Table 18 shows each association's needed revenue, determined by adding the proposed

§ 404.102 operating expense, the proposed § 404.104 total target compensation, and the proposed § 404.105 return on investment. Across

all three districts, the projected needed revenue for 2016 is \$18,557,345, up actual revenue of \$10,899,506 reported in our 2013 audits.

TABLE 18—REVENUE NEEDED

	District 1		District 2		District 3	
	Designated	Undesignated	Undesignated	Designated	Undesignated	Designated
Adjusted Operating Expenses (Step 2) ...	\$715,274	\$508,486	\$594,913	\$892,370	\$1,474,855	\$491,620
Total Target Pilot Compensation (Step 4)	2,187,500	1,875,000	1,562,500	2,187,500	3,437,500	1,875,000
Return on Investment (Step 5)	123,078	101,060	91,474	130,587	208,284	100,345
Total Revenue Needed (Total for all districts = \$18,557,345)	3,025,852	2,484,546	2,248,887	3,210,457	5,120,638	2,466,965

Make initial base rate calculations (proposed § 404.107). To make our initial base rate calculations, we first establish a multi-year base period from which available and reliable data for

actual pilot hours worked in each district's designated and undesignated waters can be drawn. As discussed in connection with our calculations for proposed § 404.103, and for the same

reasons, for 2016 our multi-year base period covers the four shipping seasons from 2010 through 2013.

TABLE 19—HOURS WORKED, 2010–2013, DESIGNATED AND UNDESIGNATED WATERS

Year	Pilotage district					
	D1 Designated waters (hours)	D1 Undesignated waters (hours)	D2 Designated waters (hours)	D2 Undesignated waters (hours)	D3 Designated waters (hours)	D3 Undesignated waters (hours)
2010	4,839	5,649	5,235	5,565	2,461	20,211
2011	5,045	5,377	3,680	3,708	1,678	16,012
2012	4,771	5,121	3,922	3,848	2,163	15,906
2013	5,864	5,529	4,750	4,603	2,361	17,115

⁵⁰Email, Capt. John Boyce, President, St. Lawrence Seaway Pilots Association, to Director, Great Lakes Pilotage, May 8, 2015. The actual figure

stated in the enclosure to this email is \$393,996, which we round for convenience to \$394,000.

⁵¹46 U.S.C. 9307(d)(3).

⁵²Based on Moody's AAA corporate bonds, which can be found at: <http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119>.

TABLE 19—HOURS WORKED, 2010–2013, DESIGNATED AND UNDESIGNATED WATERS—Continued

Year	Pilotage district					
	D1 Designated waters (hours)	D1 Undesignated waters (hours)	D2 Designated waters (hours)	D2 Undesignated waters (hours)	D3 Designated waters (hours)	D3 Undesignated waters (hours)
Average	5,130	5,419	4,397	4,431	2,166	17,311

Table 20 calculates new rates by dividing each association’s projected needed revenue, from § 404.106, by the

average hours shown in Table 19 and rounding to the nearest whole number.

TABLE 20—RATE CALCULATIONS

	District 1		District 2		District 3	
	Designated	Undesignated	Undesignated	Designated	Undesignated	Designated
Revenue Needed (Step 66)	\$3,025,852	\$2,484,546	\$2,248,887	\$3,210,457	\$5,120,638	\$2,466,965
Average time on task 2010–2013	5,130	5,419	4,431	4,397	17,311	2,166
Hourly Rate	\$590	\$458	\$508	\$730	\$296	\$1,139

Table 20 shows that the District 3 rate for designated waters would be more than twice the rate for undesignated waters. Therefore, as discussed earlier

under this proposed section, we apply a ratio to adjust the balance between these rates so that the rate for designated waters is no more than twice the rate for

undesignated waters, as shown in Table 21, rounded to the nearest whole number.

TABLE 21—DISTRICT 3—CAPPED DESIGNATED WATERS RATE

	District 3	
	Areas 6, 8 undesignated	Area 7 designated
Revenue Needed	\$6,068,890	\$1,518,713
Projected Pilotage Demand	17,311	2,166
Hourly Rate	\$351	\$701

Review and finalize rates (proposed § 404.108). As we noted in our discussion of Table 9 under proposed § 404.103, we are working with the pilotage associations to close a significant gap between the number of pilots needed and the working pilots we expect to be working full-time and fully compensated in 2016. Closing the gap entails training new applicant pilots, at considerable expense to the associations. Ongoing training for current pilots is also an important element of providing safe, efficient, and reliable pilotage service. Ordinarily,

current training expenses would not be recognized for several years, which would reduce funds available for other immediate association expenses. We find that the importance of training, both to help achieve a full complement of needed pilots and to ensure skill maintenance and development for current pilots, is a supportable circumstance for imposing a necessary and reasonable temporary surcharge for 2016, as authorized by 46 CFR 401.401, allowing each association to recoup necessary and reasonable training expenses incurred. We anticipate that

there will be 2 applicant pilots in each district for 2016, as we continue advancing towards our pilot strength goals. Based on historic pilot costs, the stipend, per diem, and training costs for each applicant pilot are approximately \$150,000. Thus, we estimate that the training expenses that each association will incur will be approximately \$300,000. Table 22 derives the proposed percentage surcharge for each district by comparing this estimate to each district’s projected needed revenue.

TABLE 22—SURCHARGE CALCULATION BY DISTRICT

	District 1	District 2	District 3
Projected Needed Revenue (§ 404.106)	\$5,510,398	\$5,459,344	\$7,587,603
Anticipated Training Expenses	\$300,000	\$300,000	\$300,000
Surcharge Needed*	6%	6%	4%

* All surcharge calculations are rounded up to the nearest whole percentage.

At the conclusion of the 2016 shipping season, we would account for actual

surcharge revenue and make adjustments as necessary to the

operating expenses for the following year.

VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has not been designated a “significant regulatory

action” under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB). We consider all estimates and analysis in this Regulatory Analysis to be subject to change in consideration of public comments.

The following table summarizes the affected population, costs, and benefits of the proposed rule.

TABLE 23—SUMMARY OF REGULATORY ECONOMIC IMPACTS

Proposed changes	Description	Affected population	Costs	Benefits
Rate Changes	Under the Great Lakes Pilotage Act of 1960, Coast Guard is required to review and adjust base pilotage rates annually.	126 vessels journeying the Great Lakes system annually.	\$7,168,152	<ul style="list-style-type: none"> —New rates cover an association’s necessary and reasonable operating expenses. —Provides fair compensation, adequate training, and sufficient rest periods for pilots. —Ensures the association makes enough money to fund future improvements.
Procedural Changes.	Proposed changes to the annual rate-making methodology.	3 pilot associations	No additional cost	<ul style="list-style-type: none"> —Provide maximum transparency and simplicity in the ratemaking methodology. —Make submitting data easier for pilots and more accurate.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Parts III and IV of this preamble for detailed discussions of the Coast Guard’s legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this proposed rulemaking, we are adjusting the pilotage rates for the 2016 shipping season to generate for each district sufficient revenues to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate profit to use for improvements. The rate changes in this proposed rule would, if codified, lead to an increase in the cost per unit of service to shippers in all three districts, and result in an estimated annual cost increase to shippers of approximately \$6,268,152 across all three districts over 2015 payments (Table 24).

In addition to the increase in payments that would be incurred by shippers in all three districts from the previous year as a result of the proposed rate changes, we propose authorizing a temporary surcharge to allow the pilotage associations to recover training expenses that would be incurred in 2016. We estimate that each district will incur \$300,000 in training expenses. These temporary surcharges would

generate a combined \$900,000 in revenue for the pilotage associations across all three districts.

Therefore, after accounting for the implementation of the temporary surcharges across all three districts, the annual payments made by shippers during the 2016 shipping season are estimated to be approximately \$7,168,152 more than the payments that were made in 2015 (Table 24).⁵³

A draft regulatory assessment follows. This proposed rulemaking proposes revisions to the annual ratemaking methodology (procedural changes), and applies the proposed ratemaking methodology to increase Great Lakes pilotage rates and surcharges from the current rates set in the 2015 final rule (rate changes). The proposed methodology is discussed and applied in detail in Parts V and VI of this preamble. The last full ratemaking was concluded in 2015. The last annual rate review, conducted under 46 CFR part 404, appendix C, was completed early in 2011.

The shippers affected by these rate changes are those owners and operators of domestic vessels operating on register (employed in foreign trade) and owners

and operators of foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels.

We used 2012–2014 vessel arrival data from the Coast Guard’s Ship Arrival Notification System (SANS) to estimate the average annual number of vessels affected by the rate adjustment. Using that period, we found that a mean of 126 vessels journeyed into the Great Lakes system annually from the years 2012–2014. These vessels entered the Great Lakes by transiting at least one of the three pilotage districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 126 vessels, there were 396 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2012–2014 vessel data from SANS.

The procedural changes are the proposed revisions to the annual ratemaking methodology and several Great Lakes pilotage regulations. These procedural changes are intended to clarify and simplify the current methodology, and increase the accuracy

⁵³ Total payments across all three districts are equal to the increase in payments incurred by shippers as a result of the rate changes plus the temporary surcharges applied to traffic in Districts One, Two, and Three.

of collecting information on each pilot association's expenses and revenues in order to lower the variance between projected revenue and actual revenue. However, the rate changes resulting from the new methodology would generate costs on industry in the form of higher payments for shippers. The effect of the rate changes on shippers is estimated from the District pilotage revenues. These revenues represent the

costs that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage for these services.

We estimate the effect of the rate changes by comparing the total projected revenues needed to cover costs in 2015 with the figures for 2016, plus the temporary surcharges authorized by the Coast Guard. The last full year for which we have reported

and audited financial information for the pilot association expenses is 2013, as discussed in Section VI of this preamble. We projected 2015 revenues using the rate increases set in the 2014 and 2015 final rules. The 2014 final rule⁵⁴ increased rates by 2.5 percent and the 2015 final rule⁵⁵ increased rates by 10 percent. Table 24 shows the 2015 revenue projections.

TABLE 24—REVENUE ADJUSTMENT

Area	2013 Revenue (audited)	2014 Revenue adjustment (2.5%)	2015 Revenue adjustment (10%)	Total 2015 projected revenue
D1 Designated	\$1,990,865	\$49,772	\$204,064	\$2,244,700
D1 Undesignated	1,415,299	35,382	145,068	1,595,750
Total, District 1	3,406,164	85,154	349,132	3,840,450
D2 Undesignated	1,267,750	31,694	129,944	1,429,388
D2 Designated	1,901,627	47,541	194,917	2,144,085
Total, District 2	3,169,377	79,234	324,861	3,573,473
D3 Undesignated	3,242,971	81,074	332,405	3,656,450
D3 Designated	1,080,994	27,025	110,802	1,218,821
Total, District 3	4,323,965	108,099	443,206	4,875,271
System Total	\$10,899,506	\$272,488	\$1,117,199	\$12,289,193

Table 25 details the additional cost increases to shippers by area and district as a result of the rate changes

and temporary surcharges on traffic in Districts One, Two, and Three.

TABLE 25—EFFECT OF THE PROPOSED RULE BY AREA AND DISTRICT
[\$U.S.; non-discounted]

Area	Projected revenue needed in 2015	Projected revenue needed in 2016	Total costs 2015 (2016–2015)	Temporary surcharge	Additional costs or savings of this proposed rule
D1 Designated	\$2,244,700	\$3,025,852	\$781,152	.....	.....
D1 Undesignated	1,595,750	2,484,546	888,796	.....	.....
Total, District 1	3,840,450	5,510,398	1,669,948	300,000	1,969,948
D2 Undesignated	1,429,388	2,248,887	819,499	.....	.....
D2 Designated	2,144,085	3,210,457	1,066,372	.....	.....
Total, District 2	3,573,473	5,459,344	1,885,871	300,000	2,185,871
D3 Undesignated	3,656,450	5,120,638	1,464,188	.....	.....
D3 Designated	1,218,821	2,466,965	1,248,144	.....	.....
Total, District 3	4,875,271	7,587,603	2,712,332	300,000	3,012,332
System Total	12,289,193	18,557,345	6,268,152	900,000	7,168,152

The resulting difference between the projected revenue in 2015 and the projected revenue in 2016 is the annual change in payments from shippers to pilots as a result of the rate change. This figure is equivalent to the total additional payments from the previous

year that shippers would incur for pilotage services from this proposed rule.

The effect of the rate change in this proposed rule on shippers varies by area and district. The rate changes would lead to affected shippers operating in

District One, District Two, and District Three experiencing an increase in payments of \$1,669,948, \$1,885,871, and \$2,712,332, respectively, from the previous year.

In addition to the rate changes, temporary surcharges on traffic in

⁵⁴ See 79 FR 12084, Great Lakes Pilotage Rates-2014 Annual Review and Adjustment (<https://www.federalregister.gov/articles/2014/03/04/2014->

[04591/great-lakes-pilotage-rates-2014-annual-review-and-adjustment](https://www.federalregister.gov/articles/2014/03/04/2014-04591/great-lakes-pilotage-rates-2014-annual-review-and-adjustment)).

⁵⁵ See 80 FR 10365, Great Lakes Pilotage Rates-2015 Annual Review and Adjustment ([https://](https://www.federalregister.gov/articles/2015/02/26/2015-04036/great-lakes-pilotage-rates-2015-annual-review-and-adjustment)

www.federalregister.gov/articles/2015/02/26/2015-04036/great-lakes-pilotage-rates-2015-annual-review-and-adjustment).

District One, District Two, and District Three would be applied for the duration of the 2016 season in order for the pilotage associations to recover training expenses incurred. We estimate that these surcharges would generate an additional \$300,000 in revenue for the pilotage associations in each district, for a total additional revenue of \$900,000.

To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less, depending on the distance travelled and the number of port arrivals by their vessels. However, the increase in costs reported earlier in this NPRM does capture the adjustment in payments that shippers would experience from the previous year. The overall adjustment in payments, after taking into account the increase in pilotage rates and the addition of temporary surcharges would be an increase in payments by shippers of approximately \$7,168,152 across all three districts.

This proposed rule would allow the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes would promote safe, efficient, and reliable pilotage service on the Great Lakes by ensuring rates cover an association's operating expenses; provide fair pilot compensation, adequate training, and sufficient rest periods for pilots; and ensures the association makes enough money to fund future improvements. The procedural changes would increase the accuracy of pilotage data by utilizing a uniform financial reporting system (see discussion of 46 CFR 403.300 in Part V of the preamble). The procedural changes will also promote greater transparency and simplicity in the ratemaking methodology through annual revenue audits (see discussion of 46 CFR 404.1 in Part V of the preamble).

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000 people.

We expect that entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data for the period 2012 through 2014 in the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database, and we reviewed business revenue and size data provided by publicly available sources such as MANTA⁵⁶ and Cortera.⁵⁷ We found that large, foreign-owned shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes.

There are three U.S. entities affected by the proposed rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are designated with the same NAICS industry classification and small-entity size standards described above, but they have fewer than 500 employees; combined, they have approximately 65 total employees. We expect no adverse effect to these entities from this proposed rule because all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic effect on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic effect on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies, as well as how and to what degree this

proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email Todd.A.Haviland@uscg.mil, or fax 202–372–1914. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) but would adjust the burden for an existing COI number 1625–0086, as described below.

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary of the Collection of Information: The proposed rule would require continued submission of data to an electronic collection system, identified as the Great Lakes Pilotage Management System, which will eventually replace the manual paper submissions currently used to collect data on bridge hours, vessel delay, vessel detention, vessel cancellation, vessel moorage, pilot travel, revenues, pilot availability, and related data. Further, this proposed rule will explicitly add the requirement for the pilot associations to provide copies of their paper source forms, or billing forms, until the transfer to electronic submission is available later in 2016. The pilot associations currently provide copies of their source forms, or billing

⁵⁶ See <http://www.manta.com/>.

⁵⁷ See <https://www.cortera.com/>.

forms, to the Great Lakes Pilotage Division on a monthly basis. These forms are generated by the pilot associations for their own billing purposes.

Need for Information: This information is needed in order to more accurately set future rates.

Proposed Use of Information: We would use this information to comply with the statutory and regulatory requirements regarding the ratemaking and oversight functions imposed upon the agency.

Description of Respondents: The respondents are representatives of the three U.S. pilotage associations on the Great Lakes authorized by the Coast Guard to provide pilotage service, the 42 registered pilots we project for 2016, as well as on average the six individuals that must fill out Form CG-4509 each year to apply for certification as U.S. registered pilots.

Number of Respondents: The estimated number of respondents increases with this proposed rule. We estimate the maximum number of respondents affected by this proposed rule to increase from 9 to 51 per year. This is the sum of three pilot association representatives, six applicant pilots applying for registration by filling out the CG-4509 and 42 projected registered pilots.

Frequency of Response: Frequency dictated by marine traffic levels and association staffing.

Burden of Response: We estimate the burden of response will vary by type of response, from 15 minutes for a pilot to complete the source form to one hour for the pilot association to transmit the source forms to the Coast Guard.

Estimate of Annual Burden: We estimate the total annual burden will increase from 19 to 2129.5.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated

under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

Congress directed the Coast Guard to establish "rates and charges for pilotage services." 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of state law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a "State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes." As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under E.O. 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, (2 U.S.C. 1531-1538), requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal Government, in

the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that E.O. because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272,

note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This proposed rule adjusts rates in accordance with applicable statutory and regulatory mandates. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 403

Great Lakes, Navigation (water), Reporting and recordkeeping requirements, Seamen, Uniform System of Accounts.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 401, 403, and 404 as follows:

Title 46—Shipping

PART 401—GREAT LAKES PILOTAGE REGULATIONS

- 1. The authority citation for part 401 is revised to read as follows:

Authority: 46 U.S.C. 2103, 6101, 7701, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

- 2. Revise § 401.405 to read as follows:

§ 401.405 Pilotage rates and charges.

(a) The hourly rate for pilotage service on:

- (1) The St. Lawrence River is \$590;
- (2) Lake Ontario is \$458;
- (3) Lake Erie is \$508;
- (4) The navigable waters from Southeast Shoal to Port Huron, MI is \$730;
- (5) Lakes Huron, Michigan, and Superior is \$351; and
- (6) The St. Mary's River is \$701.

(b) The pilotage charge is calculated by multiplying the hourly rate by the hours or fraction thereof (rounded to the nearest 15 minutes) that the registered pilot is on the bridge or available to the master of the vessel, multiplied by the weighting factor shown in § 401.400.

§ 401.407 [Removed]

- 3. Remove § 401.407.

§ 401.410 [Removed]

- 4. Remove § 401.410.
- 5. Revise § 401.420 to read as follows:

§ 401.420 Cancellation, delay, or interruption in rendition of services.

(a) Except as otherwise provided in this section, a vessel can be charged as authorized in § 401.405 for the waters in which the event takes place, if:

- (1) A U.S. pilot is retained on board while a vessel's passage is interrupted;
- (2) A U.S. pilot's departure from the vessel after the end of an assignment is delayed, and the pilot is detained on board, for the vessel's convenience; or
- (3) A vessel's departure or movage is delayed, for the vessel's convenience, beyond the time that a U.S. pilot is scheduled to report for duty, or reports for duty as ordered, whichever is later.

(b) When an order for a U.S. pilot's service is cancelled after that pilot has begun traveling to the designated pickup place, the vessel can be charged for the pilot's reasonable travel expenses to and from the pilot's base; and the vessel can be charged for the time between the pilot's scheduled arrival, or

the pilot's reporting for duty as ordered, whichever is later, and the time of cancellation.

(c) Between May 1 and November 30, a vessel is not liable for charges under paragraph (a)(1) or (2) of this section, if the interruption or detention was caused by ice, weather, or traffic.

(d) A pilotage charge made under this section takes the place and precludes payment of any charge that otherwise could be made under § 401.405.

- 6. Revise § 401.428 to read as follows:

§ 401.428 Boarding or discharging a pilot other than at designated points.

For a situation in which a vessel boards or discharges a U.S. pilot at a point not designated in § 401.450, it could incur additional charges as follows:

(a) Charges for the pilot's reasonable travel expenses to or from the pilot's base, if the situation occurs for reasons outside of the vessel's control, for example for a reason listed in § 401.420(c); or

(b) Charges for associated hourly charges under § 401.405, as well as the pilot's travel expenses as described in paragraph (a) of this section, if the situation takes place for the convenience of the vessel.

- 7. In § 401.450, redesignate paragraphs (b) through (j) as (c) through (k), and add paragraph (b) to read as follows:

§ 401.450 Pilot change points.

- * * * * *
- (b) Iroquois Lock;
- * * * * *

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

- 8. The authority citation for part 403 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

§ 403.120 [Removed]

- 9. Remove § 403.120.
- 10. Revise § 403.300 to read as follows:

§ 403.300 Financial reporting requirements.

(a) Each association must maintain records for dispatching, billing, and invoicing, and make them available for Director inspection, using the system currently approved by the Director.

(b) Each association must submit the compiled financial data and any other required statistical data, and written certification of the data's accuracy signed by an officer of the association,

to the Director within 30 days of the end of the annual reporting period, unless otherwise authorized by the Director.

(c) By April 1 of each year, each association must obtain an unqualified audit report for the preceding year, audited and prepared in accordance with generally accepted accounting standards by an independent certified public accountant, and electronically submit that report with any associated settlement statements to the Director by April 7.

■ 11. Revise § 403.400 to read as follows:

§ 403.400 Uniform pilot's source form.

(a) Each association must record pilotage transactions using the system currently approved by the Director.

(b) Each pilot must complete a source form in detail as soon as possible after completion of an assignment, with adequate support for reimbursable travel expenses.

(c) Upon receipt, each association must complete the source form by inserting the rates and charges specified in 46 CFR part 401.

■ 12. Revise part 404 to read as follows:

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.

404.1 General ratemaking provisions.

404.2 Procedure and criteria for recognizing association expenses.

404.3 through 404.99 [Reserved]

404.100 Ratemaking and annual reviews in general.

404.101 Ratemaking step 1: Recognize previous operating expenses.

404.102 Ratemaking step 2: Project operating expenses, adjusting for inflation or deflation.

404.103 Ratemaking step 3: Determine number of pilots needed.

404.104 Ratemaking step 4: Determine target pilot compensation.

404.105 Ratemaking step 5: Project return on investment.

404.106 Ratemaking step 6: Project needed revenue.

404.107 Ratemaking step 7: Initially calculate base rates.

404.108 Ratemaking step 8: Review and finalize rates.

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

§ 404.1 General ratemaking provisions.

(a) The goal of ratemaking is to promote safe, efficient, and reliable pilotage service on the Great Lakes, by generating for each pilotage association sufficient revenue to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an

appropriate profit to use for improvements.

(b) Annual reviews of pilotage association expenses and revenue will be conducted in conjunction with an independent party, and data from completed reviews will be used in ratemaking under this part.

(c) Full ratemakings to establish multi-year base rates and interim year reviews and adjustments will be conducted in accordance with § 404.100.

§ 404.2 Procedure and criteria for recognizing association expenses.

(a) A pilotage association must report each expense item for which it seeks reimbursement through the charging of pilotage rates, and make supporting information available to the Director. The Director must recognize the item as both necessary for providing pilotage service, and reasonable as to its amount when compared to similar expenses paid by others in the maritime or other comparable industry, or when compared with Internal Revenue Service guidelines. The association will be given an opportunity to contest any preliminary determination that a reported item should not be recognized.

(b) The Director applies the following criteria to recognize an expense item as necessary and reasonable within the meaning of paragraph (a) of this section:

(1) *Operating or capital lease costs.*

Conformity to market rates, or in the absence of a comparable market, conformity to depreciation plus an allowance for return on investment, computed as if the asset had been purchased with equity capital.

(2) *Return-on-investment.* A market equivalent return-on-investment is allowed for the net capital invested in the association by its members, if that investment is necessary for providing pilotage service.

(3) *Transactions not directly related to providing pilotage services.* Revenues and expenses generated from these transactions are included in ratemaking calculations as long as the revenues exceed the expenses. If these transactions adversely affect providing pilotage services, the Director may make rate adjustments or take other steps to ensure pilotage service is provided.

(4) *Pilot benefits.* Association-paid benefits, including medical and pension benefits and profit sharing, are treated as pilot compensation.

(5) *Profit sharing for non-pilot association employees.* These association expenses are recognizable.

(6) *Legal expenses.* These association expenses are recognizable except for any and all expenses associated with legal

action against the U.S. government or its agents.

(c) The Director does not recognize the following expense items as necessary and reasonable within the meaning of paragraph (a) of this section:

(1) Unreported or undocumented expenses, and expenses that are not reasonable in their amounts or not reasonably related to providing safe, efficient, and reliable pilotage service;

(2) Revenues and expenses from Canadian pilots that are commingled with revenues and expenses from U.S. pilots;

(3) Lobbying expenses; or

(4) Expenses for personal matters.

§§ 404.3 through 404.99 [Reserved]

§ 404.100 Ratemaking and annual reviews in general.

(a) The Director establishes base pilotage rates by a full ratemaking pursuant to §§ 404.101 through 404.108, conducted at least once every 5 years and completed by March 1 of the first year for which the base rates will be in effect. Base rates will be set to meet the goal specified in § 404.1(a).

(b) In the interim years preceding the next scheduled full rate review, the Director will review the existing rates to ensure that they continue to meet the goal specified in § 404.1(a). If interim-year adjustments are needed, they will be set according to one of the following procedures, selected as the Director deems best suited to adjust the rates to meet that goal:

(1) Automatic annual adjustments, set during the previous full rate review in anticipation of economic trends over the term of the rates set by that review;

(2) Annual adjustments reflecting consumer price changes as documented in the U.S. Bureau of Labor Statistics Midwest Region Consumer Price Index (CPI-U); or

(3) A new full ratemaking.

§ 404.101 Ratemaking step 1: Recognize previous operating expenses.

The Director uses an independent third party to review each pilotage association's expenses, as reported and audited for the last full year for which figures are available, and determines which expense items to recognize for base ratemaking purposes in accordance with § 404.2.

§ 404.102 Ratemaking step 2: Project operating expenses, adjusting for inflation or deflation.

The Director projects the base year's non-compensation operating expenses for each pilotage association, using recognized operating expense items from § 404.101. Recognized operating

expense items subject to inflation or deflation factors are adjusted for those factors based on the subsequent year's U.S. government consumer price index data for the Midwest, projected through the year in which the new base rates take effect.

§ 404.103 Ratemaking step 3: Determine number of pilots needed.

(a) The Director determines the base number of pilots needed by dividing each area's peak pilotage demand data by its pilot work cycle. The pilot work cycle standard includes any time that the Director finds to be a necessary and reasonable component of ensuring that a pilotage assignment is carried out safely, efficiently, and reliably for each area. These components may include but are not limited to:

- (1) Amount of time a pilot provides pilotage service or is available to a vessel's master to provide pilotage service;
- (2) Pilot travel time, measured from the pilot's base, to and from an assignment's starting and ending points;
- (3) Assignment delays and detentions;
- (4) Administrative time for a pilot who serves as a pilotage association's president;
- (5) Rest between assignments, as required by 46 CFR 401.451;
- (6) Ten days' recuperative rest per month from April 15 through November 15 each year, provided that lesser rest allowances are approved by the Director at the pilotage association's request, if necessary to provide pilotage without interruption through that period; and
- (7) Pilotage-related training.

(b) Peak pilotage demand and the base seasonal work standard are based on averaged available and reliable data, as so deemed by the Director, for a multi-year base period. Normally, the multi-year period is the five most recent full shipping seasons, and the data source is a system approved under 46 CFR 403.300. Where such data are not available or reliable, the Director also may use data, from additional past full shipping seasons or other sources, that the Director determines to be available and reliable.

(c) The number of pilots needed in each district is calculated by totaling the area results by district and rounding them to the nearest whole integer. For supportable circumstances, the Director may make reasonable and necessary adjustments to the rounded result to provide for changes that the Director anticipates will affect the need for pilots in the district over the period for which base rates are being established.

(d) The Director projects, based on the number of persons applying under 46

CFR part 401 to become U.S. Great Lakes registered pilots, and on information provided by the district's pilotage association, the number of pilots expected to be fully working and compensated during the first year of the period for which base rates are being established.

§ 404.104 Ratemaking step 4: Determine target pilot compensation.

The Director determines base individual target pilot compensation using a compensation benchmark, set after considering the most relevant currently available non-proprietary information. For supportable circumstances, the Director may make necessary and reasonable adjustments to the benchmark. The Director determines each pilotage association's total target pilot compensation by multiplying individual target pilot compensation by the number of pilots projected under § 404.103(d).

§ 404.105 Ratemaking step 5: Project return on investment.

The Director calculates each pilotage association's allowed base return on investment by adding the projected adjusted operating expenses from § 404.102 and the total target pilot compensation from § 404.104, multiplied by the preceding year's average annual rate of return for new issues of high grade corporate securities.

§ 404.106 Ratemaking step 6: Project needed revenue.

The Director calculates each pilotage association's base projected needed revenue by adding the projected adjusted operating expenses from § 404.102, the total target pilot compensation from § 404.104, and the projected return on investment from § 404.105.

§ 404.107 Ratemaking step 7: Initially calculate base rates.

(a) The Director initially calculates base hourly rates by dividing the projected needed revenue from § 404.106 by averages of past hours worked in each district's designated and undesignated waters, using available and reliable data for a multi-year period set in accordance with § 404.103(b).

(b) If the result of this calculation initially shows an hourly rate for the designated waters of a district that would exceed twice the hourly rate for undesignated waters, the initial designated-waters rate will be adjusted so as not to exceed twice the hourly undesignated-waters rate. The adjustment is a reallocation only and will not increase or decrease the amount

of revenue needed in the affected district.

§ 404.108 Ratemaking step 8: Review and finalize rates.

The Director reviews the base pilotage rates initially set in § 404.107 to ensure they meet the goal set in § 404.1(a), and either finalizes them or first makes necessary and reasonable adjustments to them based on requirements of Great Lakes pilotage agreements between the United States and Canada, or other supportable circumstances. Adjustments will be made consistently with § 404.107(b).

Gary C. Rasicot,

*Director, Marine Transportation Systems,
U.S. Coast Guard.*

[FR Doc. 2015-22895 Filed 9-8-15; 4:15 pm]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150708591-5591-01]

RIN 0648-XE043

**Fisheries Off West Coast States;
Coastal Pelagic Species Fisheries;
Annual Specifications**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is proposed pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2015-2016 HG for Pacific mackerel is 21,469 metric tons (mt). This is the total commercial fishing target level. This action also proposes an annual catch target (ACT), of 20,469 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,469 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This proposed rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Comments must be received by October 13, 2015.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2015–0096, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov / #!docketDetail;D=NOAA-NMFS-2015-0096, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 and 2016–2017 Fishing Years” may be obtained from the West Coast Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council’s (Council) CPS Management Team (Team), the Council’s CPS Advisory Subpanel (Subpanel) and the Council’s Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable

biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG and ACT recommendations, and comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this proposed rule is to implement the 2015–2016 ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is $HG = [(Biomass-Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel. For the 2015–2016 management season this is 120,435 mt.
2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.
4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the

distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted the “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 and 2016–2017 Fishing Years” completed by NMFS Southwest Fisheries Science Center and the resulting Pacific mackerel biomass estimate for use in the 2015–2016 fishing year of 120,435 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, an OFL of 25,291 mt, an ABC and ACL of 23,104 mt, a HG of 21,469 mt, and an ACT of 20,469 mt for the fishing year of July 1, 2015, to June 30, 2016. Additionally, the Council also adopted and recommended harvest specifications for the 2016–2017 fishing year; however, currently NMFS is only proposing to implement the annual harvest measures for the 2015–2016 fishing year. A subsequent rule will be published later in the year that will propose the Council’s recommendations for the 2016–2017 fishing year.

Under this proposed action, upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. For the remainder of the fishing year incidental landings would also be constrained to a 45-percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,469 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2015–2016 season, therefore the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside and the allowance of an incidental fishery is to allow for restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS would also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

Detailed information on the fishery and the stock assessment are found in the reports "Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–16 Fishing Year" and "Pacific Mackerel Biomass Projection Estimate for USA Management (2015–16)" (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866 because they contain no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$ 5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million. 78 FR 33656, 33660, 33666 (See Table 1). NMFS conducted its analysis for this action in light of the new size standards.

As stated above, the SBA now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$20.5 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards, as described below, they all would continue to be considered small.

The small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast CPS purse seine fleet. The CPS FMP and its implementing regulations requires NMFS to set an OFL, ABC, ACL, HG and ACT for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control rules are applied to the current stock biomass estimate to derive these catch specifications, which are used to manage the commercial take of Pacific mackerel. A component of these control rules is that as the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. For the 2015–2016 Pacific mackerel fishing season NMFS is proposing an OFL of 25,291 metric tons (mt), an ABC and ACL of 23,104 mt, an HG of 21,469 mt and an ACT, which is the directed fishing harvest target, of 20,469 mt. These catch specifications are based on a biomass estimate of 120,435 mt.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which primarily includes the fisheries for Pacific sardine, northern anchovy and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Currently there are 58 vessels permitted in the Federal CPS limited entry fishery off California of which about 25 to 39 vessels have been annually engaged in harvesting Pacific mackerel in recent years (2009–2013). For those vessels that caught Pacific mackerel during that time, the average annual per vessel revenue has been about \$1.25 million. The individual vessel revenue for these vessels is well below the SBA's threshold level of \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal or similar effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner.

NMFS used the ex-vessel revenue information for a profitability analysis, as the cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2014–2015 fishing year, the maximum fishing level was 29,170 mt and was divided into a directed fishing harvest target (ACT) of 24,170 mt and an incidental set-aside of 5,000 mt. Approximately 3,611 mt was harvested in 2014–2015 fishing season with an estimated ex-vessel value of approximately \$940,000.

The maximum fishing level for the 2015–2016 Pacific mackerel fishing season is 21,469 mt, with an ACT of 20,469 mt and an incidental set-aside of 1,000 mt. If the fleet were to take the entire 2015–2016 ACT, the potential revenue to the fleet would be approximately \$4.7 million (based on average ex-vessel price of \$230 per mt during 2013–2014 and 2014–2015), which is the same as what the estimated potential revenue was last year for the 2014–2015 season (which was based on average ex-vessel price of \$193 per mt during 2012–2013 and 2013–2014). However, this result will depend greatly on market forces within the fishery, and on the regional availability of the resource to the fleet and the fleets' ability to find schools of Pacific mackerel. The annual average U.S. Pacific mackerel harvest over the last decade (2001–2013) and in recent years (2009–2013) has been about 4,900 mt and 4,500 mt, respectively. In those periods, the landings have not exceeded 11,500 mt. The annual average landings during 2001–2013 and 2009–2013 were only about 20% and 15% of the annual average HGs, respectively. As a result, although this year's ACT represents a decrease compared to the previous fishing season, it is highly unlikely that the ACT proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, and specifically the fishery under the previous season's regulations.

Additionally, revenue derived from harvesting Pacific mackerel is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific mackerel; as a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, sardine, and in particular market squid, making Pacific mackerel only one component of a multi-species CPS fishery. For example, in recent years the annual total fleet revenue from Pacific mackerel alone has ranged from about \$200,000 to \$1.5 million with average fleet revenue of about \$800,000 (or \$23,422 per vessel). Thus, the revenue from Pacific mackerel in the CPS fleet is a very small fraction of the revenue whether from CPS species or all fish species. The revenue from Pacific mackerel constitutes about 1.98% and

1.95% of the total revenue from CPS species and all fish species, respectively. However, as a result of the closing of the directed Pacific sardine fishery for the 2015–2016 fishing year, there is the potential for more effort to be shifted to Pacific mackerel resulting in increased landings and therefore increased revenue from mackerel.

These vessels typically rely on multiple species for profitability because abundance of mackerel, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time;

therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013 and June 14, 2014 final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner.

Based on the disproportionality and profitability analysis above, the

proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2015.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2015–22781 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 175

Thursday, September 10, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Special Session, "Building Human Capital: Nutrition Is Fundamental"

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a special session hosted by the Board for International Food and Agricultural Development (BIFAD). This public session will be held from 9:00 a.m. to 11:00 a.m. on Wednesday, October 14, 2015 at the Des Moines Marriot Downtown Hotel, 700 Grand Avenue, Des Moines, Iowa. The title of the session is *Building Human Capital: Nutrition Is Fundamental*. This session focuses on the economic impact of malnutrition in the developing world. Through this discussion, BIFAD seeks to highlight this important issue and begin a dialogue with university partners, nutrition experts, and the broader stakeholder community.

Dr. Brady Deaton, BIFAD Chair, will moderate the special session, which will begin promptly at 9:00 a.m. with opening remarks. The first speaker, Dr. Rob Bertram, USAID Bureau for Food Security's Chief Scientist, will provide an introduction to USAID's nutrition strategy under Feed the Future. The first hour of the session will consist of short presentations by a panel of nutrition experts from the university community. The panelists include Jessica Fanzo from the Bloomberg School of Public Health at Johns Hopkins University; John Hoddinott from the Charles H. Dyson School of Economics and Management at Cornell University; Grace Marquis from the School of Dietetics and Nutrition at McGill University, Canada; and Ana Lydia Sawaya from the Institute of Advanced Studies at the Federal University of Sao Paulo, Brazil. They will discuss emerging trends in the global pattern of malnutrition, including obesity and micronutrient deficiency, cognitive and

physical impairments of children that arise from poor nutrition, and the economic and social impacts of malnutrition. The panel will conclude with examples of successful, evidence-based nutrition interventions.

At 10:30 a.m., Chairman Deaton will open the floor for questions to the panelists, as well as general information sharing and dialogue among all participants. At 11:00 a.m. BIFAD Chair Brady Deaton will make closing remarks and adjourn the BIFAD-sponsored special session.

Those wishing to attend the session or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD in the Bureau for Food Security at USAID. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.09-067, Washington, DC 20523-2110 or telephone her at (202) 712-0218.

Susan Owens,

Executive Director and USAID Designated Federal Officer for BIFAD, Bureau for Food Security, U.S. Agency for International Development.

[FR Doc. 2015-22793 Filed 9-9-15; 8:45 am]

BILLING CODE 6116-02-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Services Performance Review Board: Update

AGENCY: Office of Inspector General, U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated U.S. Agency for International Development, Office of Inspector General's Senior Executive Service (SES) Performance Review Board.

DATES: August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Robert S. Ross, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue NW., Room 8.08-029, Washington, DC 20523-8700; telephone 202-712-0010; FAX 202-

216-3392; Internet Email address: ross@usaid.gov (for Email messages, the subject line should include the following reference—USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(b)(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and Section 430.307 thereof in particular, one or more SES Performance Review Boards. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published on December 19, 2014.

Approved: August 31, 2015.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

Lisa Risley, Assistant Inspector General for Investigations

Robert S. Ross, Assistant Inspector General for Management

Lisa S. Goldfluss, Legal Counsel
Alvin A. Brown, Deputy Assistant Inspector General for Audit

Melinda Dempsey, Deputy Assistant Inspector General for Audit

Lisa McClennon, Deputy Assistant Inspector General for Investigations

Tricia Hollis, Assistant Inspector General for Management, Department of Treasury

Rodney DeSmet, Deputy Assistant Inspector General for Audit, Department of Agriculture

Frank Rokosz, Deputy Assistant Inspector General for Audit, Department of Housing and Urban Development

Larry Gregg, Associate Inspector General, General Services Administration

Dated: August 28, 2015.

Catherine M. Trujillo,

Acting Deputy Inspector General.

[FR Doc. 2015-22792 Filed 9-9-15; 8:45 am]

BILLING CODE 6116-01-P

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: This notice lists approved candidates who will comprise a standing roster for service on the Agency's 2015 and 2016 SES Performance Review Boards. The Agency will use this roster to select SES board members, and an outside member for the convening SES Performance Review Board each year. The standing roster is as follows:

Allen, Colleen
Broderick, Deborah
Chan, Carol
Chapotin, Saharah Moon
Detherage, Maria
Feinstein, Barbara
Foley, Jason
Girod, Gayle
Hunt, Juan Carlos
Jenkins, Robert
Kolmstetter, Elizabeth
Kuyumjian, Kent
Leavitt, William
Mahanand, Vedjai
Martin-Wallace, Valencia, U.S. Patent and Trade Office
Miranda, Roberto
Mitchell Reginald
Pascocello, Susan
Sampler, Donald
Simpkins, John
Steele, Gloria
Sumilas, Michele
Vera, Mauricio
Walther, Mark
Warren, Gordon
Webb, Mark
Whyche-Shaw, Oren

FOR FURTHER INFORMATION CONTACT: Maryclare Whitehead, 202–216–3489.

Dated: September 2, 2015.

Karen Baquedano,

Acting Director, Center for Performance Excellence.

[FR Doc. 2015–22796 Filed 9–9–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comments Request—Evaluation of the Food Insecurity Nutrition Incentive (FINI) Grant Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public and other public agencies to comment on this proposed information collection. This is a new collection for the purpose of measuring changes in fruit and vegetable purchases and consumption, food security, and perceived diet quality and health status among Supplemental Nutrition Assistance Program (SNAP) participants receiving incentives at the point of purchase.

DATES: Written comments must be received on or before November 9, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Eric Sean Williams, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Eric Sean Williams at 703–305–2576 or via email to eric.williams@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collected should be directed to Eric Sean Williams, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Food Insecurity Nutrition Incentive (FINI) Grant Program.

OMB Number: 0584–NEW.

Expiration Date of Approval: Not Yet Determined.

Abstract: The Agriculture Act of 2014 (Pub. L. 113–79) authorized USDA to provide Food Insecurity Nutrition Incentive (FINI) grants to eligible organizations to design and implement projects to increase purchases of fruits and vegetables among low-income consumers participating in SNAP by providing incentives at the point of purchase. The objective of this information collection is to measure changes in fruit and vegetable purchases and consumption, food security, and perceived diet quality and health status among SNAP participants who receive incentives through FINI grant projects awarded in FY 2015 and FY 2016. The evaluation will use a quasi-experimental study design with clustered intervention sites and non-equivalent comparison groups. Baseline and follow-up data will be collected from (i) SNAP participants in the intervention (incentive) and the non-incentive comparison groups, (ii) Program Staff (key informant) interviews, and (iii) grantees. The data collection activities to be undertaken subject to this notice include:

- **Participant Survey:** Two questions for the participant survey that have not been previously validated will be pretested with 9 SNAP participants. The pretest participants will not be included in the sample for the participant survey. SNAP participants in the intervention and comparison groups will be asked questions about their shopping patterns, knowledge and attitudes about fruits and vegetables, fruit and vegetable intakes, food security, household characteristics, and their experience with the incentive programs. Data collection procedures will be the same for the pre- and post-intervention surveys. At the onset of the voluntary study, a packet containing an advance invitation letter in English and Spanish, a \$5 pre-survey incentive, pre-intervention survey, and postage paid return envelope will be mailed to participants. Both letters will include instructions to call a toll-free number; however, the Spanish letter will have an option for Spanish Speakers to complete their survey in Spanish. One week after the initial mailing, participants who have not returned the survey will receive an automated telephone call reminding them to complete and return the survey. Next, three weeks after the initial mailing, a FedEx package will be sent to non-responding participants, to

underscore the importance of the study. The FedEx package will include a reminder letter with a toll-free number they can call to complete the survey by phone, a hard copy participant survey, and postage paid envelope. One week after the 2nd mailing, all non-responding participants will receive an automated telephone reminder call. About three weeks after the second mailing, telephone data collectors will attempt to contact sampled participants who have not returned the survey and try to complete the participant survey by phone. In the event that the trained interviewer is unable to speak with a person, interviewers will leave a message on voice mail along with a toll-free number for respondents to call and complete the survey at their convenience. A thank you letter with a \$20 cash incentive will be mailed to participants completing the survey. Respondents who use their cellphone to complete the interview will receive an additional \$10 (*i.e.*, total of \$30) to reimburse for the minutes used to complete the survey. The invitation letter for post-intervention survey and FedEx follow-up letter for the post-intervention survey will be sent only to pre-intervention survey respondents.

- **Program Staff (Key Informants):** State Agencies and Business Grantees will identify program administrators, retail and market operators and representatives from the partnering local community organization(s), to participate in two semi-structured telephone interviews regarding implementation of the incentive program. The interview procedures will be the same for the two interviews; trained project staff will use the

interview guide and record the discussions. A thank you postcard will be mailed to all program staff. Since program staff are expected to cooperate with and contribute to the independent evaluation, they will be no monetary incentives for their participation in this study.

- **State, Local or Tribal and Business-for-not-for-profit:** Grantees will be emailed on a quarterly basis, with a request to complete the online minimum core data survey for all outlets that are involved in the incentive program. As indicated in the program staff section above, grantees are expected to cooperate with and contribute to the independent evaluation; therefore, grantees will not receive monetary incentives for their participation in the evaluation. However, they may receive a summary data report about their FINI grant project.

Affected Public: Respondent groups identified include: Individuals/Households (SNAP participants), State/Local or Tribal Government (Respondent Types: Grantees and program administrators), and Profit/Non-Profit Businesses (Respondent Types: Grantees, program administrators, retailers, and community organizations).

Estimated Number of Respondents: The total number of respondents is 10,266. This includes 9 SNAP participants that will pretest 2 survey questions and 10,152 SNAP participants (6,903 will complete the pre-intervention survey and 3,093 will complete the pre-intervention and post-intervention surveys) with an 80 percent response rate for eligible respondents).

A total of 105 key informant interviews will be conducted annually (5 State/Local government grantees; 30 for profit/nonprofit grantees; and 70 retailer/local community staff). The minimum core data form will be completed by 35 grantees (5 State/Local government grantees and 30 for profit/nonprofit grantees), on a quarterly basis. Note that some grantees have multiple sites and they will coordinate data collection activities with their outlets. The average number of outlets is 302 for State/Local government grantee and 88 per profit/nonprofit grantee. We expect a 100 percent response rate for the grantees program staff/key informant interviews and for the completion and quarterly submission of the minimum core data.

Estimated Number of Responses per Respondent: SNAP participants and program staff/key informant interviews will respond two times; grantees will respond 16 times, on average (on a quarterly basis).

Estimated Time per Response: Pretesting 2 questions will take .25 hours. The pre-intervention and post-intervention surveys completed by mail will take 20 minutes (.334 hours) and those completed over the telephone will take 25 minutes. Program Staff/Key informant interviews will take 1 hour, and the minimum core data form will take about 20 minutes per outlet, per quarter.

Estimated Total Burden on Respondents: 17,584.2 hours. See the table below for estimated total burden for each type of respondent.

The burden is broken down by respondent type:

BILLING CODE 3410-34-P

	Thank you postcard, Year 1	2	2	1	2	0.1670	0.33	0	2	0	0.17	0	0.33
	Minimum core data request email (j), Year 1	2	2	4	8	0.0835	0.67	0	8	0	0.08	0	0.67
	Minimum core data form (j), Year 1	2	2	4	8	100.6667	805.33	0	4	0	100.67	0	805.3
	KI Interview Scheduling (script) (i), Year 2	3	3	1	3	0.0835	0.25	0	1	0	0.08	0	0.3
	KI Interview (guide) (i), Year 2	3	3	1	3	1.0000	3.00	0	1	0	1.00	0	3.0
	Thank you postcard, Year 2	3	3	1	3	0.1670	0.50	0	1	0	0.17	0	0.5
	Minimum core data request email (j), Year 2	3	3	4	12	0.0835	1.00	0	4	0	0.08	0	1.0
	Minimum core data form (j), Year 2	3	3	4	12	100.6667	1208.00	0	4	0	100.67	0	1208.0
	Minimum core data request email (j), Year 3	3	3	4	12	0.0835	1.00	0	4	0	0.08	0	1.0
	Minimum core data form (j), Year 3	3	3	4	12	100.6667	1208.00	0	4	0	100.67	0	1208.0
		5	5		79	40.8894	3230.26	0		0		0	3230.26
Grantees and Administrators/ Retailers/Local Community Org. Staff*	Grantee Key Informant (KI) Interview Scheduling (script) (i), Year 1	13	13	1	13	0.0835	1.09	0	2	0	0.080	0	0.00
	Grantee KI Interview (guide) (i), Year 1	13	13	1	13	1.0000	13.00	0	2	0	1.000	0	13.00
	Grantee Thank you postcard, Year 1	13	13	1	13	0.1670	2.17	0	2	0	0.167	0	2.17
	Grantee Minimum core data request email (j), Year 1	13	13	4	52	0.0835	4.34	0	8	0	0.084	0	4.34
	Grantee Minimum core data form (j), Year 1	13	13	4	52	29.3077	1524.00	0	4	0	29.308	0	1524.00
	Grantee KI Interview Scheduling (script) (i), Year 2	30	30	1	30	0.0835	2.51	0	1	0	0.084	0	2.51
	Grantee KI Interview (guide) (i), Year 2	30	30	1	30	1.0000	30.00	0	1	0	1.000	0	30.00
	Grantee Thank you postcard, Year 2	30	30	1	30	0.1670	5.01	0	1	0	0.167	0	5.01
	Grantee Minimum core data request email (j), Year 2	30	30	4	120	0.0835	10.02	0	4	0	0.084	0	10.02
	Grantee Minimum core data form (j), Year 2	30	30	4	120	29.3077	3516.92	0	4	0	29.308	0	3516.92
	Grantee Minimum core data request email (j), Year 3	30	30	4	120	0.0835	10.02	0	4	0	0.084	0	10.02
	Grantee Minimum core data form (j), Year 3	30	30	4	120	0.0167	2.00	0	4	0	0.017	0	2.00

Retailer KI Interview Scheduling (script) (i), Year 1	70	70	1	70	0.0835	5.85	0	1	0	0.08	0	5.85
Retailer KI Interview (guide) (i), Year 1	70	70	1	70	1.0000	70.00	0	2	0	1.00	0	70.00
Retailer Thank you postcard, Year 1	70	70	1	70	0.0167	1.17	0	2	0	0.02	0	1.17
Retailer KI Interview Scheduling (script) (i), Year 2	70	70	1	70	0.0835	5.845	0	1	0	0.0835	0	5.845
Retailer KI Interview (guide) (i), Year 2	70	70	1	70	1.0000	70	0	2	0	1.0000	0	70
Retailer Thank you postcard, Year 2	70	70	1	70	0.0167	1.169	0	2	0	0.0167	0	1.169
	100	100		1133	4.656	5275.11	0		0		0.00	5274.02
	10,266	9,251		81,165	0.214	17,335.55	1015		6976		248.69	17,584.15

Dated: September 4, 2015.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015-22782 Filed 9-9-15; 8:45 am]

BILLING CODE 3410-34-C

BROADCASTING BOARD OF GOVERNORS

Notice of Public Availability of the Broadcasting Board of Governors FY-2013 Service Contract Analysis and FY-2014 Service Contract Inventory

AGENCY: The Broadcasting Board of Governors.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111-117), the Broadcasting Board of Governors (BBG) is publishing this notice to instruct the public of the availability of its FY-2013 Service Contract Analysis and FY-2014 Service Contract Inventory. They are available on the BBG Internet site at <http://www.bbg.gov/about-the-agency/research-reports/other/bbg-service-contract-inventory/>. The service contract inventory provides information on service contract actions over \$25,000 made in FY-2014. The information is organized by function to show how contracted resources are distributed throughout the Agency. The inventory has been developed in accordance with guidance on service contract inventories issued on November 5, 2010 and on December 19, 2011 by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

FOR FURTHER INFORMATION CONTACT: James McGuirk, Senior Procurement Analyst, IBB Office of Contracts via email at jmcguirk@bbg.gov or at telephone number (202) 382-7840.

Dated: September 3, 2015.

Chris Luer,

Chief, IBB Office of Administration.

[FR Doc. 2015-22861 Filed 9-9-15; 8:45 am]

BILLING CODE 8610-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Mississippi Advisory Committee; Correction

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The U.S. Commission on Civil Rights published a document in the

Federal Register of July 21, 2015, concerning notice of a public meeting of the Mississippi Advisory Committee. The public meeting has been cancelled and will be rescheduled.

FOR FURTHER INFORMATION CONTACT:

Melissa Mojnaroski, DFO, at 312-353-8311 or mwojnaroski@usccr.gov.

Correction

In the **Federal Register** of July 21, 2015, in FR Doc. 2015-17785, on pages 43060-43061, withdraw the notice of a meeting of the Mississippi Advisory Committee for September 8, 2015, via conference call. The meeting has been cancelled and will be rescheduled.

Dated: September 4, 2015.

David Mussatt,

Chief Regional Programs Unit.

[FR Doc. 2015-22824 Filed 9-9-15; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: School District Review Program.

OMB Control Number: 0607-XXXX.

Form Number(s): N/A.

Type of Request: Regular Submission.

Number of Respondents: 102.

Average Hours per Response: 20.

Burden Hours: 2040.

Needs and Uses: The mission of the Geography Division (GEO) within the U.S. Census Bureau is to plan, coordinate, and administer all geographic and cartographic activities needed to facilitate Census Bureau statistical programs throughout the United States and its territories. GEO manages programs that continuously update features, boundaries, addresses, and geographic entities in the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The National Center for Education Statistics (NCES) sponsors the School District Review Program, which enables the Census Bureau to create special tabulations of Decennial Census data by school district geography. The demographic data produced by the Census Bureau for the NCES and related to each school district is of vital importance for each state's allocation under Title I of the

Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001. The NCES identifies a Title I Coordinator, and the Census Bureau works with the NCES on assigning a Mapping Coordinator in each state to work with the Census Bureau to implement this work. The respondents for the SDRP are the Title I Coordinators and Mapping Coordinators from the fifty states and the District of Columbia. The SDRP invites respondent participation in two phases of the program: Annotation and Verification. As part of the 2015-2016 SDRP Annotation phase, the Mapping Coordinator in each state will receive a variety of materials from the Census Bureau to use in their review and update of school district boundaries, names, codes and geographic relationships. The Mapping Coordinators will use the Census Bureau's MAF/TIGER Partnership Software (MTPS) and Census supplied spatial data in digital shapefile format to identify boundary changes for their school districts. As part of the Verification phase of the SDRP, Mapping Coordinators will have the opportunity to either use the MTPS with Census Bureau supplied Verification shapefiles, or the Census Crowdsourcing Tool (CCT) to review and verify that the Census Bureau correctly captured their submitted information. If a respondent finds cases where the Census Bureau did not incorporate their proposed submissions correctly, the respondent can tag and comment the area of issue and that information will become available to the Census Bureau for corrections. The Census Bureau conducts the SDRP every two years under agreement from the NCES of the U.S. Department of Education (ED). The Census Bureau invites state education officials to participate in the review and update of its national inventory of school district boundaries and district information. State education officials collaborate with local superintendents on their responses. The participants review and provide updates and corrections to the elementary, secondary, and unified school district names and Federal Local Education Agency (LEA) identification numbers, school district boundaries, and the grade ranges for which a school district is financially responsible. The participants submit updated digital spatial files back to the Census Bureau. The Census Bureau uses the updated school district information along with the most current Census population and income data, current population estimates, and tabulations of

administrative records data, to form the Census Bureau's estimates of the number of children aged five through seventeen in low-income families for each school district. These estimates of the number of children in low-income families residing within each school district are the basis of the funding allocation for each school district under Title I of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001, Public Law (Pub. L.) 107-110.

Affected Public: All fifty states and the District of Columbia.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.

Section 16, 141, and 193. Title I, Part A of the Elementary and Secondary Education Act.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Dated: September 4, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-22812 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Generic Clearance for the 2020 Census Field Tests

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer,

Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erin Love, Census Bureau, HQ-3H468E, Washington, DC 20233; (301) 763-2034 (or via the Internet at erin.s.love@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau is committed to conducting research towards a 2020 Census that costs less while maintaining high quality results. The Census Bureau plans to request an extension of the current OMB approval to conduct a series of small-scale tests to research and evaluate how the use of automation can improve data collection activities. These tests will explore how the Census Bureau can use automated processes to improve efficiency, data quality, and response rates and reduce respondent burden.

This information collection will operate as a generic clearance. The estimated number of respondents and annual reporting hours requested cover both the known and yet to be determined tests. A generic clearance is needed for these tests because though each share similar methodology, the exact number of tests and the explicit details of each test to be performed has yet to be determined. Once information collection plans are defined, they will be submitted on an individual basis in order to keep OMB informed as these tests progress.

The Census Bureau plans to test the use of mobile computing devices, emails, text messages and applications in self-enumeration and data collection tasks. The enumeration functions research will focus on using various applications to enumerate households and persons. The research and evaluation may include: Developing an automated enumeration questionnaire; inviting respondents to participate; reminding them to participate; usability issues; conducting interviews; and ability to toggle to non-English language instrument. To test enumeration functions, the Census Bureau may conduct the enumeration directly with a household member or knowledgeable respondent. The questions asked in these tasks will be content or experimental content for the 2020 Census operations and forms, along with some attitudinal and satisfaction debriefing questions.

II. Method of Collection

The information will be collected through observations, self-response, face-face interviews, and/or telephone interviews.

III. Data

OMB Control Number: 0607-0971.

Form Number: Not yet determined.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 36,000 per year.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 6000 hours annually.

Estimated Total Annual Cost: There is no cost to the respondent other than time to answer the information request.

Respondents Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-22789 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-58-2015]

Foreign-Trade Zone (FTZ) 133—Quad-Cities, Iowa/Illinois; Notification of Proposed Production Activity; CNH Industrial America, LLC; Subzone 133E, (Agricultural and Construction Equipment, Subassemblies and Kits), Burlington and West Burlington, Iowa

CNH Industrial America, LLC (CNH), operator of Subzone 133E, submitted a notification of proposed production activity to the FTZ Board for its facilities located within Subzone 133E at sites in Burlington and West Burlington, Iowa. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 2, 2015.

The CNH facilities are used for the production and distribution of agricultural and construction equipment, subassemblies and kits. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CNH from customs duty payments on the foreign-status components used in export production. On its domestic sales, CNH would be able to choose the duty rates during customs entry procedures that apply to decal kits; toolbox kits; air conditioner kits; air conditioner service kits; forklifts; crawler dozers; tractor loaders; tractor loader backhoes; tractor loader backhoe assemblies and attachments (shafts, hook assemblies, buckets, shaft masts); cabs units; forklifts; cab service kits; valve service kits; engine hoods; loaders; bucket arms; boom and dipper assemblies; link assemblies; crawler dozer frames with tracks; axle assemblies; cab assemblies; draper, auger, and corn headers; bucket service kits; strippers for combine headers; wheel mount assemblies; combine header service kits; combine header arm assemblies, frames, and floors; locking tabs; reel tine flap kits; header dividers; hydraulic valve kits; valve part kits; beacon kits; relay voltage kits; electrical control kits; programmable controller kits; electrical service kits; and ignition wire service kits (duty rates range from duty-free to 5.8%) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Articles of plastic (hoses; hose assemblies; shields; tubes without fittings; non-reinforced tubes, pipes and hoses with fittings; reinforced tubes, pipes and hoses with fittings; caution decals; insulators; fuel caps; steering wheel knobs; handles; spacers; tool boxes; joints; insulators; clamps; clips; retainers; strips; trim; seals; washers; and gaskets); articles of rubber (gaskets; insulation; pads; weather strips and sheets; weather strip profile shapes; insulation; non-reinforced elbows; tubes; and hoses without fittings; metal reinforced hose and hose assemblies without fittings; metal reinforced hoses; hose assemblies and tubes with fittings; textile reinforced rubber hoses; hose assemblies and sleeves without fittings; textile reinforced flexible hoses; air conditioner hoses; hose assemblies with fittings; reinforced (other materials) air hoses; flexible hoses; hydraulic hoses; alternator hoses and hose assemblies without fittings; reinforced (other materials) radiator hoses; pipes; flexible hoses with fittings; textile reinforced transmission belts; v-belts (60 to 180 cm outside circumference); textile reinforced transmission belts and v-belts (180 to 240 cm outside circumference); other transmission v-belts; textile reinforced belts; transmission belts; belt assemblies; belts; buffers; gaskets; seals; floor mats; liners; o-rings; packing; protection caps; glass stops; covers; shifter control lever boots; grommets; bellows; bushings; insulator blocks; mounts; pads; bands; stoppers and strips); coated paper gaskets and washers; training manuals; drawings; schematics; catalogs; rubber canvas radiator seals; anti-skid mats and strips; tempered safety glass for cabs of vehicles of chapter 87; mirrors and mirror assemblies; cold-rolled steel hollow tubes; stainless steel tubes; articles of iron or steel (tubes; couplings; connectors; fittings; elbows; stems; adapters; unions; o-rings; tees; cables; cable assemblies; ropes; wire ropes; roller chains; roller chain assemblies; chains; chain kits and assemblies; chain links and assemblies; screws; bolts; nuts; plugs; rods; retainers; rings; latches; washers; shims; pins; pin assemblies; rivets; springs; clamps; brackets; supports; racks; tool boxes; clips; and flanges); copper ground straps and cables; washers; and rivets; hex wrench sets; hammers; gathering chain tool assemblies; wrenches; latches; locks; catches; handles; lock assemblies; locks; lock keys; ignition keys; hinges; supports; iron/steel/aluminum/zinc/ other base metal angles, dampers,

brackets, gas struts, shock absorbers, springs, supports, plates, and mounts; plugs; radiator caps; covers; dust caps of base metal; decals; name plates; identity plates; emblems; engines; belt tensioners; hydraulic tubes; hydraulic cylinders; hydraulic motors and assemblies; fuel pumps; hydraulic fluid power pumps; hydraulic fluid power gear pumps; master cylinders; brake cylinders; pump modules and related parts (pump cores, covers, diaphragms, filters, gear sets, housings, impellers, repair kits, nozzles, pistons and plates); fans and fan assemblies; blowers and blower assemblies; turbochargers; compressors and compressor kits; heater cores; air conditioners; evaporator core assemblies; condensers; receiver-dryer assemblies; water filters; water screens; water strainers; oil filters; fuel filters; filter elements; hydraulic filters; filter receiver dryers; heaters; thermostats; filter cartridges; filter elements; filter strainers; air filters; air cleaners and assemblies; catalytic converters; cab filters; air dryer assemblies; receiver dryer assemblies; air cleaner manifolds and housing; oil and fuel filter elements; strainer assemblies; spray parts (tips, tubes, nozzles, tanks, supports, sprays, spindles, spacers, retainers, reservoirs for sprayers); jacks; lift cylinders; counterweights; mufflers; valve plates; buckets and bucket attachments; channels; wrist rest assemblies; bezels, brackets, bushings, dippers and arms for buckets; link blocks; frames; support brackets; elbows; cabs; shovel brackets; baffles; shovel discs; mounts; auger floor troughs; caps; door panels; tank ducts; fuel tanks; air intake tubes; header frames; cutterbars; conversion kits; accumulators; rotary brush attachments; wipers; straps; wiper blades and assemblies; hydraulic valves; center joints; swivel joints; joysticks; copper, iron or steel check valves; aspirator kits; breathers; plugs; poppets; copper/iron/steel shut-off valves, control valves, drain cocks and assemblies, quick couplings, valve fittings, and stop valves; copper/iron/steel connecting and coupling blocks, cylinder caps, cartridges, coils, control blocks, hydraulic manifolds, plugs, pistons, plug covers, control and hydraulic valves for non-hand operated valves; ball bearings; bearings and bearing assemblies; roller bearings; bearing cups; shims; spacers; tapered bearings; thrust washers; balls; collars; rings; races; transmission shafts; drive shafts and shaft assemblies; bearing housings; bearing carriers; bearing supports; torque converters; transmissions; drive assemblies; gear reduction units; reducers; final drive housings; swing

reduction assemblies; gear pump drives; slewing rings; pulleys and pulley idlers; flywheels; adapters; bushings; clutches; couplings and coupling assemblies; universal joints; gears; gear shifter forks; sprockets; exhaust seals; engine gaskets and kits; seal kits; oil seals; seal repair kits; dust seals; taper fasteners; oil seals; lube nipples; actuators; electric motors; wiper motors; DC converters; printed circuit boards; magnets; magnetic rings; solenoids; coils; wet batteries; dry batteries; starter motors; alternators; visual signaling equipment; working lights; floodlights; alarms; horns; buzzers; welding orifices; wire feeders; cable units; encoder cables; welding torches; welding power sources; conductive metals; tip bodies; block heaters; heater assemblies; heating elements; fluid heaters; heaters; heater blocks; wireless network sensors; speakers; software on CD-Rom; video cameras; radars; true ground sensors; radios; radio parts; radio antennas; beacons; indicator lights; monitors; light kits; control levers; potentiometers; sensors; powertrain sensors; resistors; fuses; electrical timers; relays; switch assemblies; electrical shift lever buttons; electrical control units; handle assemblies; electrical connectors; wire harnesses; sockets; terminal cables; clamps; electrical connectors; lugs; terminal connectors; relay assemblies; electrical connectors; electrical control units; switch assemblies; modules; panel assemblies; electrical connectors; wire connectors; housing contacts; lamps; headlamps; bulbs; diodes; pressure, humidity and shaft speed sensors; transmitters; cables; ground cables; electrical wires; wire assemblies; wire harnesses; electrical cables; antenna cables; safety belts; buckles; trim panels and assemblies; air ducts; head and roof liners; mounts; brake pipes; gearbox covers; axles; axle bushings; wheel weights; shock absorbers; arms, housings and castings for shock absorbers; radiators; exhaust system pipes and tubes; ball joints; tie rods; steering columns and wheels; track rod assemblies; display mounts; trailer hitch hammer straps; drawbar hammer straps; coolant reservoirs; wiper tank fixing brackets; washers; temperature sensors; thermostatic switches; fuel sender units; pressure gauges; indicators; pressure switches; hourmeters; instrument clusters; tachometers; instrument panels; gauge clusters; cold start units; environmental control units; and seats (duty rates range from free to 9.9%).

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 October 20, 2015.

A copy of the notification 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: Diane Finver at Diane.Finver@trade.gov or (202) 482-1367.

Dated: September 3, 2015.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2015-22853 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-57-2015]

Foreign-Trade Zone (FTZ) 265— Conroe, Texas; Notification of Proposed Production Activity; Bauer Manufacturing Inc. (Stationary Oil/Gas Drilling Rigs), Conroe, Texas

The City of Conroe, Texas, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board on behalf of Bauer Manufacturing Inc. (Bauer), located in Conroe, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 19, 2015.

Bauer has authority to produce pile drivers and leads, boring machinery, foundation construction equipment, foundation casings, related parts and sub-assemblies, and tools and accessories for pile drivers and boring machinery within Site 1 of FTZ 265. The current request would add new finished products (stationary oil/gas drilling rigs and related subassemblies) and foreign-status materials and components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Bauer from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, Bauer

would be able to choose the duty rate during customs entry procedures that applies to pile drivers and leads, boring machinery, foundation construction equipment, foundation casings, related parts and sub-assemblies, tools and accessories for pile drivers and boring machinery, and stationary oil/gas drilling rigs and related subassemblies (duty rates: Free, 2.9%, or 5.0%) for the foreign status materials and components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials and components sourced from abroad include: Subassemblies and components for stationary drilling rigs; sealing paper for gaskets; printed materials (protective covers for keyboards); electric voltage converters; cotton transport straps (Subheading 5806.31, 8.8%); antennas; steel flanges; expansion tanks; and, metal clamps (duty rate ranges from free to 8.8%). Inputs included in textile category 229 (classified within HTSUS Subheading 5806.31) will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

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 October 20, 2015.

A copy of the notification 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 Pierre Duy at Pierre.Duy@trade.gov or (202) 482-1378.

Dated: August 28, 2015.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2015-22860 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-125-2015]

Foreign-Trade Zone 77—Memphis, Tennessee Application for Expansion of Subzone 77E; Cummins, Inc., Memphis, Tennessee

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by

the City of Memphis, Tennessee, grantee of FTZ 77, requesting to expand Subzone 77E at the facilities of Cummins, Inc., located in Memphis, Tennessee. 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 August 28, 2015.

Subzone 77E was approved on December 20, 2010 (Board Order 1735, 76 FR 87, 01/03/2011) and currently consists of one site (23.3 acres) located at 4155 Quest Way, Memphis.

The applicant is requesting authority to expand the subzone to include two additional sites: Proposed Site 2 (19.91 acres)—5800 Challenge Drive, Memphis; and, Proposed Site 3 (20.9 acres)—4650 Quality Drive, Memphis. The existing subzone and expanded portion would be subject to the existing activation limit of FTZ 77. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce 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 FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 20, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 4, 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 Kathleen Boyce at Kathleen.Boyce@trade.gov or (202) 482–1346.

Dated: August 28, 2015.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2015–22859 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of 2013–2014 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Petitioner,¹ the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India (hot-rolled steel). The period of review (POR) is December 1, 2013, through November 30, 2014. This review covers four companies, Ispat Industries Ltd. (Ispat), JSW Steel Ltd. (JSW), JSW Ispat Steel Ltd. (JSW Ispat), and Tata Steel Ltd. (Tata). We preliminarily determine that Ispat, JSW, JSW Ispat, and Tata had no entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* September 10, 2015.

FOR FURTHER INFORMATION CONTACT: George McMahon or Eric Greynolds, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1167 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon steel flat products from India. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90,

7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Products subject to this order may also enter under HTSUS subheadings: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.²

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results, see the Preliminary Decision Memorandum. 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 version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

² A full description of the scope of the order is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Certain Hot-Rolled Carbon Steel Flat Products from India: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review; 2013–2014" (Preliminary Decision Memorandum), dated concurrently with and adopted by this notice.

¹ The Petitioner is Nucor Corporation.

Preliminary Determination of No Shipments

Ispat, JSW, JSW Ispat, and Tata submitted timely-filed certifications that they had no exports, sales, or entries of subject merchandise during the POR,³ and a query of U.S. Customs and Border Protection (CBP) data did not show any POR entries of subject merchandise by Ispat, JSW, JSW Ispat, and Tata.⁴ In addition, CBP did not identify any entries of subject merchandise from Ispat, JSW, JSW Ispat, and Tata during the POR in response to an inquiry from the Department asking CBP for such information.⁵ Based on the foregoing, the Department preliminarily determines that Ispat, JSW, JSW Ispat, and Tata had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR.

Assessment Rate

Upon issuance of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

The Department clarified its “automatic assessment” regulation on May 6, 2003.⁶ If applicable, this clarification will apply to all entries of subject merchandise during the POR produced or exported by Ispat, JSW, JSW Ispat, and Tata, for which these companies did not know that its merchandise was destined for the United States. Furthermore, this clarification applies to all POR entries entered under the case number for Ispat,

JSW, JSW Ispat, and Tata if we continue to make a final determination of no shipments of subject merchandise, because these companies and their representatives certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. In such instances, we will instruct CBP to liquidate these entries at the all others rate established in the less-than fair-value (LTFV) investigation, as amended, which is 38.72 percent,⁷ if there is no rate for the intermediary involved in the transaction. These cash deposit requirements, when imposed, shall remain in effect until further notice.⁸

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for respondents noted above, which claimed no shipments, will remain unchanged from the rates assigned to the companies in the most recently completed review of the companies; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 38.72 percent, the all-others rate established in the LTFV investigation, as amended. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii) interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.⁹ Parties who submit comments are requested to submit: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁰ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance’s ACCESS system within 30 days of publication of this notice. Requests should contain: (1) The party’s name, address, and telephone number; (2) The number of participants; and (3) A list of the issues parties intend to discuss. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.¹¹ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and increase the subsequent

³ See Letter from JSW titled, “Certain Hot-Rolled Carbon Steel Flat Products from India: No Shipment Certification of JSW Steel Ltd.” (February 27, 2015). JSW’s letter stated, “[p]lease note that this statement applies as well to the companies listed in the Department’s initiation notice as Ispat Industries Ltd. and JSW Ispat Steel Ltd. Those companies no longer exist as separate entities, but have been merged into JSW Steel.” See Letter from Tata titled, “Antidumping Duty Review of Certain Hot-Rolled Carbon Steel Flat Products from India: Tata Steel Limited Certification of No Shipments” (March 10, 2015); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041 (February 4, 2015).

⁴ See Memorandum to the File titled, “Customs and Border Protection (CBP) Data Query Results,” dated February 4, 2015; see also Memorandum to the File titled, “Customs and Border Protection (CBP) Data Query Results based on Second Data Query,” dated February 24, 2015.

⁵ See CBP Message Number 5204308, dated July 23, 2015.

⁶ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

⁷ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 60194 (December 3, 2001) (*Amended Final Determination*).

⁸ See *Assessment Policy Notice* for a full discussion of this clarification; see also, e.g., *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989, 56990 (September 17, 2010).

⁹ See 19 CFR 351.309(d).

¹⁰ See 19 CFR 351.309(c)(2), (d)(2).

¹¹ See 19 CFR 351.310.

assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Results Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Preliminary Determination of No Shipments
- V. Recommendation

[FR Doc. 2015-22855 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Rescission of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India for the period of review (POR) May 1, 2014, through April 30, 2015.

DATES: *Effective Date:* September 10, 2015.

FOR FURTHER INFORMATION CONTACT:

Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202-482-0665.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2015, based on a timely request for review by Allied Tube & Conduit and JMC Steel Group, domestic interested parties and producers of certain welded carbon steel standard pipes and tubes from India,¹ the

¹ See letter from Allied Tube & Conduit and JMC Steel Group to the Department, "Circular Welded

Department initiated an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India with respect to Lloyds Metals & Engineers Limited and Lloyds Line Pipe Ltd., Lloyds Steel Industries Ltd., Jindal Pipes Limited, Maharashtra Seamless Limited, Ratnamani Metals Tubes Ltd., and Tata Iron and Steel Co., Ltd.²

On August 18, 2015, Allied Tube & Conduit and JMC Steel Group withdrew their request for an administrative review.³

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Allied Tube & Conduit and JMC Steel Group withdrew their request for review within the 90-day time limit. Because no other party requested a review, the Department is rescinding this administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of certain welded carbon steel standard pipes and tubes from India during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping

Carbon Steel Pipes and Tubes from India: Request for Administrative Review" (May 29, 2015).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015).

³ See letter from Allied Tube & Conduit and JMC Steel Group to the Department, "Circular Welded Carbon Steel Pipes and Tubes from India: Withdrawal of Request for Administrative Review" (August 18, 2015).

duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 3, 2015.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015-22852 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-834-807]

Silicomanganese From Kazakhstan: Rescission of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on silicomanganese from Kazakhstan for the period of review (POR) May 1, 2014, through April 30, 2015.

DATES: *Effective Date:* September 10, 2015.

FOR FURTHER INFORMATION CONTACT:

Hermes Pinilla, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202-482-3477.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2015, based on a timely request for review by Eramet Marietta, Inc. (Eramet) and Felman Production, LLC (Felman), domestic interested parties and producers of

silicomanganese from Kazakhstan,¹ the Department initiated an administrative review of the antidumping duty order on silicomanganese from Kazakhstan² with respect to Aksu Ferroalloy Plant, Alloy 2000, S.A., Consider, Inc., and Transnational Co. Kazchrome.³

On August 25, 2015, Eramet and Felman withdrew their request for an administrative review.⁴

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Eramet and Felman withdrew their request for review within the 90-day time limit. Because no other party requested a review, the Department is rescinding this administrative review of the antidumping duty order on silicomanganese from Kazakhstan.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of silicomanganese from Kazakhstan during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could

¹ See letter from Eramet and Felman to the Department, "Silicomanganese from Kazakhstan: Request for Administrative Review of Antidumping Order" (June 1, 2015).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

³ This company was inadvertently spelled as Kazochrome in the *Initiation Notice*. The Department corrected the spelling in the initiation notice for orders with June anniversary dates. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR at 45950 (August 3, 2015).

⁴ See letter from Eramet and Felman to the Department, "Silicomanganese from Kazakhstan: Withdrawal of Request for Administrative Review of Antidumping Order" (August 25, 2015).

result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 3, 2015.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015-22851 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2013-2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from India.¹ The period of review (POR) is February 1, 2013, through January 31, 2014. For the final results, we continue to find that all companies involved in this review sold subject merchandise at less than normal value.

DATES: *Effective Date:* September 10, 2015.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration,

¹ See *Certain Frozen Warmwater Shrimp From India; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 12147 (March 6, 2015) (*Preliminary Results*).

U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6345 or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 211 producers/exporters. The respondents which the Department selected for individual examination are Devi Fisheries Limited (Devi Fisheries) and Falcon Marine Exports Limited/K.R. Enterprises (Falcon). The respondents which were not selected for individual examination are listed in the "Final Results of the Review" section of this notice.

On March 6, 2015, the Department published the *Preliminary Results*. In April 2015, we received case briefs from the American Shrimp Processors Association, and Devi Fisheries, Falcon, and 13 additional producers/exporters of the subject merchandise (collectively, the respondents); we also received rebuttal briefs from the above-mentioned interested parties and the Ad Hoc Shrimp Trade Action Committee.

On June 23, 2015, we postponed the final results by 60 days, until September 2, 2015.²

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.³ The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

² See memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Stephen Banea, International Trade Compliance Analyst, Office II, Antidumping and Countervailing Duty Operations, entitled "Certain Frozen Warmwater Shrimp from India; 2013-2014 Administrative Review: Extension of Deadline for Final Results," dated June 23, 2015.

³ For a complete description of the Scope of the Order, see the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," (dated concurrently with these results) (Issues and Decision Memorandum), which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case briefs by parties are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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>; the Issues and

Decision Memorandum is also 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 Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested

parties regarding our *Preliminary Results*, we made no changes to Devi Fisheries' or Falcon's margin calculations.

Period of Review

The POR is February 1, 2013, through January 31, 2014.

Final Results of the Review

We are assigning the following dumping margins to the firms listed below as follows:

Manufacturer/exporter	Percent margin
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods	3.28
Falcon Marine Exports Limited/K.R. Enterprises	2.63

Review-Specific Average Rate
Applicable to the Following
Companies:⁴

Manufacturer/exporter	Percent margin
Abad Fisheries	2.96
Accelerated Freeze-Drying Co	2.96
Adilakshmi Enterprises	2.96
Akshay Food Impex Private Limited	2.96
Allana Frozen Foods Pvt. Ltd	2.96
Allanasons Ltd	2.96
AMI Enterprises	2.96
Amulya Seafoods	2.96
Anand Aqua Exports	2.96
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	2.96
Ananda Enterprises (India) Private Limited	2.96
Andaman Sea Foods Pvt. Ltd	2.96
Angelique Intl	2.96
Anjaneya Seafoods	2.96
Apex Frozen Foods Private Limited	2.96
Arvi Import & Export	2.96
Asvini Exports	2.96
Asvini Fisheries Private Limited	2.96
Avanti Feeds Limited	2.96
Ayshwarya Seafood Private Limited	2.96
Baby Marine Exports	2.96
Baby Marine International	2.96
Baby Marine Sarass	2.96
Balasure Marine Exports Private Limited	2.96
Bhatsons Aquatic Products	2.96
Bhavani Seafoods	2.96
Bijaya Marine Products	2.96
Blue Fin Frozen Foods Pvt. Ltd	2.96
Blue Water Foods & Exports P. Ltd	2.96
Bluefin Enterprises	2.96
Bluepark Seafoods Private Ltd	2.96
BMR Exports	2.96
Britto Exports	2.96
C P Aquaculture (India) Ltd	2.96
Calcutta Seafoods Pvt. Ltd	2.96
Canaan Marine Products	2.96
Capithan Exporting Co	2.96

⁴ This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin

determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010); *see also* the memorandum from Blaine Wiltse, Senior

International Trade Compliance Analyst, to the file, entitled, "Calculation of the Review-Specific Average Rate in the 2013–2014 Administrative Review of Certain Frozen Warmwater Shrimp from India," dated March 6, 2015.

Manufacturer/exporter	Percent margin
Castlerock Fisheries Ltd	2.96
Chemmeens (Regd)	2.96
Cherukattu Industries (Marine Div.)	2.96
Choice Canning Company	2.96
Choice Trading Corporation Private Limited	2.96
Coastal Aqua	2.96
Coastal Corporation Ltd	2.96
Cochin Frozen Food Exports Pvt. Ltd	2.96
Coreline Exports	2.96
Corlim Marine Exports Pvt. Ltd	2.96
D2 D Logistics Private Limited	2.96
Damco India Private Limited	2.96
Delsea Exports Pvt. Ltd	2.96
Devi Marine Food Exports Private Ltd	2.96
Kader Exports Private Limited/	
Kader Investment and Trading Company Private Limited/	
Liberty Frozen Foods Pvt. Ltd/Liberty Oil Mills Ltd/	
Premier Marine Products Private Limited ^{5/}	
Universal Cold Storage Private Limited	
Devi Sea Foods Limited ⁶	2.96
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd	2.96
Kadalkanny Frozen Foods/Theva & Company	
Digha Seafood Exports	2.96
Esmario Export Enterprises	2.96
Exporter Coreline Exports	2.96
Five Star Marine Exports Private Limited	2.96
Forstar Frozen Foods Pvt. Ltd	2.96
Frontline Exports Pvt. Ltd	2.96
G A Randerian Ltd	2.96
Gadre Marine Exports	2.96
Galaxy Maritech Exports P. Ltd	2.96
Gayatri Seafoods	2.96
Geo Aquatic Products (P) Ltd	2.96
Geo Seafoods	2.96
Goodwill Enterprises	2.96
Grandtrust Overseas (P) Ltd	2.96
GVR Exports Pvt. Ltd	2.96
Haripriya Marine Export Pvt. Ltd	2.96
Harmony Spices Pvt. Ltd	2.96
HIC ABF Special Foods Pvt. Ltd	2.96
Hindustan Lever, Ltd	2.96
Hiravata Ice & Cold Storage	2.96
Hiravati Exports Pvt. Ltd	2.96
Hiravati International P. Ltd (located at APM—Maico Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	2.96
Hiravati International Pvt. Ltd (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.96
IFB Agro Industries Ltd	2.96
Indian Aquatic Products	2.96
Indo Aquatics	2.96
Innovative Foods Limited	2.96
International Freezefish Exports	2.96
Interseas	2.96
ITC Limited, International Business	2.96
ITC Ltd	2.96
Jagadeesh Marine Exports	2.96
Jaya Satya Marine Exports	2.96
Jaya Satya Marine Exports Pvt. Ltd	2.96
Jayalakshmi Sea Foods Private Limited	2.96
Jinny Marine Traders	2.96
Jiya Packagings	2.96
K R M Marine Exports Ltd	2.96
K V Marine Exports	2.96
Kalyan Aqua & Marine Exports India Pvt. Ltd	2.96
Kalyanee Marine	2.96
Kanch Ghar	2.96
Kay Kay Exports	2.96
Kings Marine Products	2.96
KNC Agro Pvt. Ltd	2.96
Koluthara Exports Ltd	2.96
Konark Aquatics & Exports Pvt. Ltd	2.96
Landauer Ltd	2.96
Libran Cold Storages (P) Ltd	2.96
Lighthouse Trade Links Pvt. Ltd	2.96
Magnum Estates Limited	2.96
Magnum Export	2.96

Manufacturer/exporter	Percent margin
Magnum Sea Foods Limited	2.96
Malabar Arabian Fisheries	2.96
Malnad Exports Pvt. Ltd	2.96
Mangala Marine Exim India Pvt. Ltd	2.96
Mangala Sea Products	2.96
Mangala Seafoods	2.96
Meenaxi Fisheries Pvt. Ltd	2.96
MSC Marine Exporters	2.96
MSRDR Exports	2.96
Munnangi Sea Foods (Pvt) Ltd	2.96
MTR Foods	2.96
N.C. John & Sons (P) Ltd	2.96
Naga Hanuman Fish Packers	2.96
Naik Frozen Foods Private Limited	2.96
Naik Seafoods Ltd	2.96
Navayuga Exports	2.96
Nekkanti Sea Foods Limited	2.96
Nezami Rekha Sea Food Private Limited	2.96
NGR Aqua International	2.96
Nila Sea Foods Pvt. Ltd	2.96
Nine Up Frozen Foods	2.96
Nutrient Marine Foods Limited	2.96
Overseas Marine Export	2.96
Paragon Sea Foods Pvt. Ltd	2.96
Parayil Food Products Pvt. Ltd	2.96
Penver Products Pvt. Ltd	2.96
Pesca Marine Products Pvt. Ltd	2.96
Pijikay International Exports P Ltd	2.96
Pisces Seafood International	2.96
Premier Exports International	2.96
Premier Marine Foods	2.96
Premier Seafoods Exim (P) Ltd	2.96
R V R Marine Products Limited	2.96
Raa Systems Pvt. Ltd	2.96
Raju Exports	2.96
Ram's Assorted Cold Storage Ltd	2.96
Raunaq Ice & Cold Storage	2.96
Raysons Aquatics Pvt. Ltd	2.96
Razban Seafoods Ltd	2.96
RBT Exports	2.96
RDR Exports	2.96
Riviera Exports Pvt. Ltd	2.96
Rohi Marine Private Ltd	2.96
S & S Seafoods	2.96
S. A. Exports	2.96
S Chanchala Combines	2.96
Safa Enterprises	2.96
Sagar Foods	2.96
Sagar Grandhi Exports Private Limited	2.96
Sagar Samrat Seafoods	2.96
Sagarvihar Fisheries Pvt. Ltd	2.96
Sai Marine Exports Pvt. Ltd	2.96
Sai Seafoods	2.96
Sanchita Marine Products Private Limited	2.96
Sandhya Aqua Exports	2.96
Sandhya Aqua Exports Pvt. Ltd	2.96
Sandhya Marines Limited	2.96
Santhi Fisheries & Exports Ltd	2.96
Sarveshwari Exports	2.96
Sawant Food Products	2.96
Sea Foods Private Limited	2.96
Seagold Overseas Pvt. Ltd	2.96
Selvam Exports Private Limited	2.96
Sharat Industries Ltd	2.96
Shimpo Exports Pvt. Ltd	2.96
Shippers Exports	2.96
Shiva Frozen Food Exp. Pvt. Ltd	2.96
Shree Datt Aquaculture Farms Pvt. Ltd	2.96
Shroff Processed Food & Cold Storage P Ltd	2.96
Silver Seafood	2.96
Sita Marine Exports	2.96
Sowmya Agri Marine Exports	2.96
Sprint Exports Pvt. Ltd	2.96
Sri Chandrakantha Marine Exports	2.96

Manufacturer/exporter	Percent margin
Sri Sakkthi Cold Storage	2.96
Sri Sakthi Marine Products P Ltd	2.96
Sri Satya Marine Exports	2.96
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	2.96
Srikanth International	2.96
SSF Ltd	2.96
Star Agro Marine Exports Private Limited	2.96
Star Organic Foods Incorporated	2.96
Sun-Bio Technology Ltd	2.96
Supran Exim Private Limited	2.96
Suryamitra Exim Pvt. Ltd	2.96
Suvarna Rekha Exports Private Limited	2.96
Suvarna Rekha Marines P Ltd	2.96
TBR Exports Pvt Ltd	2.96
Teekay Marine P. Ltd	2.96
Tejaswani Enterprises	2.96
The Waterbase Ltd	2.96
Triveni Fisheries P Ltd	2.96
Uniloids Biosciences Private Limited	2.96
Uniroyal Marine Exports Ltd	2.96
Unitriveni Overseas	2.96
V.S Exim Pvt Ltd	2.96
Vasista Marine	2.96
Veejay Impex	2.96
Victoria Marine & Agro Exports Ltd	2.96
Vinner Marine	2.96
Vishal Exports	2.96
Wellcome Fisheries Limited	2.96
West Coast Frozen Foods Private Limited	2.96
Z A Sea Foods Pvt. Ltd	2.96

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Devi Fisheries and Falcon reported the entered value for all of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-

⁵ On December 2, 2014, Premier Marine Products Private Limited was found to be the successor-in-interest to Premier Marine Products. See *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India*, 79 FR 71384 (December 2, 2014).

⁶ Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from this order effective February 1, 2009. See *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part*, 75 FR 41813, 41814 (July 19, 2010). However, shrimp produced by other Indian producers and exported by Devi remain subject to the order. Thus, this administrative review with respect to Devi covers only shrimp which was produced in India by other companies and exported by Devi.

specific *ad valorem* ratios based on the entered value.

For the companies which were not selected for individual examination, we used as the assessment rate the cash deposit rate assigned to these exporters, in accordance with our practice.⁷

The Department's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Devi Fisheries or Falcon for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse,

⁷ See, e.g., *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review*, 79 FR 51309 (August 28, 2014).

for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.⁸ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the only reminder to importers of their

⁸ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147, 5148 (February 1, 2005).

responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: September 2, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

Summary

Background

Scope of the Order

Discussion of the Issues

Comment 1: Legal Authority to Consider an Alternative Comparison Method in an Administrative Review

Comment 2: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in LTFV Investigations

Comment 3: Differential Pricing Analysis and the Administrative Procedures Act
Comment 4: Differential Pricing Analysis: Identification of a Pattern of Prices that Differ Significantly

Comment 5: Differential Pricing Analysis: Whether the Average-to-Average (A-to-A) Method Can Account for Such Differences

Comment 6: Differential Pricing Analysis: The Impact of "Zeroing"

Comment 7: Differential Pricing Analysis: Thresholds in the "Ratio Test"

Comment 8: Other Arguments Related to Differential Pricing Analysis

Comment 9: Whether to Include Certain Costs Incurred by KR Enterprises in Falcon's Reported Cost of Manufacturing

Recommendation

[FR Doc. 2015-22869 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Comments On World Health Organization Pandemic Influenza Preparedness Framework

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice and Request for Comments.

SUMMARY: The International Trade Administration invites submission of comments from the public and relevant industries on influenza surveillance and response, related to the implementation of the World Health Organization (WHO) Pandemic Influenza Preparedness Framework (PIP-FW) (http://apps.who.int/gb/ebwha/pdf_files/WHA64/A64_8-en.pdf). Comments will be used to support the five-year review of the WHO PIP-FW in 2016.

DATES: Written comments must be submitted on or before October 7, 2015. Comments should be no more than 15 pages. Business-confidential information should be clearly identified as such.

ADDRESSES: Submissions should be made via the Internet at www.regulations.gov docket number ITA-2015-0003. For alternatives to on-line submissions please contact Jennifer Boger at (202) 482-3360. The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments should be directed to Jennifer Boger at (202) 482-3360, Jennifer.Boger@trade.gov, or Bijou Mgbojikwe at (202) 482-1722, Bijou.Mgbojikwe@trade.gov.

SUPPLEMENTARY INFORMATION:

Background: In 2007, the Sixtieth World Health Assembly passed a resolution calling on the Director-General to convene an intergovernmental meeting to develop mechanisms to ensure the continued sharing of potential pandemic influenza viruses, and the fair and equitable sharing of benefits arising from such sample sharing. For four years, WHO member states met as an Intergovernmental Mechanism, as well as informally, to negotiate the Pandemic Influenza Preparedness Framework (PIP-FW). The PIP-FW came into effect on May 24, 2011 when it was unanimously adopted by the Sixty-fourth World Health Assembly.

The key goals of PIP are to improve and strengthen global influenza pandemic preparedness by:

(1) Ensuring the global sharing of influenza viruses with human pandemic potential for continuous global monitoring and assessment of risks, and for the development of safe and effective countermeasures. The PIP-FW provides a transparent mechanism for sharing virus samples, based on two Standard Material Transfer Agreements (SMTAs) that specify the conditions for samples passed within and outside of the Global Influenza Surveillance and Response System (GISRS), and a traceability mechanism to monitor the movement of samples.

(2) Increasing countries' access to vaccines and other pandemic related resources. Two innovative and complementary benefit-sharing mechanisms pool monetary and in-kind contributions from entities that use the GISRS to enhance pandemic influenza preparedness and response capacity for countries in need and at risk of pandemic influenza: The annual partnership contribution and the SMTA-2.

At the core of the PIP-FW is a robust Global Influenza Surveillance and Response System (GISRS, previously called the Global Influenza Surveillance Network or GISN). Section 7.4.2 of the PIP-FW provides that: "The Framework and its Annexes will be reviewed by 2016 with a view to proposing revisions reflecting development as appropriate, to the World Health Assembly in 2017, through the Executive Board." It is in anticipation of the 2016 review that the U.S. Department of Commerce seeks comments on the following points:

(1) Experiences, best practices, opportunities, and challenges in advancing the PIP-FW over the past five years.

(2) Experiences relating to the status and process of concluding Standard Material Transfer Agreements (SMTA2).

(3) Use of partnership contributions and WHO efforts to strengthen the GISRS and overall global preparedness and response capability/capacity.

(4) How changing technology has impacted or has the ability to impact the existing PIP-FW.

(5) Other matters related to prevention, planning and response whose resolution will be integral for the effective operation of a global influenza pandemic response.

The facts and information obtained from written submissions will be used to inform the participation of the U.S. Department of Commerce in the interagency process to prepare for United States participation for the five-

year 2016 review of the PIP–FW. Upon receipt of the written submission, representatives from the U.S. Department of Commerce will consider them and share them, as needed, with other interested U.S. Government agencies and departments engaging in the five-year review process.

The Department of Commerce invites comments from civil society organizations as well as pharmaceutical and medical technology industries and other interested members of the public on a number of issues regarding pandemic influenza preparedness and response. Entities making submissions may be contacted for further information or explanation and, in some cases, meetings with submitters may be requested.

Dated: September 3, 2015.

Jennifer Boger,

Health Team Director, Office of Health and Information Technologies.

[FR Doc. 2015–22730 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Hollings Manufacturing Extension Partnership (HMEP) Program Application Requirements

AGENCY: NIST, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Diane Henderson, Manufacturing Extension Partnership, 100 Bureau Drive, Mail Stop 4800, 301–975–5105, mepffo@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Institute of Standards and Technology's (NIST) Hollings Manufacturing Extension Partnership (MEP) works with small and medium-sized U.S. manufacturers to help them create and retain jobs, increase profits, and save time and money. The nationwide network provides a variety of services, from innovation strategies to process improvements to sustainable manufacturing, supply chain and technology acceleration services. MEP centers also work with partners at the State and Federal levels on programs that put manufacturers in position to develop new customers, expand into new markets and create new products.

As a program of the U.S. Department of Commerce, MEP offers a range of effective resources to help manufacturers identify opportunities that will accelerate and strengthen their growth and competitiveness in the global marketplace.

MEP is a nationwide network of more than 1,200 technical experts—located in every State—serving as trusted business advisors focused on transforming U.S. manufacturers to compete globally, supporting supply chain integration, and providing access to technology for improved productivity. MEP is built around manufacturing extension centers locally positioned throughout the 50 States and Puerto Rico. MEP Centers are a diverse network of State, non-profit university-based, and other non-profit organizations, offering products and services that address the critical needs of their local manufacturers.

Each MEP Center works directly with area manufacturers to provide expertise and services tailored to their most critical needs, ranging from process improvement and workforce development to business practices and technology transfer. Additionally, MEP Centers connect manufacturers with government and trade associations, universities and research laboratories, and a host of other public and private resources to help them realize individual business goals.

Through local and national resources, MEP Centers have helped thousands of manufacturers reinvent themselves, increase profits, create jobs and establish a foundation for long-term business growth and productivity.

This request is for the information collection requirements associated with submission of proposals for NIST MEP funding. The intent of the collection is to meet statutory requirements for NIST MEP, as well as compliance with 15

U.S.C. 278k, as implemented in 15 CFR part 290.

II. Method of Collection

Electronically via www.grants.gov.

III. Data

OMB Control Number: 0693–0056.

Form Number(s): None.

Type of Review: Regular Revision of a currently approved information collection.

Affected Public: U.S.-based nonprofit institution or organization. Nonprofit institutions include public and private nonprofit organizations, nonprofit or State colleges and universities, public or nonprofit community and technical colleges, and State, local or Tribal governments.

Estimated Number of Respondents: 24.

Estimated Time per Response: 112 hrs.

Estimated Total Annual Burden Hours: 2,688 hours.

Estimated Total Annual Cost to Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–22788 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Cost-Earnings Surveys of American Samoa Longline Fishery**

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Minling Pan, National Marine Fisheries Service, (808) 725-5349 or Minling.Pan@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect information about annual base fishing expenses in the American Samoa longline fishery with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans. Respondents will include longline fishers in American Samoa and their participation in the economic data collection will be voluntary.

II. Method of Collection

The economic surveys will be conducted via in-person interviews with fishing vessel owners and operators.

III. Data

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Review: Regular (request for a new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 11.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015-22832 Filed 9-9-15; 8:45 am]

BILLING CODE 3520-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XE166

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow four commercial fishing vessels to fish outside of the limited access sea scallop regulations in support of study investigating the effect different dredge tow cable scope ratios have on dredge pitch and catch rates using the Turtle Deflector Dredge and Low Profile Dredge designs.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before September 25, 2015.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email:* nmfs.gar.efp@noaa.gov.

Include in the subject line "DA15-065 CFF Dredge Design Study EFP."

- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "DA15-065 CFF Dredge Design Study EFP."

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978-282-8456.

SUPPLEMENTARY INFORMATION: NOAA has preliminarily awarded the Coonamesset Farm Foundation (CFF) a grant through the 2015 Saltonstall Kennedy grant program, in support of a project titled "Improving an Ecosystem Friendly Scallop Dredge." To conduct this research, CFF submitted a complete application for an EFP on August 6, 2015. The project would look at the effect different scope ratios have on dredge pitch and catch rates using the Turtle Deflector Dredge (TDD) and Low Profile Dredge (LPD) designs. The project would also utilize an underwater camera attached to the dredge frames to capture fish dredge interactions.

CFF is requesting exemptions that would allow four commercial fishing vessels be exempt from the Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); crew size restrictions at § 648.51(c); and rotational closed area exemptions for Closed Area I at § 648.58(a), Closed Area II at § 648.58(b),

and Nantucket Lightship at § 648.58(c). It would also exempt participating vessels from the Atlantic sea scallop observer program requirements at § 648.11(g) and from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Four vessels would conduct scallop dredging in October 2015-April 2016, on four 7-day trips, for a total of 28 DAS. Each trip would complete approximately 50 tows per trip for an overall total of 200 tows for the project. Trips would take place in the open areas of southern New England and Georges Bank as well as in Georges Bank scallop access areas that are closed. Trips would be centralized around areas with high yellowtail and winter flounder bycatch and in areas that contain a wide range of scallop sizes to examine changes in size selectivity due to dredge design and wire scope.

All tows would be conducted in tandem using one TDD and one LPD for a duration of 60 minutes with a tow speed range of 4–5.5 knots. Both dredges would be 15 feet (4.57 meters) in width using 4-inch (10.16 cm) rings, and would be rigged with a 7-row apron, and twine top hanging ratio of 2:1. Both dredges would be equipped with a regulation turtle chain mat for any tows west of 71° W. longitude. The LPD dredge in comparison to the TDD dredge has a reduced frame angle from 45° to 22.5°, an extended shoe from 15 inches (38.10 cm) to 22 inches (55.88 cm), and a reduced frame height from 15 inches (38.10) to 9.5 inches (24.13 cm). Each tow pair would be conducted in a straight line varying between long (4:1) and short (3:1) scope ratios in an AB–BA alternating pattern. Scope is the ratio of deployed towing cable to ocean depth.

To film finfish interactions, both dredge frames would have an underwater camera attached to the outer frame bars facing the depressor plate. Each interaction would be recorded using Observer XT computer software and would fall into three categories: Horizontal escape where the fish swims perpendicular to the dredge; vertical escape where the fish swims over the frame; and overcome/capture where the fish passes under the cutting bar or through the openings between the depressor plate and cutting bar. Filming will help test the hypothesis that the LPD frame aids in flatfish escapement and reduces interaction time with the

dredge potentially, reducing incidental mortality rates.

For all tows, the sea scallop catch would be counted into baskets and weighed. One basket from each dredge would be randomly selected and the scallops would be measured in 5-mm increments to determine size selectivity. Finfish catch would be sorted by species then counted, weighed, and measured in 1-mm increments. Depending on the volume of scallops and finfish captured, the catch would be subsampled as necessary. No catch would be retained for longer than needed to conduct sampling and no catch would be landed for sale.

PROJECT CATCH ESTIMATES

Species	lbs	mt
Scallops	110,231	50.00
Yellowtail	2,000	0.91
Winter Flounder	500	0.23
Windowpane Flounder ..	3,500	1.59
Monkfish	4,500	2.04
Summer Flounder	150	0.007
Barndoor Skate	500	0.23
NE Skate Complex	75,000	34.02
Atlantic Cod	50	0.02
Haddock	75	0.03
Silver/Offshore Hake	125	0.05
Unclassified hakes	100	0.06

CFF needs these exemptions to allow them to conduct experimental dredge towing without being charged DAS, as well as deploy gear in access areas that are currently closed to scallop fishing. Participating vessels need crew size waivers to accommodate science personnel and possession waivers will enable them to conduct finfish sampling activities.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 2015.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–22834 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lisa White, (301) 427–8402 or Lisa.White@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

Reporting injury to and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Categories I, II, or III. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include online forms, email of electronic or scanned forms, and mail

and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0292.

Form Number(s): None.

Type of Review: Regular submission (extension of currently approved collection).

Affected Public: Business or other for-profit organizations; Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs and application fees.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–22709 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE102

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2015. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2016 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on October 8, November 12, and December 3, 2015.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on October 7, October 21, November 4, November 18, December 2, and December 16, 2015.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Somerville, MA; Mount Pleasant, SC; and Largo, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Panama City, FL; Warwick, RI; Wilmington, NC; Largo, FL; Kenner, LA; and Ronkonkoma, NY.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: <http://www.nmfs.noaa.gov/sfa/hms/workshops/>.

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that

is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 113 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. October 8, 2015, 12 p.m.–4 p.m., La Quinta Inn, 23 Cummings Street, Somerville, MA 02145.
2. November 12, 2015, 12 p.m.–4 p.m., Hampton Inn, 1104 Isle of Palms Connector, Mt. Pleasant, SC 29464.
3. December 3, 2015, 12 p.m.–4 p.m., Hampton Inn, 100 East Bay Drive, Largo, FL 33770.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at esander@peoplepc.com or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the

appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 214 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a

workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 7, 2015, 9 a.m.–5 p.m., Hilton Garden Inn, 1101 North Highway 231, Panama City, FL 32405.
2. October 21, 2015, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.
3. November 4, 2015, 9 a.m.–5 p.m., Hilton Garden Inn, 6745 Rock Spring Road, Wilmington, NC 28405.
4. November 18, 2015, 9 a.m.–5 p.m., Holiday Inn Express, 210 Seminole Boulevard, Largo, FL 33770.
5. December 2, 2015, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70068.
6. December 16, 2015, 9 a.m.–5 p.m., Hilton Garden Inn, 3485 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally,

individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 2015.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–22836 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Access-Point Angler Intercept Survey (APAIS)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tom Sminkey, Ph.D., (301) 427–8177 or Tom.Sminkey@NOAA.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These

data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To partially meet these requirements, NOAA Fisheries designed and implemented a new Access-Point Angler Intercept Survey (APAIS) in 2013 to ensure better coverage and representation of recreational fishing activity.

The APAIS intercepts marine recreational fishers at public-access sites in coastal counties from Maine to Louisiana, Hawaii, and Puerto Rico, to obtain information about the just-completed day's fishing activity. Respondents are asked about the time and type of fishing, the angler's avidity and residence location, and details of any catch of finfish. Species identification, number, and size are collected for any available landed catch. Data collected from the APAIS are used to estimate the catch per angler of recreational saltwater fishers. These APAIS estimates are combined with estimates derived from independent but complementary surveys of fishing effort, the Coastal Household Telephone Survey and the For-Hire Survey, to estimate total, state-level fishing catch, by species, and participation. These estimates are used in the development, implementation, and monitoring of fishery management programs by the NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

II. Method of Collection

Information will be collected through onsite in-person interviews.

III. Data

OMB Number: 0648–0659.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Response: 5 minutes for intercepted anglers.

Estimated Total Annual Burden Hours: 8,333.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–22707 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD977

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Mukilteo Multimodal Project Tank Farm Pier Removal Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we, NMFS, have issued an incidental harassment authorization (IHA) to the Washington State Department of Transportation Ferries System (WSF) to harass, by Level B harassment only, small numbers of eight marine mammal species incidental to construction work associated with the Mukilteo Ferry Terminal replacement project in Mukilteo, Snohomish County, Washington.

DATES: This authorization is effective from September 1, 2015 through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of WSF's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at:

www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

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.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to

certain activities not pertinent here, the MMPA defines “harassment” as “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

Summary of Request

On November 6, 2014, WSF submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of eight marine mammal species incidental to construction work associated with the Mukilteo Ferry Terminal replacement project in Mukilteo, Snohomish County, Washington. The new terminal will be located to the east of the existing location at the site of the former U.S. Department of Defense Fuel Supply Point facility, known as the Tank Farm property, which includes a large pier extending into Possession Sound. Completion of the entire project will occur over 4 consecutive years. WSF plans to submit an IHA request for each consecutive year of construction. WSF previously received an IHA on July 25, 2014 (79 FR 43424) which was active from September 1, 2014 through August 31, 2015. However, the project was delayed for one year and did not begin until August 1, 2015. The IHA application currently under review would cover work from September 1, 2015 through August 31, 2016. Due to NMFS, U.S. Fish and Wildlife Service (USFWS), and Washington State Department of Fish and Wildlife (WDFW) in-water work timing restrictions to protect salmonids listed under the Endangered Species Act (ESA), planned WSF in-water construction is limited each year to August 1 through February 15. For removal of the Tank Farm Pier, which is the first stage of the project, in-water construction will take place between August 1, 2015 and February 15, 2016; and continue between August 1, 2016 and February 15, 2017, if pier removal is not completed during the 2015/16 work window. A new MMPA IHA application will be submitted for subsequent construction years for this project. Species that may be exposed to Level B harassment include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall’s porpoise

(*Phocoenoides dalli*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*)

Description of the Specified Activity

Overview

WSF is seeking an IHA for the first year of construction work associated with the Mukilteo Ferry Terminal replacement project in Mukilteo, Snohomish County, Washington. The IHA covers the initial phase of the project which is the demolition and removal of the Mukilteo Tank Farm Pier. Piles will be removed with a vibratory hammer or by direct pull using a chain wrapped around the pile.

Dates and Duration

WSF previously received an IHA on July 25, 2014 (79 FR 43424) which was active from September 1, 2014 through August 31, 2015. However, the project was delayed for almost a full year and did not begin until August 1, 2015. The IHA application currently under review would cover work from September 1, 2015 through August 31, 2016. All existing pier demolition and pile removal work will be done under these two successive permits. WSF in-water construction is limited each year to August 1 through February 15. For removal of the Tank Farm Pier, in-water construction is planned to take place between August 1, 2015 and February 15, 2016; and continue in August 1, 2016 to February 15, 2017, if pier removal and dredging is not completed during the 2015/16 work window.

Specific Geographic Region

The Mukilteo Tank Farm is located within the city limits of Mukilteo and Everett, Snohomish County, Washington. The property is located on the shore of Possession Sound, an embayment of the inland marine waters of Puget Sound.

Detailed Description of Activities

We provided a description of the proposed action in our **Federal Register** notice announcing the proposed authorization (80 FR 43720; July 23, 2015). Please refer to that document; we provide only summary information here.

The Mukilteo Tank Farm Pier, which has not been used for fuel transfers since the late 1970s, covers approximately 138,080 ft² (3.17 acres) over-water and contains approximately 3,900 12-inch diameter creosote-treated piles. Demolition of the pier will remove approximately 7,300 tons of creosote-treated timber from the aquatic environment. Demolition will take

approximately ten months over two in-water work windows. Removal of the pier will occur from land and from a barge containing a derrick, crane and other necessary equipment. Piles will be removed with a vibratory hammer or by direct pull using a chain wrapped around the pile. If piles are so deteriorated they cannot be removed using either the vibratory or direct pull method, the operator will use a clamshell to pull the piles from below the mudline, or cut at or just below the mudline (up to one foot) using a hydraulic saw. Pile removal and demolition of creosote-treated timber elements of the Tank Farm Pier will take place between August 1 and February 15 and will occur in water depths between 0 and -30 feet mean lower-low water. Noise produced by the proposed vibratory pile extraction may impact marine mammals. Direct pull and clamshell removal are not expected to exceed noise levels that would injure or harass marine mammals.

Comments and Responses

A notice of NMFS’ proposal to issue an IHA was published in the **Federal Register** on July 23, 2015 (80 FR 43720). During the 30-day public comment period, the Marine Mammal Commission (Commission) and Mystic Sea Charters (MSC) each submitted letters. These letters are available on the Internet at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. All comments specific to the WSF application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission noted that NMFS has, at times, included a much abbreviated timeframe under which it considers public comments prior to issuing authorizations. The deadline for comments on the proposed incidental harassment authorization is August 24 2015, while the proposed incidental harassment authorization would be effective starting on September 1, 2015. The Commission expressed concern that the time between the close of the comment period and the proposed issuance date (6 business days) does not provide adequate opportunity for NMFS to consider, provide responses to, and incorporate any changes prompted by comments from the Commission and the public. The Commission recommends that NMFS allow sufficient time between the close of the comment period and the issuance of an incidental harassment authorization for NMFS to analyze, consider, and respond fully to

comments received and incorporate recommended changes, as appropriate.

Response 1: The amount of time needed to fully consider comments on a proposed IHA depends on the volume and complexity of comments we receive. In this case, we believe there was sufficient time to consider and respond to the comments we received.

Comment 2: MSC commented that the areas affected by the proposed project should require constant monitoring from both land and water.

Response 2: NMFS has worked with WSF to develop a monitoring plan requiring two full-time observers stationed at different locations. This scenario will provide observers with a comprehensive view of the entire zone of influence. However, if weather precludes adequate land-based observations then boat-based monitoring will be employed.

Comment 3: MSC recommended that potential impacts to wildlife other than marine mammals should also be evaluated and suggested for consideration several avian species known to occur in the area.

Response 3: NMFS authority under section 101(a)(5)(D) of the MMPA is limited to evaluating and minimizing impacts on marine mammals. Other statutes administered primarily by the U.S. Fish and Wildlife (FWS) have been enacted to protect and conserve a wide range of avian species. Loons and eagles

are both afforded protection under the Migratory Bird Treaty Act. Eagles are subject to additional protection under the Bald and Golden Eagle Protection Act. While marbled murrelets are listed as threatened under the Endangered Species Act, FWS issued a Biological Opinion on July 8, 2013 which concluded with a “may affect, not likely to adversely affect” determination for marbled murrelets.

Comment 4: MSC expressed concern about the potential impacts of the project on harbor porpoises. MSC indicated that they have observed schools of harbor porpoises jumping into the air to escape loud sounds.

Response 4: As part of the IHA issuance process, NMFS reviewed the best available information to assess potential effects of the activity on harbor porpoises and determined that impacts will be negligible. Accordingly, NMFS has authorized the take of 1,120 harbor porpoises by Level B harassment under this IHA. The conditions of this IHA include measures to avoid injury and minimize disturbance to harbor porpoises and seven other marine mammal species.

Description of Marine Mammals in the Area of the Specified Activity

There are eight marine mammal species known to occur in the vicinity of the project which may be subjected to Level B harassment. These include

the Pacific harbor seal, California sea lion, Steller sea lion, harbor porpoise, Dall’s porpoise, killer (southern resident and transient), gray whale, and humpback whale.

We have reviewed WSF’s detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of WSF’s application as well as the proposed incidental harassment authorization published in the **Federal Register** (80 FR 43720) instead of reprinting the information here. Please also refer to NMFS’ Web site (www.nmfs.noaa.gov/pr/species/mammals) for generalized species accounts which provide information regarding the biology and behavior of the marine resources that occur in the vicinity of the Mukilteo project area. We provided additional information for the potentially affected stocks, including details of stock-wide status, trends, and threats, in our **Federal Register** notice of proposed authorization (80 FR 43720).

Table 1 lists marine mammal stocks that could occur in the vicinity of the Mukilteo project that may be subject to Level B harassment and summarizes key information regarding stock status and abundance. Please see NMFS’ Stock Assessment Reports (SAR), available at www.nmfs.noaa.gov/pr/sars, for more detailed accounts of these stocks’ status and abundance.

TABLE 1—LIST OF MARINE SPECIES UNDER NMFS JURISDICTION THAT OCCUR IN THE VICINITY OF THE MUKILTEO TANK FARM PIER PROJECT

Species	ESA status	MMPA status	Timing of occurrence	Frequency of occurrence
Harbor Seal	Unlisted	Non-depleted	Year-round	Common.
California Sea Lion	Unlisted	Non-depleted	August–April	Common.
Steller Sea Lion	Delisted	Strategic/Depleted	October–May	Rare.
Harbor Porpoise	Unlisted	Non-depleted	Year-round	Occasional.
Dall’s Porpoise	Unlisted	Non-depleted	Year-round (more common in winter)	Occasional.
Killer Whale (Southern Resident)	Endangered	Strategic/Depleted	October–March	Occasional.
Killer Whale (Transient)	Unlisted	Strategic/Depleted	March–May (intermittently year-round)	Occasional.
Gray Whale	Delisted	Non-depleted	January–May	Occasional.
Humpback Whale	Endangered	Strategic/Depleted	April–June	Occasional.

Potential Effects of the Specified Activity on Marine Mammals

The **Federal Register** notice of proposed authorization (80 FR 43720), incorporated here by reference, provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals. That information has not changed.

Anticipated Effects on Habitat

The **Federal Register** notice of proposed authorization (80 FR 43720), incorporated here by reference, provides information on potential impacts to habitat. In summary, the project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals’ foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the

relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for individual marine mammals or their populations. Removal of the creosote-treated wood piles from the marine environment will result in temporary and localized sediment re-suspension of some of the contaminants associated with creosote, such as polycyclic aromatic hydrocarbons. However, the long-term result is an improvement in water and sediment quality. The net impact is a benefit to

marine organisms, especially toothed whales and pinnipeds that are high on the food chain and bioaccumulate these toxins.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking” for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see “Estimated Take by Incidental Harassment”). ZOIs are often used to establish a mitigation zone around each pile (when deemed practicable) to prevent Level A harassment to marine mammals, and also provide estimates of the areas within which Level B harassment might occur. ZOIs may vary between different diameter piles and types of installation methods. WSF will employ the following mitigation measures:

(a) Conduct briefings between construction supervisors and crews and marine mammal monitoring teams prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) For in-water heavy machinery work other than pile driving (using, *e.g.*, standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location or (2) positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile).

Monitoring and Shutdown for Pile Driving

The following measures apply to WSF’s mitigation through shutdown and disturbance:

Shutdown Zone—For all pile driving activities, WSF will establish a shutdown zone. Shutdown zones are typically used to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria for cetaceans and pinnipeds, respectively,

with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. For vibratory driving, WSF’s activities are not expected to produce sound at or above the 180 dB rms injury criterion. WSF would, however, implement a minimum shutdown zone of 10 m radius for all marine mammals around all vibratory extraction activity. This precautionary measure is intended to further reduce the unlikely possibility of injury from direct physical interaction with construction operations.

Disturbance Zone Monitoring—WSF will establish disturbance zones corresponding to the areas in which SPLs equal or exceed 122 dB rms (Level B harassment threshold for continuous sound, adjusted upward to account for ambient noise levels in this area) for pile driving installation and removal. The disturbance zones will provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones will enable observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring will be to document incidents of Level B harassment.

Ramp Up (Soft Start)—Vibratory hammer use for pile removal and pile driving shall be initiated at reduced power for 15 seconds with a 1 minute interval, and be repeated with this procedure for an additional two times. This will allow marine mammals to move away from the sound source.

Time Restrictions—Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, for salmonid protection, all in-water construction will be limited to the period between August 1, 2015 and February 15, 2016; and continue in August 1, 2016 until the IHA expires on August 31, 2016.

Southern Resident Killer Whale—The following steps will be implemented for ESA-listed southern resident killer whales to avoid or minimize take (see Appendix B of the application—Monitoring Plan):

■ If Southern Residents approach the zone of influence (ZOI) during vibratory pile removal, work will be paused until the Southern Residents exit the ZOI. The ZOI is the area co-extensive with

shutdown and Level B harassment zones.

■ If any killer whales approach the ZOI during vibratory pile removal, and it is unknown whether they are Southern Resident killer whales or transients, it shall be assumed they are Southern Residents and work will be paused until the whales exit the ZOI.

■ If any Southern Residents enter the ZOI before they are detected, work will be paused until the Southern Residents exit the ZOI to avoid further Level B harassment take.

Mitigation Conclusions

NMFS has carefully evaluated WSF’s proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal

habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of WSF's proposed measures, including information from monitoring of implementation of mitigation measures very similar to those described here under previous IHAs from other marine construction projects, we have determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that 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 incidental take authorizations 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 in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock

(specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

WSF has consulted with NMFS to create a marine mammal monitoring plan as part of the IHA application for this project. The monitoring plan proposed by WSF can be found in its IHA application. A summary of the primary components of the plan follows.

(1) Marine Mammal Monitoring Coordination

WSF will conduct briefings between the construction supervisors and the crew and protected species observers (PSOs) prior to the start of pile-driving activity, marine mammal monitoring protocol and operational procedures.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research will be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sighting information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study killer whale communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science

Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSF will be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSF will employ qualified PSOs to monitor the 122 dB_{rms} re 1 μPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.

- Advanced education in biological science, wildlife management, mammalogy or related fields (Bachelor's degree or higher) is preferred, but not required.

- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(3) Monitoring Protocols

PSOs will be present on site at all times during pile removal and driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time

corresponding to the daily tidal cycle will be recorded.

WSF proposed the following methodology to estimate marine mammals taken as a result of the Mukilteo Multimodal Tank Farm Pier removal project:

- During vibratory pile removal, two land-based biologists will monitor the area from the best observation points available. If weather conditions prevent adequate land-based observations, boat-based monitoring may be implemented.
- To verify the required monitoring distance, the vibratory Level B behavioral harassment ZOI will be determined by using a range finder or hand-held global positioning system device.
- The vibratory Level B acoustical harassment ZOI will be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal activity.
- Monitoring will be continuous unless the contractor takes a significant break, in which case, monitoring will be required 30 minutes prior to restarting pile removal.
- If marine mammals are observed, their location within the ZOI, and their reaction (if any) to pile-driving activities will be documented.

Data Collection

We require that observers use approved data forms. Among other pieces of information, WSF will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, WSF will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.*, percent cover, visibility);
- Water conditions (*e.g.*, sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and

- Other human activity in the area.

Reporting

WSF would provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

WSF has requested authorization for the incidental taking of small numbers of humpback whale, Steller sea lion, California sea lion, Dall’s porpoise, gray whale, harbor porpoise and killer whale near the Mukilteo Tank Farm Pier that may result from vibratory pile extraction activities.

All anticipated takes would be by Level B harassment resulting from vibratory pile removal and are likely to involve temporary changes in behavior. Injurious or lethal takes are not expected due to the expected source levels and sound source characteristics associated with the activity, and the proposed mitigation and monitoring measures are expected to further minimize the possibility of such take.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

We note that this practice potentially overestimates the numbers of marine mammals taken for stationary activities, as it is reasonable to assume that some individuals may accrue a number of

incidences of harassment rather than each incidence of harassment accrues to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.*, because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We provided detailed information on applicable sound thresholds for determining effects to marine mammals as well as describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take, in our **Federal Register** notice of proposed authorization (80 FR 43720).

Currently NMFS uses 120 dB_{rms} re 1 μPa received level for non-impulse noises (such as vibratory pile driving, saw cutting, drilling, and dredging) for the onset of marine mammal Level B behavioral harassment. However, since the ambient noise level at the vicinity of the proposed project area is between 122 to 124 dB re 1 μPa, depending on marine mammal functional hearing groups (Laughlin 2011b), the received level of 120 dB re 1 μPa would be below the ambient level. Therefore, for this project, 122 dB re 1 μPa is used as the threshold for Level B behavioral harassment. The distance to the 122 dB contour Level B acoustical harassment threshold due to vibratory pile removal extends a maximum of 1.6 km as is shown in Figure 1–5 in the Application.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the Tank Farm Pier during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, in some cases take requests were estimated using local marine mammal data sets (*e.g.*, Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Harbor seal—Based on the ORCA monitoring, NMFS' analysis uses a conservative estimate of 13 harbor seals per day potentially within the ZOI. For Year One pile removal, the duration estimate is 975 hours over 140 days. For the exposure estimate, it will be conservatively assumed that 13 harbor seals may be present within the ZOI and be exposed multiple times during the project. The calculation for marine mammal exposures is estimated by:

$$\text{Exposure estimate} = N * 140 \text{ days of vibratory pile removal activity,}$$

where:

$N = \# \text{ of animals (13)}$

$\text{Exposure estimate} = 13 * 140 \text{ days} = 1,820$

NMFS is authorizing 1,820 takes by Level B harassment. However, many of these takes are likely to be repeated exposures of individual animals.

California Sea Lion—Based on the ORCA monitoring this analysis uses a conservative estimate of 6 California sea lions per day potentially within the ZOI. Exposure estimate = $6 * 140 \text{ days} = 840$

NMFS is authorizing 840 takes of California sea lions by Level B harassment. Many of these takes are likely to be repeated exposures of individual animals.

Steller Sea Lion—Based on the observation data from Craven Rock, this analysis uses a conservative estimate of 12 Steller sea lions per day potentially near the ZOI. However, given the distance from this haul-out to the Tank Farm Pier, it is not expected that the same numbers would be present in the ZOI. For the exposure estimate, it will be conservatively assumed that 1/6th of the Steller sea lions observed at Craven Rock (2 animals) may be present within the ZOI and be exposed multiple times during the project for total of 2 animals. Exposure estimate = $2 * 140 \text{ days} = 280$

NMFS is authorizing 280 takes of Steller sea lions by Level B harassment. It is likely that many of these takes will be repeated exposures of individual animals.

Harbor Porpoise—Based on the water depth within the ZOI and group size, this analysis uses a conservative estimate of 8 harbor porpoises per day potentially near the ZOI.

Exposure estimate = $8 * 140 \text{ days} = 1,120$

NMFS is authorizing the Level B take of 1,120 takes of harbor porpoises by Level B harassment. Again, many of these takes are likely to be repeated exposures of individual animals.

Dall's Porpoise—Based on the average winter group size, as described in Section 3.0 of the Application, this analysis uses a conservative estimate of 3 Dall's porpoises per day potentially near the ZOI.

Exposure estimate = $3 * 140 \text{ days} = 420$

NMFS is authorizing 420 takes of Dall's porpoise by Level B harassment. A number of these anticipated takes are likely to be repeated exposures of individual animals.

Southern Resident Killer Whale—In order to estimate anticipated take, NMFS used Southern Resident killer whale density data from the Pacific Marine Species Density Database (US Navy 2014) that measured density per km^2 per season in the waters in the vicinity of the Mukilteo Tank Farm Pier. NMFS took the highest value of the summer, fall, and winter seasons multiplied by 140 days of work as well as the ensonified area ($\sim 5 \text{ km}^2$.)

Exposure estimate = $(0.00090 \text{ [summer]}) * 140 \text{ days} * 5 \text{ km}^2 = 0.63 \text{ Southern Resident killer whales.}$

Note that pod size of Southern Resident killer whales can range from 3–50. NMFS assumed that one pod of 15 whales will be sighted during this authorization period and authorized that amount. However, it is possible that a larger group may be observed. In order to limit the take of southern resident killer whales, NMFS is requiring additional mitigation for killer whales. These steps are described above and in Appendix B of the Application.

Transient Killer Whale—NMFS estimated the take of transient killer whales by applying the same methodology used to estimate Southern Resident killer whale.

Exposure estimate = $(0.002373 \text{ [fall]}) * 140 \text{ days} * 5 \text{ km}^2 = 1.66 \text{ transient killer whales.}$

However, a pod of 12 transients was spotted near the project area on August 6, 2015 August 9, 2015 (Whidbey News-Times, August 15, 2015). NMFS will assume that four pods of 12 whales will be sighted during this authorization period. Therefore, NMFS is authorizing 48 takes of transient killer whales.

Gray Whale

Based on the frequency of sightings during the in-water work window, this analysis uses a conservative estimate of 3 gray whales per day potentially near the ZOI.

It is assumed that gray whales will not enter the ZOI each day of the project, but may be present in the ZOI for 5 days per month as they forage in the area, for a total of 30 days. For the exposure estimate, it will be conservatively assumed that up to 3 animals may be present within the ZOI and be exposed multiple times during the project.

Exposure estimate = $3 * 30 \text{ days} = 90$

NMFS is authorizing 90 takes of gray whales by Level B harassment. It is assumed that this number will include multiple harassments of individual animals.

Humpback Whale

Based on the frequency of sightings during the in-water work window, this analysis uses a conservative estimate of 2 humpback whales potentially near the ZOI.

It is assumed that humpback whales will not enter the ZOI each day of the project, but may be present in the ZOI for 3 days per month as they forage in the area, for a total of 18 days. For the exposure estimate, it will be conservatively assumed that up to 2 animals may be present within the ZOI and be exposed multiple times during the project.

Exposure estimate = $2 * 18 \text{ days} = 36$

NMFS is authorizing 36 takes of humpback whales by Level B harassment. It is assumed that this number will include multiple harassments of individual animals.

Based on the foregoing, an estimated maximum of approximately 1,820 Pacific harbor seals, 840 California sea lions, 280 Steller sea lions, 1,120 Harbor porpoise, 420 Dall's porpoise, 48 transient killer whales, 15 Southern Resident killer whales, 90 gray whales, and 36 humpback whales could be exposed to received sound levels above 122 dB re 1 μPa (rms) from the proposed Mukilteo Tank Farm Pier Removal project. A summary of the estimated takes is presented in Table 2.

TABLE 2—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO VIBRATORY HAMMER SOUND LEVELS ABOVE 122 dB re 1 μ Pa (rms)

Species	Estimated marine mammal takes*	Percentage of species or stock
Pacific harbor seal	1,820	16.5
California sea lion	840	0.3
Steller sea lion	280	0.4
Harbor porpoise	1,120	10.5
Dall's porpoise	420	1.0
Killer whale, transient	48	19.7
Killer whale, Southern Resident	15	18.2
Gray whale	90	0.5
Humpback whale	36	2.0

*Represents maximum estimate of animals due to likelihood that some individuals will be taken more than once.

Analyses and Determinations

Negligible Impact Analysis

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 Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, 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 of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the following discussion applies to the affected stocks of harbor seals, California sea lions, Steller sea lions, harbor porpoises, Dall's porpoises, gray whales and humpback whales, except where a separate discussion is provided for killer whales, as the best available information indicates that effects of the specified activity on individuals of those stocks will be similar, and there is no information about the population size, status, structure, or habitat use of the areas to warrant separate discussion.

Pile removal activities associated with the Mukilteo Tank Farm removal project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form

of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile extraction. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of extraction and no impact driving will occur. Vibratory driving and removal does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (site-specific acoustic monitoring data show no source level measurements above 180 dB rms) and the lack of potentially injurious source characteristics. Given sufficient “notice” through use of soft start, marine mammals are expected to move away from a sound source. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for waters around the Mukilteo Tank Farm further enables the implementation of shutdowns if animals come within 10 meters of operational activity to avoid injury, serious injury, or mortality.

WSF proposed activities are localized and of relatively short duration. The entire project area is limited to water in close proximity to the tank farm. The project will require the extraction of 3,900 piles and will require 675–975 hours over 140–180 days.

These localized and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These

reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, the proposed mitigation and monitoring measures, including establishment of a shutdown zone, establishment of Level B harassment area, time and seasonal restrictions on operations, special Southern resident killer whale restrictions, and ramp up or soft start techniques, are expected to reduce potential exposures and behavioral modifications even further.

Southern Resident Killer Whale

Critical habitat for Southern Resident killer whales has been identified in the area and may be impacted. The proposed action will have short-term adverse effects on Chinook salmon, the primary prey of Southern Resident killer whales. However, the Puget Sound Chinook salmon ESU comprises a small percentage of the Southern Resident killer whale diet. Hanson et al. (2010) found only six to 14 percent of Chinook salmon eaten in the summer were from Puget Sound. Therefore, NMFS concludes that both the short-term adverse effects and the long-term beneficial effects on Southern Resident killer whale prey quantity and quality will be insignificant. Also, the sound from vibratory pile driving and removal may interfere with whale passage. For example, exposed killer whales are likely to redirect around the sound instead of passing through the area. However, the effect of the additional distance traveled is unlikely to cause a measureable increase in an individual's energy budget, and the effects would therefore be temporary and insignificant. Additionally, WSF will employ additional mitigation measures to avoid or minimize impacts to Southern Residents. These measures were described previously in the section *Monitoring and Shutdown for Pile Driving*.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section. The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Furthermore, no important feeding and/or reproductive areas for other marine mammals are known to be near the proposed action area.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving and removal, pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project

activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, we considered the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat, other than identified critical habitat for Southern Resident killer whales within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; (4) the expected efficacy of the required mitigation measures in minimizing the effects of the specified activity on the affected species or stocks and their habitat to the level of least practicable impact. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. Accordingly, the take resulting from the proposed WSF Mukilteo Multimodal Project Tank Farm Pier Removal project is not reasonably expected to and is not reasonably likely to adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

Therefore, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from WSF's Mukilteo Multimodal Project Tank Farm Pier Removal project will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 1,820 Pacific harbor seals, 840 California sea lions, 280 Steller sea lions, 1,120 harbor porpoises, 420 Dall's porpoises, 48 transient killer whales, 15 Southern Resident killer whales, 90 gray whales, and 36 humpback whales (and likely fewer, given that we expect at least some takes will be from repeat exposures of individual animals rather than new animals) could be exposed to received noise levels above 122 dB rms re 1 μ Pa from the proposed construction work at the Mukilteo Multimodal Ferry Terminal. These numbers represent

approximately 0.3%–19.7% of the stocks and populations of these species that could be affected by Level B behavioral harassment.

The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action.

Endangered Species Act (ESA)

The humpback whale and Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSF's proposed construction projects. NMFS issued a Biological Opinion that covers the proposed action on July 31, 2013, and concluded that the proposed action is not likely to jeopardize the continued existence of Southern Resident killer whales or humpback whales, and is not likely to destroy or adversely modify Southern Resident killer whales critical habitat.

National Environmental Policy Act (NEPA)

NMFS re-affirms the document titled *Final Environmental Assessment Issuance of Marine Mammal Incidental Take Authorizations to the Washington State Department of Transportation to Take Marine Mammals* which was issued in February 2014. A Finding of No Significant Impact (FONSI) was signed on February 28, 2014. In the FONSI NMFS determined that the issuance of IHAs for the take, by harassment, of small numbers of marine mammals incidental to the WSF's Mukilteo Ferry Terminal replacement project in Washington State, will not significantly impact the quality of the human environment, as described in this document and in the Mukilteo EA. These documents are found at <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm>.

Authorization

As a result of these determinations, we have issued an IHA to WSF for conducting the described activities related to the Mukilteo Multimodal Project Tank Farm Pier Removal Project from September 1, 2015 through August 31, 2016 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 2, 2015.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015-22776 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE055

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Maintenance Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, three species of marine mammals during construction activities associated with a pier maintenance project at Naval Base Kitsap Bremerton, Washington.

DATES: This authorization is effective from October 1, 2014, through March 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. A memorandum describing our adoption of the Navy's Environmental Assessment (2013) and our associated Finding of No Significant Impact,

prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

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."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On April 14, 2015, we received a request from the Navy for authorization to take marine mammals incidental to pile driving and removal associated with the Pier 6 pile replacement project at Naval Base Kitsap Bremerton, WA (NBKB). The Navy submitted revised versions of the request on May 20 and June 12, 2015, the latter of which we deemed adequate and complete. The Navy plans to continue this multi-year project, involving impact and vibratory pile driving conducted within the approved in-water work window. This IHA covers only the third year (in-water work window) of the project, from September 1, 2015, through March 1, 2014, which is expected to be the final year of work associate with the project. Hereafter, use of the generic term "pile driving" may refer to both pile installation and removal unless otherwise noted.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), and harbor seal (*Phoca vitulina richardii*). All of these species may be present throughout the period of validity for this IHA.

This is the third such IHA issued to the Navy for this project, following the IHAs issued effective from December 1, 2013, through March 1, 2014 (78 FR 69825) and from October 1, 2014, through March 1, 2015 (79 FR 59238). Monitoring reports associated with these previous IHAs are available on the Internet at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

Description of the Specified Activity

Overview

NBKB serves as the homeport for a nuclear aircraft carrier and other Navy vessels and as a shipyard capable of overhauling and repairing all types and sizes of ships. Other significant capabilities include alteration, construction, deactivation, and dry-docking of naval vessels. Pier 6 was completed in 1926 and requires substantial maintenance to maintain readiness. Over the length of the entire project, the Navy plans to remove up to 400 deteriorating fender piles and to replace them with up to 330 new pre-stressed concrete fender piles.

Dates and Duration

The allowable season for in-water work, including pile driving, at NBKB is June 15 through March 1, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect fish. Under the specified activity—which includes only the portion of the project planned for completion under this IHA—a maximum of sixty pile driving days would occur. The Navy plans to conduct fifteen days of vibratory pile removal and 45 days of pile installation with an impact hammer. Either type of pile driving may occur on any day during the period of validity, including concurrent pile removal and installation. Pile driving may occur only during daylight hours.

Specific Geographic Region

NBKB is located on the north side of Sinclair Inlet in Puget Sound (see Figures 1–1 and 2–1 of the Navy's application). Sinclair Inlet, an estuary of Puget Sound extending 3.5 miles southwesterly from its connection with the Port Washington Narrows, connects to the main basin of Puget Sound through Port Washington Narrows and then Agate Pass to the north or Rich Passage to the east. Sinclair Inlet has been significantly modified by development activities. Fill associated with transportation, commercial, and residential development of NBKB, the City of Bremerton, and the local ports of Bremerton and Port Orchard has resulted in significant changes to the shoreline. The area surrounding Pier 6 is industrialized, armored and adjacent to railroads and highways. Sinclair Inlet is also the receiving body for a wastewater treatment plant located just west of NBKB. Sinclair Inlet is relatively shallow and does not flush fully despite freshwater stream inputs.

Detailed Description of Activities

The Navy plans to remove deteriorated fender piles at Pier 6 and replace them with pre-stressed concrete piles. The entire project calls for the removal of 380 12-in diameter creosoted timber piles and twenty 12-in steel pipe piles. These will be replaced with 240 18-in square concrete piles and ninety 24-in square concrete piles. It is not possible to specify accurately the number of piles that might be installed or removed in any given work window, due to various delays that may be expected during construction work and uncertainty inherent to estimating production rates. The Navy assumes a

notional production rate of sixteen piles per day (removal) and four piles per day (installation) in determining the number of days of pile driving expected, and scheduling—as well as exposure analyses—is based on this assumption.

All piles are planned for removal via vibratory driver. The driver is suspended from a barge-mounted crane and positioned on top of a pile. Vibration from the activated driver loosens the pile from the substrate. Once the pile is released, the crane raises the driver and pulls the pile from the sediment. Vibratory extraction is expected to take approximately 5–30 minutes per pile. If piles break during removal, the remaining portion may be removed via direct pull or with a clamshell bucket. Replacement piles will be installed via impact driver and are expected to require approximately 15–60 minutes of driving time per pile, depending on subsurface conditions. Impact driving and/or vibratory removal could occur on any work day during the period of the IHA. Only one pile driving rig is planned for operation at any given time.

Description of Work Accomplished— During the first in-water work season for the Pier 6 project, the contractor completed installation of two concrete piles, on two separate days. During the second in-water work season, 282 piles were removed by vibratory extraction or direct pull. The contractor found that the direct pull method was very effective in pile removal and approximately fifty percent of the piles that were removed during Year 2, including three steel piles, were pulled without the use of the vibratory driver. A total of 168 new concrete piles were installed using an impact hammer. Therefore, approximately 118 piles remain to be removed and 160 to be installed. The Navy's monitoring reports are available on the Internet at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on July 24, 2015 (80 FR 44033). We received a letter from the Marine Mammal Commission, which concurred with our preliminary findings and recommended that we issue the requested IHA, subject to inclusion of the proposed mitigation and monitoring measures. All mitigation and monitoring measures described in our notice of proposed IHA have been included in the IHA as issued. The Commission also recommended that we ensure that the Navy is sufficiently aware of the requirements set forth in

the authorization, and we agree with the recommendation.

Description of Marine Mammals in the Area of the Specified Activity

There are five marine mammal species with records of occurrence in waters of Sinclair Inlet in the action area. These are the California sea lion, harbor seal, Steller sea lion, gray whale (*Eschrichtius robustus*), and killer whale (*Orcinus orca*). The harbor seal is a year-round resident of Washington inland waters, including Puget Sound, while the sea lions are absent for portions of the summer. For the killer whale, both transient (west coast stock) and resident (southern stock) animals have occurred in the area. However, southern resident animals are known to have occurred only once, with the last confirmed sighting from 1997 in Dyes Inlet. A group of 19 whales from the L–25 subpod entered and stayed in Dyes Inlet, which connects to Sinclair Inlet northeast of NBKB, for 30 days. Dyes Inlet may be reached only by traversing from Sinclair Inlet through the Port Washington Narrows, a narrow connecting body that is crossed by two bridges, and it was speculated at the time that the whales' long stay was the result of a reluctance to traverse back through the Narrows and under the two bridges. There is one other unconfirmed report of a single southern resident animal occurring in the project area, in January 2009. Of these stocks, the southern resident killer whale is listed (as endangered) under the Endangered Species Act (ESA).

An additional seven species have confirmed occurrence in Puget Sound, but are considered rare to extralimital in Sinclair Inlet and the surrounding waters. These species—the humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata scammoni*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), harbor porpoise (*Phocoena phocoena vomerina*), Dall's porpoise (*Phocoenoides dalli dalli*), and northern elephant seal (*Mirounga angustirostris*)—along with the southern resident killer whale—are considered extremely unlikely to occur in the action area or to be affected by the specified activities, and are not considered further in this document. A review of sightings records available from the Orca Network (www.orcanetwork.org; accessed July 13, 2015) confirms that there are no recorded observations of these species in the action area (with the exception of the southern resident sightings described above).

We have reviewed the Navy’s detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy’s application instead of reprinting the information here. Please also refer to NMFS’ Web site (www.nmfs.noaa.gov/pr/species/mammals) for generalized species accounts and to the Navy’s Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Puget

Sound (DoN, 2006). The document is publicly available at www.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html (accessed May 2, 2014). We provided additional information for marine mammals with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (July 24, 2015; 80 FR 44033).

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBKB

during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS’ Stock Assessment Reports (SAR), available at www.nmfs.noaa.gov/pr/sars, for more detailed accounts of these stocks’ status and abundance. The harbor seal, California sea lion, and gray whale are addressed in the Pacific SARs (e.g., Carretta *et al.*, 2015), while the Steller sea lion and transient killer whale are treated in the Alaska SARs (e.g., Allen and Angliss, 2015).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBKB

Species	Stock	ESA/MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR ³	Annual M/SI ⁴	Relative occurrence in Sinclair Inlet; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	Eastern North Pacific.	-; N	20,990 (0.05; 20,125; 2010–11).	624	⁹ 132	Rare; year-round.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	West coast transient ⁵ .	-; N	243 (n/a; 2009)	2.4	0	Rare; year-round.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion.	U.S	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Common; year-round (excluding July).
Steller sea lion	Eastern U.S.	-; N ⁷	60,131–74,448 (n/a; 36,551; 2008–13) ⁸ .	1,645	92.3	Occasional/seasonal; Oct–May
Family Phocidae (earless seals)						
Harbor seal	Washington northern inland waters ⁶ .	-; N	11,036 (0.15; 7,213; 1999) ..	undetermined	>2.8	Common; year-round.

¹ ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species’ (or similar species’) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

³ Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

⁴ These values, found in NMFS’ SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

⁵ The abundance estimate for this stock includes only animals from the “inner coast” population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the “outer coast” subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

⁶ Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

⁷ The eastern distinct population segment of the Steller sea lion, previously listed under the ESA as threatened, was delisted on December 4, 2013 (78 FR 66140; November 4, 2013).

⁸ Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (*i.e.*, high fecundity or low juvenile mortality).

⁹ Includes annual Russian harvest of 127 whales.

Potential Effects of the Specified Activity on Marine Mammals

Our **Federal Register** notice of proposed authorization (July 24, 2015; 80 FR 44033) provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

We described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (July 24, 2015; 80 FR 44033). In summary, we have determined that given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. The area around NBKB, including the adjacent ferry terminal and nearby marinas, is heavily altered with significant levels of industrial and recreational activity, and is unlikely to harbor significant amounts of forage fish. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see “Estimated Take by Incidental Harassment”); these values were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of

the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures apply to the Navy’s mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the acoustic injury criteria for pinnipeds (190 dB root mean square [rms]). The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under “Potential Effects of the Specified Activity on Marine Mammals” in our notice of proposed authorization [July 24, 2015; 80 FR 44033], serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 2. However, a minimum shutdown zone of 10 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the 190-dB Level A harassment threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone

monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see “Monitoring and Reporting”). Nominal radial distances for disturbance zones are shown in Table 2.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer’s location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities must be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan (Appendix C in the

Navy's application), developed by the Navy in consultation with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

- Advanced education in biological science or related field (undergraduate degree or higher required);

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

- Experience or training in the field identification of marine mammals, including the identification of behaviors;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.*,

when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity must be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Special Conditions

The Navy did not request the authorization of incidental take for killer whales or gray whales (see discussion below in "Estimated Take by Incidental Harassment"). Therefore, shutdown will be implemented in the event that either of these species is observed in the vicinity, prior to entering the defined disturbance zone. As described later in this document, we believe that occurrence of these species during the in-water work window would be uncommon and that the occurrence of an individual or group would likely be highly noticeable and would attract significant attention in local media and with local whale watchers and interested citizens. Prior to the start of pile driving on any day, the Navy will contact and/or review the latest sightings data from the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 residents, scientists, and government agency personnel in the U.S. and Canada, and includes passive acoustic detections. The presence of a killer whale or gray whale in the southern reaches of Puget Sound would be a notable event, drawing public attention and media scrutiny. With this level of coordination in the region of activity, the Navy should be able to effectively receive real-time information on the presence or absence of whales, sufficient to inform the day's activities. Pile driving will not occur if there was the risk of incidental harassment of a species for which incidental take was not authorized.

During vibratory pile driving, one land-based observer will be positioned at the pier work site. Additionally, one vessel-based observer will travel through the monitoring area, completing an entire loop approximately every thirty minutes (please see Figure 1 of Appendix C in the Navy's applications). If any killer whales or gray whales are

detected, activity would not begin or would shut down.

Timing Restrictions

In the project area, designated timing restrictions exist to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is June 15-March 1. All in-water construction activities will occur only during daylight hours (sunrise to sunset).

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." The pier maintenance project will utilize soft start techniques for both impact and vibratory pile driving. We require the Navy to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period, with the procedure repeated two additional times. For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's pile driving work and at any time following a cessation of pile driving of thirty minutes or longer (specific to impact and vibratory driving).

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned;

and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that 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 incidental take authorizations 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 in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Navy marine mammal monitoring plan can be found as Appendix C of the Navy's application, on the Internet at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

Acoustic Monitoring

The Navy will implement a sound source level verification study during the specified activities. Data will be collected in order to estimate airborne and underwater source levels for vibratory removal of timber piles and impact driving of concrete piles, with measurements conducted for ten piles of each type. Monitoring will include one underwater and one airborne monitoring position. These exact positions will be determined in the field during consultation with Navy personnel, subject to constraints related to logistics and security requirements. Reporting of measured sound level signals will include the average, minimum, and maximum rms value and frequency spectra for each pile monitored. Please see section 11.4.4 of

the Navy's application for details of the Navy's acoustic monitoring plan.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity must be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

During vibratory pile driving, two observers will be deployed as described under Mitigation, including one land-based observer and one-vessel-based observer traversing the extent of the Level B harassment zone. We previously required (for Years 1–2 of the Pier 6 project) the deployment of four land-based observers (in addition to one vessel-based observer) during vibratory driving. This additional monitoring effort served to confirm that our assumptions relating to marine mammal occurrence in the action area were accurate, and we do not believe it necessary to continue with two shore-based observers in the far-field, in addition to the far-field vessel-based observer, to accomplish the required monitoring of incidental take. During impact driving, one observer would be positioned at or near the pile to observe the much smaller disturbance zone.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment

throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.*, percent cover, visibility);
- Water conditions (*e.g.*, sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.*, shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report will be submitted to NMFS within 45 days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorizations for the Pier 6 project. Marine mammal monitoring occurred before, during, and after each pile driving event. During the course of these activities, the Navy did not exceed the take levels authorized under the IHAs. In accordance with the 2013 and 2014 IHAs, the Navy submitted monitoring reports (available at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

Under the 2013 IHA, the Navy anticipated a total of 65 pile driving days; however, only a limited program of test pile driving actually took place. Pile driving occurred on only two days, with a total of only two piles driven (both impact-driven concrete piles). The only species observed was the California sea lion. A total of 24 individuals were observed within the defined Level B harassment zone, but all were hauled-out on port security barrier floats outside of the defined Level B harassment zone for airborne sound. Therefore, no take of marine mammals occurred incidental to project activity under the year one IHA.

Under the 2014 IHA, the Navy anticipated a total of sixty pile driving days, but actually conducted a total of 32 pile driving days. This total included sixteen days each of impact driving and pile removal; however, only approximately fifty percent of pile removal required use of the vibratory driver and there were a total of 24 monitoring days. Only two species, the California sea lion and harbor seal, were observed. Total observed incidents of take were 275 for California sea lions (151 during vibratory removal and 124 during impact driving) and ten for harbor seals (nine during vibratory removal and one during impact driving). Given the extensive far-field monitoring required, no extrapolation of observed takes to unobserved area was necessary.

Observed behaviors were typical for pinnipeds and included foraging, milling, and traveling. Numerous California sea lions use the port security floats as a haul-out. No reactions indicative of disturbance were observed.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the

wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered extremely unlikely. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.*, through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.*, because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for

marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals may be present year-round and sea lions are known to haul-out on man-made objects at the NBKB waterfront. Sightings of other species are rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, and harbor seals in Sinclair Inlet and

nearby waters that may result from pile driving during construction activities associated with the pier maintenance project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we first estimated the extent of the sound field that may be produced by the activity and then considered that in combination with information about marine mammal density or abundance in the project area. We provided detailed information on applicable sound thresholds for determining effects to marine mammals as well as describing the information used in estimating the sound fields, the available marine mammal density or

abundance information, and the method of estimating potential incidents of take, in our **Federal Register** notice of proposed authorization (July 24, 2015; 80 FR 44033). That information is unchanged, and our take estimates were calculated in the same manner and on the basis of the same information as what was described in the **Federal Register** notice. Modeled distances to relevant thresholds are shown in Table 2 and total estimated incidents of take are shown in Table 3. Please see our **Federal Register** notice of proposed authorization (July 24, 2015; 80 FR 44033) for full details of the process and information used in estimating potential incidents of take.

TABLE 2—DISTANCES TO RELEVANT SOUND THRESHOLDS AND AREAS OF ENSONIFICATION, UNDERWATER

Description	Distance to threshold (m) and associated area of ensonification (km ²) ¹			
	190 dB	180 dB	160 dB	120 dB
Concrete piles, impact	1.2, <0.0001	5.4, 0.0001	117, 0.04	n/a
Steel piles, vibratory	0	0	n/a	² 2,154, 7.5
Timber piles, vibratory	0	0	n/a	1,585; 5.0

¹ SPLs used for calculations were: 191 dB for impact driving, 170 dB for vibratory removal of steel piles, and 168 dB for vibratory removal of timber piles.

² Areas presented take into account attenuation and/or shadowing by land. Please see Appendix B in the Navy's applications.

Sinclair Inlet does not represent open water, or free field, conditions. Therefore, sounds would attenuate according to the shoreline topography. Distances shown in Table 2 are

estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Appendix B of the Navy's application for a depiction of areas in which each

underwater sound threshold is predicted to occur at the project area due to pile driving.

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km ²) ¹	n * ZOI (vibratory steel pile removal) ²	Abundance ³	Total authorized takes (% of total stock)
California sea lion	0.1266	1	45	2,880 (1.0)
Steller sea lion	0.0368	0	1	60 (0.1)
Harbor seal	⁴ 1.219	9	11	660 (6.0)
Killer whale (transient)	0.0024 (fall)	0	n/a	0
Gray whale	0.0005 (winter)	0	n/a	0

¹ Best available species- and season-specific density estimate, with season noted in parentheses where applicable (Hanser *et al.*, 2015).

² Product of density and largest ZOI (7.5 km²) rounded to nearest whole number; presented for reference only.

³ Best abundance numbers multiplied by expected days of activity (60) to produce take estimate.

⁴ Uncorrected density; presented for reference only.

Analyses and Determinations

Negligible Impact Analysis

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.” 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 Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of

estimated mortalities, and effects on habitat.

Pile driving activities associated with the pier maintenance project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, piles will be removed via vibratory means—an activity that does not have the potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics—and, while impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks, only small diameter concrete piles are planned for impact driving. Predicted source levels for such impact driving events are significantly lower than those typical of impact driving of steel piles and/or larger diameter piles. In addition, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient “notice” through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. Environmental conditions in Sinclair Inlet are expected to generally be good, with calm sea states, although Sinclair Inlet waters may be more turbid than those further north in Puget Sound or in Hood Canal. Nevertheless, we expect conditions in Sinclair Inlet will allow a high marine mammal detection capability for the trained observers required, enabling a high rate of success in implementation of shutdowns to avoid injury, serious injury, or mortality. In addition, the topography of Sinclair Inlet should allow for placement of observers sufficient to detect cetaceans, should any occur (see Figure 1 of Appendix C in the Navy’s application).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006; HDR, 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving

activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, we find that the total marine mammal take from Navy’s pier maintenance activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The number of incidences of take authorized for these stocks would be considered small relative to the relevant stocks or populations (one percent or less for both sea lion stocks and six percent for harbor seals; Table 3) even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for pinnipeds in estuarine/inland waters, there is likely to be some overlap in individuals present day-to-day.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pier maintenance project. We made the Navy’s EA available to the public for review and comment, in relation to its suitability for adoption in order to assess the impacts to the human environment of issuance of an IHA to the Navy. In compliance with NEPA, the CEQ regulations, and NOAA Administrative Order 216–6, we subsequently adopted that EA and signed a Finding of No Significant Impact (FONSI) on November 8, 2013.

We have reviewed the Navy’s application for a renewed IHA for ongoing construction activities for

2014–15 and the 2013–14 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary, and, after review of public comments, reaffirm our 2013 FONSI. The 2013 NEPA documents are available for review at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described pier maintenance activities in Sinclair Inlet, from September 1, 2015 through March 1, 2016, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 2, 2015.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2015–22799 Filed 9–9–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995.

DATES: Written comments must be submitted on or before November 9, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Adam Bailey, National Marine Fisheries Service (NMFS), Southeast Regional Office (SERO), 263 13th Avenue S., St. Petersburg, FL 33701, (727) 824–5305, or adam.bailey@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision to the existing reporting requirements that are currently approved under OMB Control No. 0648–0205, Southeast Region Permit Family of Forms, in association with the upcoming final rule, Regulation Identifier Number (RIN) 0648–BB02, Amendment 9 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 9), developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801.

The final rule, RIN 0648–BB02, would implement a number of Atlantic shark and smoothhound shark management measures and would establish an effective date for previously-adopted smoothhound shark management measures finalized in Amendment 3 to the 2006 Consolidated Atlantic HMS FMP (Amendment 3) and the 2011 Final Rule to Modify the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries. Among these previously-adopted smoothhound shark management measures is a commercial smoothhound shark permit requirement. The commercial smoothhound shark permitting requirement contained in this rule would become effective at a date specified after approval of this revision request.

In April 2011, NMFS submitted a PRA change request to the Office of Management and Budget (OMB) to add the commercial smoothhound shark permit to the existing HMS permit PRA package (OMB Control No. 0648–0327). OMB subsequently approved the change request to add the Federal commercial smoothhound shark permit to the HMS permit PRA package in May 2011. In July 2015, the commercial smoothhound shark permit was removed from the HMS permit PRA package (OMB Control No. 0648–0327) with the intention of transferring it to the Southeast Region Permit Family of Forms. This revision seeks to add this permit to OMB Control No. 0648–0205, because the SERO Permits Office will administer the smoothhound shark permit. The revision also addresses a new permit fee

of \$25 (\$10 if issued in conjunction with another SERO-administered permit) related to SERO's administration of the permit and a more accurate estimate of the number of respondents, reducing the estimated number of respondents from 4,000, to 500 based on recent landings data.

Specifically for the smoothhound shark commercial permit, NMFS estimates 500 respondents to apply. If a respondent already holds a SERO-administered permit, applying for a smoothhound shark permit would only require checking an additional box on the permits application form, which would take approximately 10 seconds. If the respondent does not hold a SERO-administered permit, a new application must be filled out, which would take approximately 30 minutes. Thus, the total annual burden estimate is between 1.4 hours and 250 hours. It is likely that many respondents already hold a permit issued through the SERO Permits Office due to participation in other SERO fisheries (including other shark fisheries), thus, they would simply need to check a box on their existing form. However, at this time, NMFS does not have an estimate of the number of respondents who would apply for this permit and that already hold a permit administered through the SERO Permits Office, and therefore, for the purpose of this revision request, NMFS assumes the high estimate of 250 burden hours annually for the commercial smoothhound shark permit.

There is a \$25 fee for a stand-alone commercial smoothhound shark permit or a \$10 fee if issued in conjunction with another SERO-administered permit. Thus, the total annual cost to the public for the permit is between \$12,500 if none of the 500 respondents hold another SERO-administered permit and \$5,000 if all the respondents hold another SERO-administered permit. For the purpose of this revision request, NMFS assumes the high estimate of \$12,500 in total annual costs for the commercial smoothhound shark permit.

The commercial smoothhound shark permit would add a maximum of 500 respondents, 250 burden hours, and \$12,500 total annual costs to this information collection.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0205.
Form Number(s): None.

Type of Review: Regular submission (revision of current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 13,909.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6,086 hours.

Estimated Total Annual Cost to Public: \$457,378 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015-22720 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Regional Economic Data Collection Program for Southwest Alaska.

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 1,602.

Average Hours per Response: 45 minutes.

Burden Hours: 600.

Needs and Uses: This request is for a new information collection.

Regional or community economic analysis of proposed fishery management policies is required by the Magnuson-Stevens Fishery Conservation and Management Act, National Environmental Policy Act, and Executive Order 12866, among others. To satisfy these mandates and inform policymakers and the public of the likely regional economic impacts associated with fishery management policies, appropriate economic models and the data to implement them are needed. Much of the data required for regional economic analysis of Southwest Alaska fisheries are either unavailable or unreliable. Accurate fishery-level data on employment, labor income, and expenditures in the Southwest Alaska fishery and related industries are not generally available but are needed to estimate the role of fisheries and effects of fishery policies on local, regional and national economies. The Southwest region for this survey includes six boroughs and census areas (BCAs)—Aleutians East Borough, Aleutians West Census Area, Bristol Bay Borough, Dillingham Census Area, Lake and Peninsula Borough, and Kodiak Island Borough.

In 2007–2008, a similar data collection project was administered for the Southwest Alaska region by obtaining 2006 annual data. However, that data is now outdated and incomplete. In the proposed survey, 2013 or 2014 annual data for important regional economic variables will be collected from fish harvesting and seafood processing businesses operating in the region (2012 data on these variables will be collected if more recent vessel landings and processed products data are not available at the time the data collection begins). The data will be used to develop Southwest regional and BCA-level models that will provide more reliable impact estimates and significantly improve policymakers' ability to assess effects on fishery-dependent communities in Southwest Alaska. A departure from the prior survey effort is that more information will be collected this time on the source locations of business expenditures by catcher vessels and seafood processors. The survey will be conducted one time only.

A mail survey will be used to collect data on employment, labor income, and expenditures from owners of 2,731 catcher vessels whose boats delivered

fish to Southwest Alaska processors. Key informant interviews will be conducted to gather additional information from 30 seafood processors, including catcher-processor and floating processor vessels, and 20 local businesses that supply inputs to regional fish harvesters and seafood processors. The interviews will be used to determine relative expenditures for inputs made in nine geographical areas—(1) each of the six BCAs within the Southwest region, (2) non-Southwest Alaska region, (3) West Coast, and (4) the rest of US and elsewhere. Personal interviews with input suppliers will gather additional information on (i) the level of supplier sales to regional seafood industry businesses, and (ii) the portion of business expenditures for labor and non-labor inputs that were made in each of the above nine geographical areas.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Dated: September 3, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015-22708 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD001

Takes of Marine Mammals Incidental to Specified Activities; Confined Blasting Activities by the U.S. Army Corps of Engineers During the Port of Miami Construction Project in Miami, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice, withdrawal of an Incidental Harassment Authorization (IHA) application.

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers (ACOE) has withdrawn its application

for an IHA, for the take of small numbers of marine mammals, by Level B harassment only, incidental to conducting confined blasting activities in the Port of Miami in Miami, Florida. Accordingly, NMFS has withdrawn its related proposed IHA.

ADDRESSES: The documents and the application related to this action are available by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here.

A copy of the IHA application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/>.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION: On November 15, 2013, NMFS received an application from the ACOE requesting an IHA. The requested IHA would authorize the take, by Level B harassment, small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to confined blasting activities in Miami Harbor, Port of Miami, in Miami-Dade County, Florida. NMFS published a notice of the proposed IHA in the **Federal Register** (79 FR 6545) on February 4, 2014. On August 3, 2015, NMFS accepted notice from the ACOE withdrawing their IHA application for the proposed action. The ACOE was able to complete the construction project using dredging methods and without needing to conduct confined blasting. Therefore, NMFS has withdrawn its proposed IHA for the action.

Dated: September 3, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 2015-22775 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-C-2015-0058]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT: Karen Karlinchak at (571) 272-8717.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Russell D. Slifer, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office.

Andrew H. Hirshfeld, Commissioner for Patents, United States Patent and Trademark Office.

Mary Boney Denison, Commissioner for Trademarks, United States Patent and Trademark Office.

Anthony P. Scardino, Chief Financial Officer, United States Patent and Trademark Office.

John B. Owens II, Chief Information Officer, United States Patent and Trademark Office.

Sarah T. Harris, General Counsel, United States Patent and Trademark Office.

Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office.

Alternates

Sharon R. Marsh, Deputy Commissioner for Trademark Examination Policy, United States Patent and Trademark Office.

Andrew I. Faile, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office.

Dated: September 1, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015-22728 Filed 9-9-15; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2015-0008]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 13, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493.

SUPPLEMENTARY INFORMATION: *Title, Associated Form and OMB Number:* Department of Defense (DoD) Passport and Passport Agent Services, Authorization to apply for "No-Fee" Passport and/or request for Visa, DD Form 1056, 0702-XXXX.

Type of Request: New.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 175,000.

Needs And Uses: The information collection requirement is necessary to obtain and record the personally identifiable information of official passport and/or visa applicants. This information is used to process, track, and verify no-fee passport and visa applications and requests for additional visa pages and Status of Forces Agreement (SOFA) endorsements.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket

ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Dated: September 4, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-22846 Filed 9-9-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2015-HQ-0034]

Proposed Collection; Comment Request

AGENCY: US Army in Europe (USAREUR), G1, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the U.S. Army in Europe (USAREUR), G1 announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 9, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to U.S. Army in Europe (USAREUR), G1, CPD, Attn: AEPE-CD, Unit 29351, Box 99, APO AE 09014-9351, or email Armand Lepage, Chief, DoD Contractor Personnel Office (DOCPER), armand.c.lepage.civ@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DOCPER Contractor Online Processing System (DCOPS); AE Form 715-9A and AE Form 715-9C; OMB Control Number 0702-XXXX.

Needs and Uses: The information collection requirement is necessary if DoD contractors and their employees working in Germany and Italy request to be provided the same status under the NATO Status of Forces Agreement (SOFA) as DoD civilians working for the DoD in those Host Nations. The information collected is used to qualify the contractor employees for NATO SOFA status under the procedures outlined in the respective bilateral agreements between the US and the Host Nations. Allowing DoD contractors and their employees to obtain NATO SOFA status exempts them from most Host Nation taxation, and from the requirement to obtain work and residency permits while working in support of the DoD mission.

Affected Public: Business or other for profit; Individuals or households.

Annual Burden Hours: 1500.

Number of Respondents: 1500.
Responses per Respondent: 1.
Annual Responses: 1500.
Average Burden per Response: 60 minutes.

Frequency: On occasion.

Respondents are DoD contractors and their contractor employees who, if desiring NATO SOFA status, must provide certain information under the bilateral agreements with the Host Nations. For contracts, the information provided is the contract itself, including a description of the work to be done by the contractor, and the various positions, locations, and salaries associated with each position on the contract. For the contractor employee, personal information to be provided includes full name, SSN, date and place of birth, resumes, dependent information, and sufficient personal historical information intended to assure the Host Nation that the contractor employee is not considered to be "ordinarily resident", *i.e.*, a person who, under the bilateral agreements, would not be eligible for the tax relief provided by NATO SOFA status.

Dated: September 4, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-22833 Filed 9-9-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement to Transition Six FA-18C Strike Fighter Squadrons to FA-18E Strike Fighter Squadrons at Naval Air Station Oceana, Virginia and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 Code of Federal Regulations parts 1500-1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of transitioning six FA-18C (Hornet) strike fighter squadrons to FA-18E (Super Hornet) strike fighter squadrons at Naval Air Station (NAS) Oceana, Virginia. The EIS will also include a comprehensive analysis of NAS Oceana operations, addressing

overall air operations at the main base and Field Carrier Landing Practice (FCLP) operations at Naval Auxiliary Landing Field (NALF) Fentress.

DATES AND ADDRESSES: Two public scoping meetings will be held from 5:00 p.m. to 8:00 p.m. on:

1. Tuesday, September 29, 2015, at the Columbian Club, 1236 Prosperity Road, Virginia Beach, VA 23451; and
2. Wednesday, 30 September, 2015, at Centerville Baptist Church, 908 Centerville Turnpike, Chesapeake, VA 23322.

The two public scoping meetings will be informal, using an open house format to obtain verbal or written comments on the scope of the EIS and to identify specific environmental concerns or topics for consideration. Each information station will be staffed by DoN representatives. Additional information concerning each public scoping meeting is available on the EIS Web page located at: <http://www.oceanastrikefightereis.com>.

FOR FURTHER INFORMATION CONTACT: NAS Oceana EIS Project Manager (Code EV21/TW); Naval Facilities Engineering Command (NAVFAC) Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508.

SUPPLEMENTARY INFORMATION: Since 2002, FA-18C Hornet aircraft have been used in support of world-wide operations at higher rates than originally projected. The result of this higher use has been greater airframe fatigue, which in turn is rapidly accelerating the date at which the Hornet aircraft will reach the end of their service life and need to be retired. While the DoN plan had been to replace Hornet aircraft with the F-35C Joint Strike Fighter (JSF) aircraft, the entry of the F-35C into the U.S. Navy inventory has been delayed and it will not be available on the East Coast before the current inventory of Hornet aircraft based at NAS Oceana will be retired.

The combination of the accelerated retirement of the Hornet aircraft and delays in the availability of replacement F-35C aircraft warrants an interim measure to ensure the requisite number of strike fighter aircraft remain at NAS Oceana to meet operational and training needs. Therefore, the DoN proposes to transition the six NAS Oceana squadrons that still operate the FA-18C Hornet, and the NAS Oceana-based Fleet Replacement Squadron (FRS), to the FA-18E Super Hornet aircraft. The proposed transition would involve a one-for-one aircraft replacement, occur at NAS Oceana, and begin no earlier than 2018. The proposed action will provide newer, more capable, and more

reliable aircraft to the NAS Oceana-based strike fighter community using existing assets until the replacement F-35C aircraft are available for East Coast operations. No other aircraft carrier (CVN)-capable strike fighter aircraft exist to cover the gap until the introduction of the F-35C.

Since Super Hornet flight training is nearly identical to Hornet flight training, the type and quantity of flight training operations at NAS Oceana, NALF Fentress, and the local operating areas are not expected to be affected by the proposed transition and the subsequent retirement of the Hornet. Other than minor modifications to aircraft auxiliary power utilities in hangars, and installation of Super Hornet-compatible electrical distribution on the flight line, no major construction or facility modifications are planned.

Recognizing that noise will be an important environmental concern associated with the transition, the EIS will include a comprehensive analysis of NAS Oceana air operations, including noise impacts, at the main base and FCLP operations at NALF Fentress. In addition, the DoN will use the EIS scoping period to conduct a thorough review of existing flight procedures to determine if any reasonable adjustments can be made to mitigate potential noise impacts of the proposed action. Following scoping, the DoN will also consider input from the public to help identify reasonable noise mitigation alternatives not already implemented to carry forward for analysis in the Draft EIS.

Federal, state, and local agencies, the public and interested persons are encouraged to provide comments to the DoN during the public scoping period to identify environmental concerns that the commenter believes should be addressed in the EIS. To be most effective, scoping comments should clearly describe the specific issues(s) or topic(s) that the EIS should address. Mailed comments must be postmarked by (30 Days).

In addition to the proposed action, the EIS will address the No Action Alternative. Under the No Action Alternative, the DoN would not transition six NAS Oceana Hornet squadrons and the NAS Oceana based FRS from Hornet aircraft to Super Hornet aircraft. The shortage of Hornet airframes that would result under this alternative would have an immediate and growing impact on the operational readiness of the strike fighter squadrons at NAS Oceana.

The DoN will analyze the potential environmental effects of transitioning

the remaining Hornet aircraft to the Super Hornet aircraft. Resource areas to be addressed in the EIS will include, but not be limited to: noise, air quality, land use, socioeconomics, natural resources, biological resources, cultural resources, and safety and environmental hazards. The analysis will evaluate direct and indirect impacts, and will account for cumulative impacts from other relevant activities near the installation. Relevant and reasonable measures that could avoid or mitigate environmental effects will also be analyzed. Additionally, the DoN will undertake any consultations required by law or regulation.

The DoN will not release the names, street addresses, email addresses and screen names, telephone numbers, or other personally identifiable information of individuals who provide comments during scoping unless required by law. However, the DoN may release the city, state, and 5-digit zip code of individuals who provide comments. Each commenter making oral comments at the public scoping meetings will be asked by the stenographer if he/she otherwise elects to authorize the release of their personally identifiable information prior to providing their comments. Commenters submitting written comments, either using comment forms or via the project Web site, may elect to authorize release of personally identifiable information by checking a "release" box on the comment form.

To be included on the DoN's mailing list for the EIS (or to receive a copy of the Draft EIS, when released), electronic requests can be made on the project Web site at www.oceanastrikefightereis.com. Requests via the U.S. Postal Service should be submitted to: NAS Oceana EIS Project Manager (Code EV21/TW); Naval Facilities Engineering Command (NAVFAC) Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508. The same policy for release of personally identifiable information as identified above for scoping comments will be maintained by DoN for individuals requesting to be included on the EIS mailing list.

Dated: August 27, 2015.

N. A. Hagerty-Ford,

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

[FR Doc. 2015-22773 Filed 9-9-15; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Evaluation of Data Driven Instruction Professional Development for Teachers**AGENCY:** Institute of Education (IES), Department of Education (ED).**ACTION:** Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2015–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, 202–219–1373.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of

Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Data Driven Instruction Professional Development for Teachers.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 343.

Total Estimated Number of Annual Burden Hours: 260.

Abstract: This OMB package requests clearance for data collection activities for a rigorous evaluation of data-driven instruction (DDI) in 104 schools from 12 school districts. Data-driven instruction involves the use of student assessment data to help teachers adapt their instruction and, ultimately, improve student achievement. The study's intervention plan will build school capacity for DDI by: (1) Helping schools set up structures and processes that enable teachers and other school staff to efficiently carry out data-driven instruction, and (2) training and coaching teachers in the skills needed to understand student data and implement improved instructional strategies to address student needs. We plan to collect student records and teacher-assignment data from participating districts and schools, and conduct a teacher survey, teacher logs, and a principal survey. The evaluation's main objectives are to understand how DDI is implemented and to rigorously estimate the impact of a comprehensive DDI program on student achievement and teacher and principal practices.

Dated: September 4, 2015.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–22813 Filed 9–9–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY**Secretary of Energy Advisory Board Meeting****AGENCY:** Department of Energy.**ACTION:** Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Friday, September 25, 2015, 8:30 a.m.–12:30 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–3787; seab@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 8:30 a.m. on September 25th. The tentative meeting agenda includes: Introductions of new SEAB members, updates from SEAB's task forces, and an opportunity for comments from the public. The meeting will conclude at 12:30 p.m. Agenda updates will be posted on the SEAB Web site prior to the meeting: www.energy.gov/seab.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Monday, September 21, 2015 at seab@hq.doe.gov. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Please note that the Department of Homeland Security (DHS) has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include:

- U.S. Passport or Passport Card
- An Enhanced Driver's License or Enhanced ID-Card issued by the states

of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License)

- A military ID or other government issued Photo-ID card

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:30 a.m. on September 25th.

Those not able to attend the meeting or who have insufficient time to attend the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, email to seab@hq.doe.gov.

Minutes: The minutes of the meeting will be available on the SEAB Web site or by contacting Ms. Gibson. She may be reached at the postal address or email address above, or by visiting SEAB's Web site at www.energy.gov/seab.

Issued in Washington, DC, on September 3, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015-22809 Filed 9-9-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770, requires notice of the meeting be announced in the **Federal Register**.

DATES: Tuesday, October 27, 2015, 8:30 a.m.–5:00 p.m.; Wednesday, October 28, 2015, 8:00 a.m.–12:30 p.m.

ADDRESSES: Holiday Inn Capitol Hotel, 550 C St. SW., Washington, DC 20024

FOR FURTHER INFORMATION CONTACT: Email: HTAC@nrel.gov or at the mailing address: James Alkire, Deputy

Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 15013 Denver West Parkway, Golden, CO 80401.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109-58; 119 Stat. 849.

Purpose of the Meeting: To provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at: http://hydrogen.energy.gov/advisory_htac.html).

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- Updates from Federal/State Governments and Industry
- HTAC Subcommittee Updates
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Wednesday, October 21, 2015, by email at HTAC@nrel.gov. Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place between 8:30 a.m. and 9:00 a.m. on October 27, 2015. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to HTAC@nrel.gov.

Minutes: The minutes of the meeting will be available for public review at http://hydrogen.energy.gov/advisory_htac.html.

Issued in Washington, DC, on September 3, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015-22798 Filed 9-9-15; 8:45 am]

BILLING CODE 6450-01-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: EC15-199-000.

Applicants: Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy Storage LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Grand Ridge Energy LLC, *et al.*

Filed Date: 9/2/15.

Accession Number: 20150902-5078.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: EC15-200-000.

Applicants: ITC Midwest LLC.

Description: Application Pursuant to Section 203 of the Federal Power Act to Acquire New Assets of ITC Midwest LLC.

Filed Date: 9/2/15.

Accession Number: 20150902-5079.

Comments Due: 5 p.m. ET 9/23/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1819-012; ER10-1820-015; ER10-1818-010; ER10-1817-011.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company.

Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, *et al.*

Filed Date: 9/2/15.

Accession Number: 20150902-5072.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-243-001.

Applicants: PJM Interconnection, L.L.C., The Dayton Power and Light Company.

Description: Compliance filing: Dayton submits a compliance filing revising Attachment H-15 per 8/14/15 Order to be effective 1/1/2015.

Filed Date: 9/1/15.

Accession Number: 20150901-5238.

Comments Due: 5 p.m. ET 9/22/15.

Docket Numbers: ER15-2592-000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 55 SPPC Liberty 1st Amended Service Agreement 073115 to be effective 1/1/2016.

Filed Date: 9/1/15.
Accession Number: 20150901–5263.
Comments Due: 5 p.m. ET 9/22/15.
Docket Numbers: ER15–2593–000.
Applicants: Desert Stateline LLC.
Description: Baseline eTariff Filing: Application and Initial Baseline Tariff Filing to be effective 11/1/2015.

Filed Date: 9/1/15.
Accession Number: 20150901–5269.
Comments Due: 5 p.m. ET 9/22/15.
Docket Numbers: ER15–2594–000.
Applicants: South Central MCN, LLC.
Description: Application for Acceptance of Transmission Rate Formula and Approval of Transmission Rate Incentives of South Central MCN LLC.

Filed Date: 9/1/15.
Accession Number: 20150901–5274.
Comments Due: 5 p.m. ET 9/22/15.
Docket Numbers: ER15–2595–000.
Applicants: PacifiCorp.
Description: PacifiCorp Termination of SA 565 Klamath Geothermal No. 1 KL–01 LLC SGIA Facilities Maintenance Agreement.

Filed Date: 9/1/15.
Accession Number: 20150901–5276.
Comments Due: 5 p.m. ET 9/22/15.
Docket Numbers: ER15–2596–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: § 205(d) Rate Filing: Exhibit C Amendment Filing to be effective 11/6/2014.

Filed Date: 9/2/15.
Accession Number: 20150902–5131.
Comments Due: 5 p.m. ET 9/23/15.
Docket Numbers: ER15–2597–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement No. 4241; Queue AA1–067 (ICSA) to be effective 8/4/2015.

Filed Date: 9/2/15.
Accession Number: 20150902–5135.
Comments Due: 5 p.m. ET 9/23/15.
 Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–66–000.
Applicants: El Paso Electric Company.
Description: Application of El Paso Electric Company for FPA Section 204 authorization.

Filed Date: 9/2/15.
Accession Number: 20150902–5113.
Comments Due: 5 p.m. ET 9/23/15.

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: September 2, 2015.

Nathaniel J. Davis, Sr.,
 Deputy Secretary.

[FR Doc. 2015–22737 Filed 9–9–15; 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:

Filing Instituting Proceedings

Docket Numbers: RP15–1237–000.
Applicants: Venice Gathering System, L.L.C.

Description: § 4(d) rate filing per 154.312: Filing to Change Rates to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831–5329.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1250–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) rate filing per 154.204: Devon Gas' Negotiated Rate to be effective 10/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5110.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1251–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) rate filing per 154.204: 20150902 Pooling Service Revisions to be effective 11/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5112.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1252–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.601: Negotiated Rate & Non-Conforming ESE–SWN Energy to be effective 10/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5230.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1253–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.601: Negotiate Rate & Non-Conforming ESE–SJR & Cabot to be effective 10/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5246.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1254–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: § 4(d) rate filing per 154.204: Neg Rate Agmt and Cap Rel Neg Rate Agmt (Vanguard 1727 to Tenaska 1738) to be effective 6/1/2015.

Filed Date: 9/3/15.

Accession Number: 20150903–5050.

Comments Due: 5 p.m. ET 9/15/15.

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: September 3, 2015.

Nathaniel J. Davis, Sr.,
 Deputy Secretary

[FR Doc. 2015–22806 Filed 9–9–15; 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: EC15–201–000.

Applicants: WF Investment Holdings, LLC, Wells Fargo Wind Holdings LLC.

Description: Application of WF Investment Holdings, LLC, et. al. for Authorization Under Section 203 of the

Federal Power Act and Request for Waivers, Confidential Treatment, Expedited Consideration and Shortened Comment Period.

Filed Date: 9/3/15.

Accession Number: 20150903-5074.

Comments Due: 5 p.m. ET 9/24/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11-2777-005.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Compliance filing: 2015-09-02_Ameren WDS Compliance Filing to be effective 2/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5177.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-243-002.

Applicants: PJM Interconnection, L.L.C., The Dayton Power and Light Company.

Description: Compliance filing: Dayton submit Errata to ER15-243-001 to Correct Footnote 1 in Attachment H-15 to be effective 1/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5229.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2363-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3070 WAPA-UGP Market Participant Service Agreement to be effective 10/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5221.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2593-001.

Applicants: Desert Stateline LLC.

Description: Tariff Amendment: Amendment to Application and Initial Baseline Tariff Filing to be effective 11/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5182.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2601-000.

Applicants: Green Mountain Storage, LLC.

Description: Baseline eTariff Filing: Green Mountain Storage, LLC Application for MBR Authority to be effective 11/2/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5232.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2602-000.

Applicants: Meyersdale Storage, LLC.

Description: Baseline eTariff Filing: Meyersdale Storage, LLC Application for MBR Authority to be effective 11/2/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5233.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2603-000.

Applicants: Central Maine Power Company.

Description: Tariff Cancellation: Notice of Termination of Engineering & Procurement Agmt. with Atlantic Wind, LLC to be effective 11/2/2015.

Filed Date: 9/2/15.

Accession Number: 20150902-5234.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15-2604-000.

Applicants: Parkview AMC Energy, LLC.

Description: Tariff Cancellation:

Cancellation of MBR Tariff in its Entirety to be effective 9/3/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5049.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2605-000.

Applicants: ISO New England Inc.

Description: Tariff Cancellation:

Cancellation of CPV Towantic, LLC Large Generator Interconnection Agreement to be effective 11/1/2014.

Filed Date: 9/3/15.

Accession Number: 20150903-5061.

Comments Due: 5 p.m. ET 9/24/15.

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: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-22807 Filed 9-9-15; 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: ER15-2606-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SGIA Central Antelope Dry Ranch C LLC to be effective 9/4/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5077.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2607-000.

Applicants: PECO Energy Company, Exelon Generating Company, LLC.

Description: Exelon Corporation submits Notice of Cancellation of Rate Schedule 128 on behalf of affiliates PECO Energy Company and Exelon Generating Company, LLC.

Filed Date: 9/3/15.

Accession Number: 20150903-5101.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2608-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4253, Queue No. AA1-073 to be effective 8/27/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5123.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2609-000.

Applicants: AEP Texas North Company.

Description: § 205(d) Rate Filing: TNC-Rocksprings Val Verde Wind Wind SUA to be effective 8/12/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5139.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2610-000.

Applicants: AEP Texas Central Company.

Description: § 205(d) Rate Filing: TCC-Rocksprings Val Verde Wind Interconnection Agreement to be effective 8/12/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5140.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2611-000.

Applicants: AEP Texas Central Company.

Description: § 205(d) Rate Filing: TCC-Magic Valley Wind Farm II Interconnection Agreement to be effective 8/12/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5141.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15-2612-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised WMPA SA No. 3147, Queue No. W4-103 to be effective 8/27/2015.

Filed Date: 9/3/15.

Accession Number: 20150903-5157.

Comments Due: 5 p.m. ET 9/24/15.
Docket Numbers: ER15–2613–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to MISO–PJM JOA Att 3 Section 4 re Day-ahead M2M Provisions to be effective 9/30/2015.

Filed Date: 9/3/15.

Accession Number: 20150903–5165.

Comments Due: 5 p.m. ET 9/24/15.

Docket Numbers: ER15–2614–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2015–09–03_MISO–PJM JOA DA M2M FFE Filing to be effective 9/30/2015.

Filed Date: 9/3/15.

Accession Number: 20150903–5173.

Comments Due: 5 p.m. ET 9/24/15.

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: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–22808 Filed 9–9–15; 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 exempt wholesale generator filings:

Docket Numbers: EG15–121–000.

Applicants: Green Mountain Storage, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Green Mountain Storage, LLC.

Filed Date: 9/2/15.

Accession Number: 20150902–5169.

Comments Due: 5 p.m. ET 9/23/15.
Docket Numbers: EG15–122–000.
Applicants: Meyersdale Storage, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Meyersdale Storage, LLC.

Filed Date: 9/2/15.

Accession Number: 20150902–5204.

Comments Due: 5 p.m. ET 9/23/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1853–001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Compliance filing: 2015–09–02_Compliance SA 2791 Ameren Illinois-FutureGen GIA (J239) to be effective 8/4/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5140.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15–2361–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3065 Montana-Dakota Utilities Co. Market Participant Agreement to be effective 10/1/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5163.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15–2598–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: Amended Small Generator Interconnection Agmt with Vuelta Solar & CEII Request to be effective 8/5/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5157.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15–2599–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: Amended Small Generator Interconnection Agmt with Old Wardour & CEII Request to be effective 8/5/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5164.

Comments Due: 5 p.m. ET 9/23/15.

Docket Numbers: ER15–2600–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Engineering, Procurement, & Construction Agreement with Black Oak Wind Farm to be effective 8/18/2015.

Filed Date: 9/2/15.

Accession Number: 20150902–5193.

Comments Due: 5 p.m. ET 9/23/15.

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: September 2, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–22738 Filed 9–9–15; 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:

Filing Instituting Proceedings

Docket Numbers: RP15–1228–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) rate filing per 154.204: 2015 Semi-annual Fuel & Electric Power Reimbursement to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831–5176.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1229–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) rate filing per 154.403(d)(2): Annual Fuel and Gas Loss Retention Percentage Adjustment Filing to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831–5201.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1230–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: § 4(d) rate filing per 154.204: DART Compatibility and Index Price Update Filing to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831–5234.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15–1231–000.
Applicants: Kinetica Energy Express, LLC.

Description: Compliance filing per 154.203: Order No. 776 Compliance Filing ACA Surcharge to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5246.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1232-000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) rate filing per 154.403(d)(2): FL&U to be effective 10-1-15 to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5254.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1233-000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Operational Purchase and Sales Report of Colorado Interstate Gas Company, L.L.C. under RP15-1233.

Filed Date: 8/31/15.

Accession Number: 20150831-5283.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1234-000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Amendments to Neg Rate Agmts (QEP 37657-179, 36601-53) to be effective 9/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5306.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1235-000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (ONEOK 34951-113) to be effective 9/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5310.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1236-000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (Devon 34694-64) to be effective 9/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5312.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1238-000.

Applicants: Young Gas Storage Company, Ltd.

Description: § 4(d) rate filing per 154.204: Park and Loan Filing to be effective 10/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5346.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1239-000.

Applicants: Southeast Supply Header, LLC.

Description: § 4(d) rate filing per 154.204: SESH Incremental Fuel—Amended FTS Contract to be effective 9/1/2015.

Filed Date: 8/31/15.

Accession Number: 20150831-5396.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1240-000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing per 154.203: 2015 Operational Entitlements Filing to be effective N/A under.

Filed Date: 8/31/15.

Accession Number: 20150831-5410.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP11-2473-000.

Applicants: Gulf South Pipeline Company, LP.

Description: Compliance filing per 154.501: 2014 CICO Filing to be effective N/A under RP11-2473.

Filed Date: 9/1/15.

Accession Number: 20150901-5189.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP11-2474-000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Compliance filing per 154.501: 2014 CICO Filing to be effective N/A.

Filed Date: 9/1/15.

Accession Number: 20150901-5188.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1241-000.

Applicants: Central Kentucky Transmission Company.

Description: § 4(d) rate filing per 154.204: CKT.TCO Split to be effective 10/1/2015 under RP15-1241.

Filed Date: 9/1/15.

Accession Number: 20150901-5101.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1242-000.

Applicants: Equitrans, L.P.

Description: § 4(d) rate filing per 154.204: Negotiated Capacity Release Agreements—09/01/2015 to be effective 9/1/2015.

Filed Date: 9/1/15.

Accession Number: 20150901-5102.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1243-000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) rate filing per 154.204: 2015 Cash Out Filing to be effective 10/1/2015.

Filed Date: 9/1/15.

Accession Number: 20150901-5111.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1244-000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) rate filing per 154.204: Negotiated Rate Service Agmt—Columbia 165033 to be effective 10/1/2015.

Filed Date: 9/1/15.

Accession Number: 20150901-5117.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1245-000.

Applicants: Columbia Gas Transmission, LLC.

Description: Off System Capacity Request of Columbia Gas Transmission, LLC under RP15-1245.

Filed Date: 9/1/15.

Accession Number: 20150901-5145.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1246-000.

Applicants: Columbia Gulf Transmission, LLC.

Description: FTS-2 Out of Path Refund Report of Columbia Gulf Transmission under RP15-.

Filed Date: 9/1/15.

Accession Number: 20150901-5146.

Comments Due: 5 p.m. ET 9/14/15.

Docket Numbers: RP15-1247-000.

Applicants: Excelerate Gas Marketing, Limited Partne, Excelerate Energy L.P.

Description: Joint Petition for Limited Waiver and Request for Expedited Action of Excelerate Gas Marketing, Limited Partnership and Excelerate Energy Limited Partnership under RP15-1247.

Filed Date: 9/1/15.

Accession Number: 20150901-5169.

Comments Due: 5 p.m. ET 9/8/15.

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: September 2, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2015-22805 Filed 9-9-15; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10321, Community National Bank, Lino Lakes, MN

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Community National Bank, Lino Lakes, MN ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Community National Bank on December 17, 2010. 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: September 4, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-22831 Filed 9-9-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10264, Community Security Bank, New Prague, MN

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Community Security Bank, New Prague, MN ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Community Security Bank on July 23, 2010. 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: September 4, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-22826 Filed 9-9-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10203, State Bank of Aurora, Aurora, Minnesota

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for State Bank of Aurora, Aurora, Minnesota ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of State Bank of Aurora on March 10, 2010. 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: September 4, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-22777 Filed 9-9-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, September 15, 2015 at 11:00 a.m. and Thursday, September 17, 2015 at the Conclusion of the Open Meeting.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 52 U.S.C. 30109.

Internal personnel rules and internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2015-22929 Filed 9-8-15; 4:15 pm]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1642-FN]

Medicare Program; Approval of Request for an Exception to the Prohibition on Expansion of Facility Capacity Under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the request from Harsha Behavioral Center, Incorporation (HBC) for an exception to the prohibition against expansion of facility capacity.

DATES: *Effective Date:* This notice is effective on September 11, 2015.

FOR FURTHER INFORMATION CONTACT:

Patricia Taft, (410) 786-4561.

Teresa Walden, (410) 786-3755.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1877 of the Social Security Act (the Act), also known as the physician self-referral law—(1) prohibits a physician from making referrals for certain “designated health services” (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership or compensation), unless the requirements of an applicable exception are satisfied; and (2) prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third party payer) for those DHS furnished as a result of a prohibited referral.

Section 1877(d)(2) of the Act provides an exception, known as the rural provider exception, for physician ownership or investment interests in rural providers. In order for an entity to qualify for the rural provider exception, the DHS must be furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) and substantially all the DHS furnished by the entity must be furnished to individuals residing in a rural area.

Section 1877(d)(3) of the Act provides an exception, known as the hospital ownership exception, for physician ownership or investment interests held in a hospital located outside of Puerto Rico, provided that the referring physician is authorized to perform

services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

Section 6001(a)(3) of the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (hereafter referred to together as “the Affordable Care Act”) amended the rural provider and hospital ownership exceptions to the physician self-referral prohibition to impose additional restrictions on physician ownership and investment in hospitals. Since March 23, 2010, a physician-owned hospital that seeks to avail itself of either exception is prohibited from expanding facility capacity unless it qualifies as an “applicable hospital” or “high Medicaid facility” (as defined in sections 1877(i)(3)(E), (F) of the Act and 42 CFR 411.362(c)(2), (3) of our regulations) and has been granted an exception to the facility expansion prohibition by the Secretary of the Department of Health and Human Services (the Secretary). Section 1877(i)(3)(A)(ii) of the Act provides that individuals and entities in the community in which the provider requesting the exception is located must have an opportunity to provide input with respect to the provider’s request for the exception. Section 1877(i)(3)(H) of the Act states that the Secretary shall publish in the **Federal Register** the final decision with respect to the request for an exception to the prohibition against facility expansion not later than 60 days after receiving a complete application.

II. Exception Approval Process

On November 30, 2011, we published a final rule in the **Federal Register** (76 FR 74122, 74517 through 74525) that, among other things, finalized § 411.362(c), which specifies the process for submitting, commenting on, and reviewing a request for an exception to the prohibition on expansion of facility capacity. We published a subsequent final rule in the **Federal Register** on November 10, 2014 (79 FR 66770, 66987 through 66997) that made certain revisions to the expansion exception process. Because the Centers for Medicare & Medicaid Services (CMS) formally accepted this request prior to the effective date of that rule, CMS is reviewing and processing the request in accordance with the regulations that were published on November 30, 2011 and which were in effect at the time of submission.

In the November 30, 2011 final rule, we specified that prior to our review of the request, we will solicit community input on the request by publishing a

notice of the request in the **Federal Register** (§ 411.362(c)(5)). We also stated that individuals and entities in the hospital’s community have 30 days to submit comments on the request. If we receive timely comments from the community, we will notify the hospital, and the hospital has 30 days after such notice to submit a rebuttal statement (§ 411.362(c)(5)(ii)). Section 411.362(c)(5) also specifies that a request for an exception to the facility expansion prohibition is considered complete if no comments from the community are received by the close of the 30-day comment period. If we receive timely comments from the community, we consider the request to be complete 30 days after the hospital is notified of the comments.

If we grant the request for an exception to the prohibition against expansion of facility capacity, the expansion may occur only in facilities on the hospital’s main campus and may not result in the number of operating rooms, procedure rooms, and beds for which the hospital is licensed to exceed 200 percent of the hospital’s baseline number of operating rooms, procedure rooms, and beds (§ 411.362(c)(6)).

III. Public Response to Notice With Comment Period

On June 19, 2015, we published a notice in the **Federal Register** (80 FR 35363) entitled “Request for an Exception to the Prohibition on Expansion of Facility Capacity under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition.” In the June 19, 2015 notice, we stated that as permitted by section 1877(i)(3) of the Act and our regulations at § 411.362(c), the following physician-owned hospital requested an exception to the prohibition on expansion of facility capacity:

Name of Facility: Harsha Behavioral Center, Inc. (HBC).

Address: 1420 East Crossing Boulevard, Terre Haute, Indiana 47802.

County: Vigo County, Indiana.

Basis for Exception Request: High Medicaid Facility.

In the June 19, 2015 notice, we also solicited comments from individuals and entities in the community in which HBC is located. We received no comments during the 30-day public comment period. Accordingly, CMS deemed the request complete on July 20, 2015, the end date of the public comment period.

IV. Decision

This final notice announces our decision to approve HBC’s request for

an exception to the prohibition against expansion of facility capacity. As required by the November 30, 2011 final rule and our public guidance documents, HBC submitted the data and certifications necessary to demonstrate that it satisfies the criteria to qualify as a high Medicaid facility. In accordance with section 1877(i)(3) of the Act, we have granted HBC's request for an exception to the expansion of facility capacity prohibition based on the following criteria:

- HBC is not the sole hospital in Vigo, Indiana, the county in which it is located;
- HBC certified that it does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries; and
- With respect to each of the 3 most recent fiscal years for which data were available as of the date HBC submitted its request, it has an annual percentage of total inpatient admissions under Medicaid that is estimated to be greater than such percentage with respect to such admissions for any other hospital located in Vigo County, Indiana, the county in which it is located.

Our approval grants HBC's request to add a total of 44 beds. Pursuant to § 411.362(c)(6), the expansion may occur only in facilities on the hospital's main campus and may not result in the number of operating rooms, procedure rooms, and beds for which HBC is licensed to exceed 200 percent of its baseline number of operating rooms, procedure rooms, and beds. HBC certified that its baseline number of operating rooms, procedure rooms, and beds is 44. Accordingly, we find that granting an additional 44 beds will not exceed the limitation on a permitted expansion.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 18, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015-22856 Filed 9-9-15; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-D-1156]

International Conference on Harmonisation; Guidance on Q3D Elemental Impurities; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q3D Elemental Impurities." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance establishes permitted daily exposures for 24 elements in drug products based on evaluation of toxicity data. Permitted daily exposures are provided for each element by three routes of administration—oral, parenteral and inhalation. The guidance also provides for a risk-based approach to assessing the likelihood that elemental impurities with established permitted daily exposures will be present in a pharmaceutical product. The guidance is intended to provide a harmonized approach to control of elemental impurities in pharmaceutical products in order to avoid the uncertainty and duplication of work that results from different requirements in different ICH regions.

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 Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993, or 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:

Regarding the guidance: John Kauffman, Center for Drug Evaluation and Research, Food and Drug Administration, 645 S. Newstead Ave., St. Louis, MO 63110, 314-539-2168; *Regarding the ICH:* Michelle Limoli, CBER International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7212, Silver Spring, MD 20993-0002, 301-796-8377.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of October 23, 2013 (78 FR 63219), FDA published a notice announcing the availability of a draft guidance entitled “Q3D Elemental Impurities.” The notice gave interested persons an opportunity to submit comments by December 23, 2013.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on December 16, 2014.

The guidance establishes permitted daily exposures for 24 elements in drug products and provides for a risk-based approach to assessing the likelihood that elemental impurities with established permitted daily exposures will be present in a pharmaceutical product. In response to comments on the draft guidance, several changes were made to the final guidance including clarifying the scope, reevaluation of some permitted daily exposures based on new toxicology data, simplification of the classification scheme for elemental impurities, and clarifying the examples to illustrate certain concepts within the guidance.

This 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 Q3D elemental impurities. It does 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. 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. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.regulations.gov>, <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance>

RegulatoryInformation/Guidances/default.htm.

Dated: September 4, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–22835 Filed 9–9–15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3172]

Osteoporosis Drug Development; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration’s (FDA or Agency) Division of Bone, Reproductive, and Urologic Products in the Center for Drug Evaluation and Research is announcing a public workshop entitled “Osteoporosis Drug Development: Moving Forward.” The purpose of this workshop is to seek input from experts on scientific issues important to clinical development of drugs and therapeutic biologics intended to treat osteoporosis. During the workshop, attendees will discuss potential surrogate endpoints and the endpoints’ ability to predict clinical benefit.

Date and Time: The workshop will be held on November 4, 2015, from 8 a.m. to 5 p.m. Registration to attend the workshop must be received by October 21, 2015. See the **SUPPLEMENTARY INFORMATION** section for information on how to register for this workshop. Submit electronic or written comments by October 7, 2015.

Location: The workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, in Sections B and C of the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For more information on parking and security procedures, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

Contact Person: Samantha Bell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 22, Rm. 5379, Silver Spring, MD 20993–0002, 301–796–9687, email: Samantha.Bell@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public workshop entitled “Osteoporosis Drug Development: Moving Forward.” The Agency will engage experts in osteoporosis to address challenging issues related to osteoporosis drug development. Workshop sessions will include discussions on the indication language, target populations for treatment and prevention of osteoporosis, and phase 3 clinical trial design issues. The afternoon discussion session will focus on surrogate endpoints for fracture and the requirements for validation of a surrogate endpoint. 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, signed into law on July 9, 2012, which is titled “Enhancement of Accelerated Patient Access to New Medical Treatments.”

II. Participation in the Public Workshop

A. Registration and Requests for Oral Presentations

There is no fee to attend the public workshop, but attendees should register in advance. Space is limited and registration will be on a first-come, first-served basis. Persons interested in attending this workshop must register online at Osteoporosis_Workshop@fda.hhs.gov on or before October 21, 2015. When registering, please provide complete contact information for each attendee, including name, title, affiliation, address, email address, and telephone number. For those without Internet access, please contact Samantha Bell (see *Contact Person*) to register. If you need special accommodations due to a disability, please contact Samantha Bell (see *Contact Person*) at least 7 days in advance.

The afternoon session will have an open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues related to osteoporosis drug development. Those individuals interested in making formal oral presentations should notify the contact person and submit the following information on or before October 21, 2015: A brief statement of the general nature of the evidence or arguments

they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their requests to speak by October 28, 2015.

B. Comments

Regardless of whether you attend this meeting, you can submit either electronic comments regarding this public workshop 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. All comments should be identified with the docket number found in brackets in the heading of this document and must be received by December 29, 2015. 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>.

C. Transcripts

Transcripts of the workshop will be available for review at the Division of Dockets Management (see *Comments*) and at <http://www.regulations.gov> approximately 30 days after the workshop. A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at <http://www.fda.gov>.

Dated: September 3, 2015

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-22784 Filed 9-9-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-D-3056]

Distributor Labeling for New Animal Drugs; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (GIF) #231 entitled "Distributor Labeling for New Animal Drugs." This draft guidance discusses FDA's current thinking with respect to the factors it considers in determining whether to take regulatory action against distributor labeling for a new animal drug that differs from the labeling approved as part of a New Animal Drug Application or Abbreviated New Animal Drug Application (NADA/ANADA) in ways other than those permitted by regulation.

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 November 9, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. 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:

Dorothy McAdams, Center for Veterinary Medicine, Division of Surveillance (HFV-210), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-402-5763, email: dorothy.mcadams@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of draft GFI #231 entitled "Distributor Labeling for New Animal Drugs." "Distributor labeling" refers to the labeling of an approved new animal drug marketed by a distributor who distributes the product under its own label or proprietary name. Unlike the approved labeling, which the Center for Veterinary Medicine reviews as part of a NADA/ANADA approval process to ensure the safe and effective use of the drug and compliance with the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and its implementing regulations, distributor labeling does not ordinarily go through a premarket approval process.

FDA regulations (21 CFR 514.80) require that distributor labeling be identical to the labeling approved in the NADA/ANADA, except for a different and suitable proprietary name and the name and address of the distributor preceded by an appropriate qualifying phrase. These requirements are meant to ensure that distributor labeling complies with the requirements of the FD&C Act and its implementing regulations and to prevent distributor label products from reaching the market with labeling that compromises the safe and effective use of the new animal drug.

II. Significance of Guidance

This level 1 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 current thinking of FDA on distributor labeling for new animal drugs. 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.

III. Paperwork Reduction Act of 1995

This draft 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 § 514.80 have been approved under OMB control number 0910-0284.

IV. 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>.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm> or <http://www.regulations.gov>.

Dated: September 1, 2015.

Leslie Kux,
Associate Commissioner for Policy.

[FR Doc. 2015-22772 Filed 9-9-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-3106]

Animal Food; Export Certificates; Food and Drug Administration Food Safety Modernization Act of 2011; Certification Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the fees we will assess for issuing export certificates for animal food. The FDA Food Safety Modernization Act (FSMA) of 2011 authorizes us to charge fees to cover our costs associated with issuing export certificates for regulated food including animal food. This notice provides the fee schedule for issuing these certificates and the basis for the fees. We have not previously collected fees to issue export certificates for animal food.

DATES: The fees described in this document for export certificates for animal food will be effective October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Joanne Kla, Office of Surveillance and Compliance, Center for Veterinary Medicine (HFV-235), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-5605, CVMExportCertification@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In April 1996, a law entitled the “FDA Export Reform and Enhancement Act of

1996” (Pub. L. 104-134, amended by Pub. L. 104-180) amended sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(e) and 382). It was designed to ease restrictions on exportation of unapproved pharmaceuticals, biologics, and devices regulated by FDA. Section 801(e)(4) of the FD&C Act provides that persons exporting certain FDA regulated products may request FDA to certify that the products meet the requirements of section 801(e)(1), section 802, or other applicable requirements of the FD&C Act. Section 801(e)(4) of the FD&C Act also requires FDA to issue certification within 20 days of receipt of the request and authorizes us to charge up to \$175 for each certification issued within 20 days. In January 2011, section 801(e)(4)(A) of the FD&C Act was amended by FSMA (Pub. L. 111-353) to provide authorization for export certification fees for regulated food, including animal food (referred to as animal feed in section 107(b) of FSMA). Section 801(e)(4) of the FD&C Act authorizes FDA to issue export certificates for regulated food, drugs, and devices that are legally marketed in the United States, as well as for these same products that are not legally marketed but are legally exported under section 801(e) or 802 of the FD&C Act. The focus of this notice is on export certificates issued by the Center for Veterinary Medicine (CVM) for animal food.

II. Fees To Be Assessed for Export Certificates

CVM estimates the costs of the export certification program for animal food to be approximately \$548,000 per year for payroll and operating expenses. There are four cost categories for preparing and issuing export certificates in general. They are: (1) Direct personnel for research, review, tracking, writing, and assembly; (2) purchase of equipment and supplies used for tracking, processing, printing, and packaging. Recovery of the cost of the equipment is calculated over its useful life; (3) billing and collection of fees; and (4) overhead and administrative support. In fiscal year (FY) 2014 CVM issued approximately 933 animal food export certificates. Because CVM has not been charging fees for issuing export certificates for animal food, the program has been covered by appropriated funds.

As mentioned previously in this document, FDA may charge up to \$175 for each certificate. Certificates for some classes of products, including animal food, cost the Agency more than \$175 to prepare. Subsequent certificates issued

for the same product(s) in response to the same request generally cost FDA less than \$175 to prepare. The fee for all subsequent certificates for the same product(s) issued in response to the same request reflects reduced FDA costs for preparing those certificates.

The following fees will be assessed starting October 1, 2015, for animal food export certificates:

TABLE 1—CVM FEES FOR FIRST, SECOND, AND SUBSEQUENT EXPORT CERTIFICATES

Type of certificate	Fee (dollars)
First certificate	175
Second certificate for the same product(s) issued in response to the same request	155
Subsequent certificates for the same product(s) issued in response to the same request	70

The fee for issuing the first export certificate for animal food will be at the maximum allowable amount and consistent with the export certification fees assessed since FY 1997 by other FDA Centers that provide export certification for drugs and devices. The fees for issuing subsequent certificates continue to differ among the Centers, based on varying costs.

Dated: September 1, 2015.

Leslie Kux,
Associate Commissioner for Policy.

[FR Doc. 2015-22795 Filed 9-9-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0481]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; New Animal Drugs for Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, “New Animal Drugs for Investigational Use” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On July 14, 2015, the Agency submitted a proposed collection of information entitled, "New Animal Drugs for Investigational Use" to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0117. The approval expires on August 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: September 4, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-22830 Filed 9-9-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Trials SEP.

Date: October 8, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Crina Frincu, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Suite 662, Bethesda, MD 20892, cfrincu@mail.nih.gov.

Name of Committee: NIDCR Special Grants Review Committee.

Date: October 22-23, 2015.

Time: 8:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Conference Room #602, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892-4878, 301-594-4861, mooremar@nidcr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 3, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22769 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Thymic Aspects of T Cell Aging.

Date: November 6, 2015.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-402-7704, MIKHAILI@MAIL.NIH.GOV.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22801 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 18, 2015.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6902, peter.zelazowski@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 3, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22706 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: September 29–30, 2015.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-435-6809, beheraak@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Sciences and Population Studies A: Additional Applications.

Date: October 1, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 379-5632, hfriedman@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: October 5–6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435-2409, grossmanrs@mail.nih.gov.

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 8–9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301-408-9329, gametchb@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 13–14, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594-3163, champoum@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Visual Perception and Decision Making.

Date: October 13–14, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892-7846, 301-435-1236, zhaow@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurobiology of Psychiatric Disorders.

Date: October 14, 2015.

Time: 12:00 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: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301-408-9115, bsokolov@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: October 15–16, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301-435-2406, ariasj@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: October 15–16, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-0903, saadisoh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Improvement of Animal Models for Stem Cell-Based Regenerative Medicine.

Date: October 16, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301-435-2406, ariasj@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 3, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22767 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Prospective Grant of a Start-up Exclusive Option License: Therapeutic Uses for Cardio-Metabolic Indications, Including Hypertriglyceridemia, Hypercholesterolemia and Diabetes**

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a

Start-Up Exclusive Option License to practice the invention embodied in Patent Applications USSN 61/045,213, filed April 15, 2008; PCT/US2009/040560, filed April 14, 2009; and US 12/937,974, filed October 14, 2010, issued as 8,936,787 on January 20, 2015; titled "Peptides Promoting Lipid Efflux" (NIH Ref. E-138-2008/0) to Corvidia Corporation, having a place of business in Boston, MA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before September 25, 2015 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Email: ThalhamC@mail.nih.gov; Telephone: 301-435-4507; Facsimile: 301-402-0220.

SUPPLEMENTARY INFORMATION: The invention relates to compositions and methods for using multi-domain amphipathic α -helical peptides or peptide analogs to treat or inhibit dyslipidemic disorders. More specifically, the peptides and peptide analogs with multiple amphipathic α -helical domains: (a) Promote lipid efflux from cells via an ABCA1-dependent pathway; and (b) activate lipoprotein lipase.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive option license may be granted unless, within 15 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

The field of use may be limited to "Therapeutic uses for cardio-metabolic indications, including hypertriglyceridemia, hypercholesterolemia and diabetes".

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released

under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 3, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-22771 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: October 8, 2015.

Time: 1:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer National Institute On Aging Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, PARSADANIANA@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel; Circadian Oscillators and Aging.

Date: October 21, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D. Scientific Review Officer National Institute On Aging Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, PARSADANIANA@NIA.NIH.GOV.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22802 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee.

Date: October 20, 2015.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301-443-1225, aschulte@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 3, 2015.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22766 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Interventions for Stroke

Date: November 12, 2015

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6916, kielbj@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 4, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22800 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

Date: October 6, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Conference Room, 3F30A, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2676, ebuczko1@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-22768 Filed 9-9-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4239-DR; Docket ID FEMA-2015-0002]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA-4239-DR), dated August 12, 2015, and related determinations.

DATES: *Effective Date:* August 28, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2015.

Breathitt, Fleming, and Perry Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015-22693 Filed 9-9-15; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4238-DR; Docket ID FEMA-2015-0002]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA-4238-DR), dated August 7, 2015, and related determinations.

DATES: *Effective Date:* August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 7, 2015.

Camden, Jackson, New Madrid, Nodaway, Oregon, Pemiscot, Phelps, and St. Clair Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–22764 Filed 9–9–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0027]

Homeland Security Science and Technology Advisory Committee Meeting

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee management; Notice of Federal advisory committee meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on September 29, 2015, in Washington, DC. The meeting will be a virtual (Webinar)—open session.

DATES: The HSSTAC will meet virtually Tuesday, September 29, 2015 2 p.m.–3:30 p.m.

Please note the meeting may close early if the committee has completed its business.

ADDRESSES: Virtual Meeting, <https://share.dhs.gov/hsstac2015>. Dial: 800–857–9791, PIN: 5344344.

For information on services for individuals with disabilities or to request special assistance at the meeting, contact Bishop Garrison as soon as possible. To pre-register for the virtual meeting please send an email to:

HSSTAC@HQ.DHS.GOV. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** below. Written comments must be received by September 15, 2015, in the HSSTAC@HQ.DHS.GOV mailbox and include the subject line “Comments for HSSTAC Meeting”. The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. If submitting in writing, please include the docket number (DHS–2015–0027) and submit via *one* of the following methods before September 15, 2015:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* HSSTAC@HQ.DHS.GOV. Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the HSSTAC, go to <http://www.regulations.gov>.

A period is allotted for public comment on September 29, 2015 after the completion of the Webinar. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–5617 (O), 202–254–6176 (F), Bishop.Garrison@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems

engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

Agenda: Members will meet with the HSSTAC Designated Federal Officer (DFO) who will provide an introduction to the HSSTAC, explain the reorganization of the committee, and provide an overview of stakeholder engagement and engagement with industry. The members will be tasked with discussing strategic issues facing DHS S&T, such as resource allocation in today’s homeland security threat environment and the future of S&T. The committee will review the information presented on each issue, deliberate on any preliminary recommendations and formulate initial recommendations for consideration at the next HSSTAC meeting.

Bishop Garrison,

Executive Director, Homeland Security Science and Technology Advisory Committee.

[FR Doc. 2015–22838 Filed 9–9–15; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0111]

Agency Information Collection Activities: Petition for CNMI-Only Nonimmigrant Transitional Worker, Form I–129CW; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the

respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 9, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0111 in the subject box, the agency name and Docket ID USCIS-2012-0011. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov> under e-Docket ID number USCIS-2012-0011;

(2) *Email.* Submit comments to USCISFRComment@uscis.dhs.gov;

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number.

Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries.

Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2012-0011 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information,

please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for CNMI-Only Nonimmigrant Transitional Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-129CW; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; or State, local or Tribal Government. USCIS uses the data collected on this form to determine eligibility for the requested immigration benefits. An employer uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant into the CNMI to perform services or labor as a CNMI-Only Transitional Worker (CW-1). An employer also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for these benefits, and ensuring that the basic information required to determine eligibility, is provided by the petitioners.

Secondary: Individuals or Households. USCIS collects biometrics from aliens present in the CNMI at the

time of requesting initial grant of CW-1 status. The information is used to verify the alien's identity, background information and ultimately adjudicate their request for CW-1 status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-129CW is 18,000 (6,000 respondents from Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; or State, local or Tribal Government and the estimated hour burden per response is 3 hours; 12,000 respondents from Individuals or Households and the estimated hour burden per response is 1.17 hours).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,160 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$2,205,000.

Dated: September 3, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015-22702 Filed 9-9-15; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0051]

Agency Information Collection Activities: Monthly Report on Naturalization Papers, Form N-4; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 24, 2015, at 80 FR 36350, allowing for a 60-day public

comment period. USCIS did not receive any comment(s) in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 13, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at oir_submission@omb.eop.gov. Comments may also be submitted via fax at (202) 395-5806. All submissions received must include the agency name and the OMB Control Number 1615-0051.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2005-0032 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Monthly Report on Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-4; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State or local Government. Section 339 of the Immigration and Nationality Act (Act) requires that the clerk of each court that administers the oath of allegiance notify USCIS of all persons to whom the oath of allegiance for naturalization is administered, within 30 days after the close of the month in which the oath was administered. This form provides a format listing the number of those persons to USCIS and provides accountability for the delivery of the certificates of naturalization as required under that section of law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form N-4 is 160 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 960 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$400.

Dated: September 3, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015-22701 Filed 9-9-15; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0044]

Agency Information Collection Activities: Application for Action on an Approved Application or Petition, Form I-824; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 19, 2015, at 80 FR 35388, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 13, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at oir_submission@omb.eop.gov. Comments may also be submitted via fax at (202) 395-5806. All submissions received must include the agency name and the OMB Control Number 1615-0044.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not

for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2007-0012 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form I-824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: The estimated total number of respondents for the information collection Form I-824 is 12,609 and the estimated hour burden per response is .417 hours (25 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,258.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated cost burden associated with this collection of information is \$1,544,602.50.

Dated: September 03, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015-22700 Filed 9-9-15; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5841-N-02]

60-Day Notice of Proposed Information Collection: Core Performance Reporting Requirements for Competitively-Funded Grants

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 9, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone number 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov. Copies of the proposed forms and other information are available by contacting Ms. Pollard. Persons with hearing or speech impairments may access this number through TTY by calling the toll-

free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or by telephone at 202-402-3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Requests for copies of the proposed forms should be submitted to Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Core Performance Reporting for Competitively-Funded Grants.

OMB Approval Number: Pending.

Type of Request: Regular.

Type of Information Collection: New.
Form Numbers: HUD-PRL, HUD-CIRL, HUD-GF.

Description of the need for the information and proposed use:

This request is for the clearance of data collection and reporting requirements to enable the U.S. Department of Housing and Urban Development (HUD) Office of Strategic Planning and Management (OSPM) to better assess the effectiveness of competitively-funded grants included in this information collection request (ICR). The competitively-funded grant programs included in this ICR are: Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG), Family Self-Sufficiency Program (FSS), Housing Counseling (HC), Housing Opportunities for Persons with AIDS (HOPWA), JobsPlus Program (Jobs+), Juvenile Reentry Assistance Program (JRAP), Lead-Based Paint Hazard Control (LBPHC), Lead Hazard Reduction Demonstration (LHRD), Self-Help Homeownership Opportunity Program (SHOP), Supportive Services Demonstration Program (202), and Resident Opportunity and Self-Sufficiency Service Coordinators Program (ROSS).

A key component of this proposed collection is the reporting of measurable outcomes. Additionally, the standardization of data collection and reporting requirements across the Department will increase data

comparability and utilization. Consolidation of de-identified data drawn from pre-existing HUD systems and databases, as applicable, into a single repository will enhance the Department's comprehensive and comparative analysis of competitively-funded HUD programs. Data submission will be acceptable via Comma Separated Values (CSV), Extensible Markup Language (XML), and other file formats in addition to direct data entry into an online web form.

The Department has several reporting models in place for competitive grant programs, including the eLogic Model. The reporting models provide information on a wide variety of outputs and outcomes and are based on unique data definitions and outcome measures in program-specific performance and progress reports. In Federal Fiscal Year 2013, nine program offices at HUD used six systems and 15 reporting tools to collect over 700 data elements in support of varied metrics to assess the performance of competitively-funded. The proposed data collection and reporting requirements described in this notice are designed to replace the use of the eLogic Model and other report forms and requirements.

The lack of standardized data collection and reporting requirements imposes an increased burden on grantees with multiple grant awards from HUD. The need for a comprehensive and standardized reporting approach is underscored by reviews conducted by external oversight agencies, including the Department's Office of Inspector General (OIG) and the Government Accountability Office (GAO). These oversight agencies have questioned the validity and comparability of data reported by the Department. To address these issues, the Department is using its statutory and regulatory authority to redesign and strengthen performance reporting for

many of its competitive grant programs into a single comprehensive approach.

The Secretary's statutory and regulatory authority to administer housing and urban development programs include provisions allowing for the requirement of performance reporting from grantees. This legal authority is codified at 42 U.S.C. 3535(r). The individual privacy of service recipients is of the highest priority. The reporting repository established at HUD to receive data submission from grantees will not include any personally identifying information (PII). Additionally, if the data for a grant has 25 or fewer individuals served during a fiscal year as reported in the record-level reports, then the results for the demographic data elements for the 25 or fewer individuals will also be redacted or removed from the public-use data file and any publicly available analytical products in order to ensure the inability to identify any individual.

Eligible entities awarded grants by the Department are expected to implement the proposed recordkeeping and reporting requirements with available grant funds. It is important to note that much of the data to be reported by grantees under this ICR is already required and reported to one or more program offices at HUD. Furthermore, generally only a subset of the universe of data elements presented will be submitted as data collection and reporting requirements are determined by the program office and include consideration of the type and level of service provided by the respective grant programs.

The reporting requirements in this proposal better organize the data already being collected, standardize outcomes and performance measures, and allow program offices at HUD to select which data elements and performance indicators are relevant for their respective programs. Documents

detailing the data elements, performance indicators, and draft online data entry forms are available for review by request from Colette Pollard (Colette.Pollard@hud.gov). All information reported to HUD will be submitted electronically. Recipients or grantees may use existing management information systems provided those systems collect all of the required data elements and can be exported for submission to HUD. Recipients or grantees that sub-grant funds to other organizations will need to collect the required information from their sub-recipients or sub-grantees.

Information collected and reported will be used by recipients or grantees and the Department for the following purposes:

- To provide program and performance information to recipients, general public, Congress, and other stakeholders;
- To continuously improve the quality, effectiveness, and efficiency of grant-funded programs;
- To provide management information for use by the Department in program administration and oversight, including the monitoring of grant-specific participation, services, capital investments, and outcomes; and
- To better measure and analyze performance information to identify successful practices to be replicated and prevent or correct problematic practices and improve outcomes in compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act.

The data collection and reporting requirements will be phased in over a three-year period which includes a proof of concept pilot in FY16. The Department will provide technical assistance to recipients or grantees throughout the implementation.

Respondents (i.e. affected public): Organizations awarded competitively-funded grants as listed on page 2.

ANNUAL BURDEN ESTIMATE FOR THE REQUESTED REPORTING APPROACH INITIAL YEAR OR PROOF OF CONCEPT PILOT PROJECT

Type of record	Number of respondents	Submission frequency	Hourly rate ¹	Average number of minutes	Estimated annual burden hours	Estimated annual burden dollars
Participant Record-level	63 grantees ²	1	\$14.19	20 Per Record	2,583	\$36,653
Capital Investment Record-level.	7 grantees ³	1	14.19	15 Per Record	7	99
Grant Feedback	70 grantees	2	14.19	15	35	497
Total .....	.....	.....	14.19	.....	2,625	37,249

¹ The hourly rate of \$14.19 is the average wage for office and administrative support occupations as reported in the May 2014 *Occupational Employment and Wages* produced by the U.S. Department of Labor, Bureau of Labor Statistics.

² There are an estimated 7,749 individuals to be served by the 63 grantees.

³ There are an estimated 28 project-level records for the 7 grantees.

ANNUAL BURDEN ESTIMATE FOR THE REQUESTED REPORTING APPROACH SECOND AND SUBSEQUENT YEARS

Type of record	Number of respondents	Submission frequency	Hourly rate ¹	Average number of minutes	Estimated annual burden hours	Estimated annual burden dollars
Participant Record-level	2,850 grantees ²	1	\$14.19	20 Per Record	116,850	\$1,658,102
Capital Investment Record-level.	150 grantees ³	1	14.19	15 Per Record	150	2,129
Grant Feedback	3,000 grantees	2	14.19	15	1,500	21,285
Total .....	.....	.....	14.19	.....	118,500	1,681,516

¹ The hourly rate of \$14.19 is the average wage for office and administrative support occupations as reported in the May 2014 *Occupational Employment and Wages* produced by the U.S. Department of Labor, Bureau of Labor Statistics.

² There are an estimated 351,000 individuals to be served by the 2,850 grantees.

³ There are an estimated 600 project-level records for the 150 grantees.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 1, 2015.

Henry Hensley,

Acting Director, Office of Strategic Planning and Management.

[FR Doc. 2015-22758 Filed 9-9-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-5850-N-02]

Retrospective Review—Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Program Participants Informational Conference Call

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces that it will be holding a conference call on September 16, 2015, to discuss HUD's previous participation review process and solicit feedback on how this process can be improved. On August 10, 2015, HUD published a proposed rule to revise its regulations governing the previous participation review process that is applied to certain entities seeking to take part in multifamily housing and healthcare programs administered by HUD's Office of Housing. HUD's goal in revising the regulations is to simplify the process by which HUD currently reviews the previous participation of participants that have decision-making authority over their projects as one component of HUD's responsibility to assess financial and operational risk to the projects in these programs.

DATES: The teleconference call will be held on September 16, 2015, commencing at 11:30 a.m., EDT.

ADDRESSES: Because this is a conference call, there is no meeting venue. Current and prior multifamily housing and healthcare programs' participants interested in participating in the conference call can register for the call at HUD's Web site at www.hud.gov/emarc as can other interested members of the public.

FOR FURTHER INFORMATION CONTACT: Aaron Hutchinson, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6178, Washington, DC 20410; telephone number 202-708-3994 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

HUD's regulations governing the assessment of previous participation are

codified in 24 CFR part 200, subpart H (Subpart H),¹ and require applicants to complete a very detailed and lengthy certification form (HUD Form 2530).² The 2530 form currently requires disclosure of all principals to be involved in the proposed project, a list of projects in which those principals have previously participated or currently participate in, a detailed account of the principals' involvement in the listed project(s), and assurances that the principals have upheld their responsibilities while participating in those programs. The regulations govern not only the content of the certification submitted by applicants, but the types of parties that must certify, and the process for submitting the certification.

Participants in HUD's multifamily housing and healthcare programs have long complained about the delays with HUD's previous participation review process because of the number of required principals that must complete the form and the overly detailed information required to be submitted, and HUD is committed to improving the process. HUD has commenced steps to strive to improve the previous participation process and on August 10, 2015, at 80 FR 47874, HUD published a proposed rule, entitled "Retrospective Review—Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants."³

Conference Call

To aid HUD in the goal to revise the previous participation regulations so that the review process is effective but also expedient and less burdensome, HUD seeks input in the form of public comment on how the process can be

¹ See <http://www.gpo.gov/fdsys/pkg/CFR-2014-title24-vol2/pdf/CFR-2014-title24-vol2-part200-subpartH.pdf>.

² See <http://portal.hud.gov/hudportal/documents/huddoc?id=2530.pdf>.

³ See <http://www.gpo.gov/fdsys/pkg/FR-2015-08-10/pdf/2015-19529.pdf>.

simplified but protects the Federal Housing Administration from undue financial risk.

Opportunity for Additional Feedback

Comments on HUD's proposed rule can be submitted through the www.regulations.gov portal at <http://www.regulations.gov/#!docketDetail;D=HUD-2015-0068>. HUD encourages all interested parties, including those participating in the conference call to submit comments to HUD through this portal. Comments submitted are publicly available to the public.

Dated: September 2, 2015.

Genger Charles,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2015-22762 Filed 9-9-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5831-N-44]

30-Day Notice of Proposed Information Collection: Personal Financial and Credit Statement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment. **DATES:** *Comments Due Date:* October 13, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 20, 2015.

A. Overview of Information Collection

Title of Information Collection: Personal Financial and Credit Statement.

OMB Approval Number: 2502-0001.

Type of Request: Extension of currently approved collection.

Form Number: HUD-92417.

Description of the need for the information and proposed use: The information collection is legally required to collect information to evaluate the character, ability, and capital or the sponsor, mortgagor, and general contractor for mortgage insurance.

Respondents: (i.e. affected public): Business, non-profit.

Estimated Number of Respondents: 1,555.

Estimated Number of Responses: 1,555.

Frequency of Response: Occasion.

Average Hours per Response: 8.

Total Estimated Burdens: 12,440.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: 12 U.S.C. 1701z-1 Research and Demonstrations.

Dated: September 4, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015-22850 Filed 9-9-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5830-N-05]

60 Day Notice of Proposed Information Collection; Accountability in the Provision of HUD Assistance "Applicant/Recipient Disclosure/Update Report—HUD 2880"

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 9, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

FOR FURTHER INFORMATION CONTACT: Lindsey Allen, Deputy Assistant General Counsel, Ethics Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 2130, Washington, DC 20410-0500, telephone (202) 708-3815 (this is not a toll-free number). This form can be viewed or accessed at <http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf>.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Accountability in the Provision of HUD Assistance "Applicant/Recipient Disclosure/Update Report".

OMB Control Number, if applicable: 2510-0011.

Description of the need for the information and proposed use: Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, assistance from states and units of local government, and other assistance to be used with respect to the activities to be carried out with the assistance. The disclosure includes the financial interests of persons in the activities, and the sources of funds to be made available for the activities, and the proposed uses of the funds.

Each applicant that submits an application for assistance, within the jurisdiction of the HUD, to a state or to a unit of general local government for a specific project or activity must disclose this information whenever the dollar threshold is met. This information must be kept updated during the application review process and while the assistance is being provided.

Agency form numbers, if applicable: HUD 2880.

Members of affected public: Applicants for HUD competitively funded assistance.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The form, HUD 2880, must be submitted as part of an applicant's application for competitively funded assistance.

Number of respondents	Burden hours	Frequency of response	Total burden hours
16,900	2.0	1.2	40,560

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 2, 2015.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2015-22734 Filed 9-9-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5830-N-06]

60-Day Notice of Proposed Information Collection; Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: Comments Due Date: November 9, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Nacheshia Foxx, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410-0500.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 9230, Washington, DC 20410-0500, telephone (202) 708-1274 (this is not a toll-free number) for a copy of the instructions.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's

estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary.

OMB Control Number, if applicable: 2510-0006.

Description of the need for the information and proposed use: Mortgagees of HUD-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to HUD. In connection with the assignment, legal documents (e.g., mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The instructions contained in the Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage describe the documents to be submitted and the procedures for submission.

The Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage, in its current form and

structure, can be found at <http://intraportal.hud.gov/hudportal/documents/huddoc?id=leginstrfullinsben.pdf>.

HUD proposes to make the following revisions to this document:

Under Part B, Submissions of Legal Documents after Recordation of Assignment, HUD proposes to add a new paragraphs 12 and 13 to read as follows:

12. *Flood Insurance.* If all or part of the building(s) included within the project are in a Special Flood Hazard Area (SFHA), acceptable proof of flood insurance coverage. This can be either the original flood insurance policy covering the building(s), a copy of the Flood Insurance Application and premium payment, a copy of the declarations page, or evidence of flood insurance, comprising flood insurance coverage equal to the lesser of the insurable value of the building(s) or the maximum amount of coverage available for that type of property under the National Flood Insurance Program (“NFIP”) (see www.fema.gov/business/nfip/manual.shtm). The flood insurance should name the mortgagee and the

Secretary of Housing and Urban Development of Washington, DC, his/her successors and assigns as mortgagee and loss payee respectively. The flood insurance must be in effect at least through 11:59 p.m. on the date on which the assignment of mortgage is recorded. In addition, if the mortgagee submits evidence of flood insurance, the mortgagee must submit an affidavit that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] affirms under penalty of law that the [describe flood insurance policy by name of insurance company or producer and policy number] described in the [Evidence of Insurance or other document name, as applicable] is in full force and effect and names the Secretary of Housing and Urban Development, of Washington, DC, his/her successors and assigns, 451 Seventh Street SW., Room 9230, Washington, DC 20410–0500 as loss payee as of [insert the date of assignment].

The effective date of this endorsement and mortgagee’s affidavit, if applicable, should be the date the assignment of mortgage to the Secretary is filed for record. The evidence of flood insurance is acceptable if it contains language to

the effect that it is for informational purposes only and does not confer rights upon the holder of the policy only if accompanied by the mortgagee’s affidavit. A Certificate of Insurance is not acceptable.

13. An assignment of the mortgagee’s interest in the flood insurance policy should state the following:

The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the Secretary of Housing and Urban Development of Washington, DC, his/her successors and assigns.

Date: _____

Existing paragraphs 12 through 16 would be unchanged except for being redesignated paragraphs 14 through 18.

Agency form numbers, if applicable:
N/A

Members of affected public:
Mortgagees when applying for insurance benefits from HUD.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Burden hours	Frequency of response	Total burden hours
359	26	1	9,334

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 3, 2015.

Camille E. Acevedo,
Associate General Counsel for Regulations and Legislation.

[FR Doc. 2015–22759 Filed 9–9–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–43]

30-Day Notice of Proposed Information Collection: Neighborhood Stabilization Program 2 (NSP2) Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The

purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 13, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 30, 2015 at 80 FR 37285.

A. Overview of Information Collection

Title of Information Collection: Neighborhood Stabilization Program 2 (NSP2) Reporting.

OMB Approval Number: 2506–0185.

Type of Request: Extension of previously approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

Respondents: NSP2 grantees are units of state and local governments, non-profits and consortium members.

Estimated Number of Respondents: 62.

Estimated Number of Responses: 62.

Frequency of Response: Annually.

Average Hours per Response: 2,923.

Total Estimated Burdens: 2,923.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: 12 U.S.C. 1701z-1 Research and Demonstrations.

Dated: September 2, 2015.

Colette Pollard,

*Department Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2015-22760 Filed 9-9-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-IA-2015-N175;
FXIA167109ADV15-156-FF09A00000]

Request for Nominees for the Advisory Council on Wildlife Trafficking; Extension of Nominations Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of nominations period.

SUMMARY: On August 10, 2015, via a **Federal Register** notice, the Secretary of the Interior (Secretary), after consultation with the Co-Chairs of the Presidential Task Force on Wildlife Trafficking (Task Force), issued a call

for nominations for individuals to serve on the Advisory Council on Wildlife Trafficking (Council). The due date for nominations is now extended.

DATES: Nominations must be received by September 25, 2015.

ADDRESSES: Send nominations, preferably by email, to Mr. Cade London, Special Assistant, Assistant Director for International Affairs, at acwnominations@fws.gov. You may also send nominations via U.S. mail to U.S. Fish and Wildlife Service; Attention: Mr. Cade London; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Mr. Cade London, Special Assistant, Assistant Director for International Affairs, U.S. Fish and Wildlife Service, via email at cade_london@fws.gov, via phone at (703) 358-2584, or via fax at (703) 358-2115.

SUPPLEMENTARY INFORMATION: On August 10, 2015, via a **Federal Register** notice (80 FR 47946), the Secretary, after consultation with the Co-Chairs of the Task Force, issued a call for nominations for individuals to serve on the Council. The U.S. Fish and Wildlife Service is extending the nominations period to September 25, 2015.

The Council's Role and Membership

The Council was formed and conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix). It reports to the Task Force through the Secretary of the Interior or her designee and functions solely as an advisory body. The Council advises and makes recommendations on issues related to combating wildlife trafficking, including, but not limited to:

(1) Effective support for anti-poaching activities,

(2) Coordinating regional law enforcement efforts,

(3) Developing and supporting effective legal enforcement mechanisms, and

(4) Developing strategies to reduce illicit trade and reduce consumer demand for illegally traded wildlife, including protected species.

The Council meets approximately 3-4 times annually, and at such time as designated by the Designated Federal Officer.

Members must include knowledgeable individuals from the private sector, former governmental officials, representatives of nongovernmental organizations, and others who are in a position to provide expertise and support to the Task Force. No member of the Council may be an

employee of the Federal Government. Members' appointments will be for 3-year terms.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominating Potential Council Members

The Department of the Interior is extending the nominations to be considered as Council members. Nominations should include a resume providing contact information and an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding whether individual nominees meet the membership requirements of the Council.

Dated: September 3, 2015.

Bryan Arroyo,

*Assistant Director for International Affairs,
U.S. Fish and Wildlife Service.*

[FR Doc. 2015-22816 Filed 9-9-15; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 L14400000.EU000]

Notice of Realty Action: Modified Competitive Sealed Bid Sale of Public Land (NMNM 90300), Eddy County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer, by modified-competitive, sealed-bid sale, public lands totaling 2,486.38 acres in Eddy County, New Mexico, at not less than the appraised fair market value (FMV) of \$298,000. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA).

DATES: Interested parties may submit written comments regarding the sale and the environmental assessment (EA) until October 26, 2015. Sealed bids may be mailed or delivered to the BLM Carlsbad Field Office, at the address

below, beginning on October 26, 2015. Sealed bids must be received no later than 4:30 p.m., Mountain Time, November 9, 2015 in accordance with the sale procedures. The BLM will open the sealed bids on November 10, 2015 at the BLM Carlsbad Field Office.

ADDRESSES: Mail written comments to the BLM Carlsbad Field Manager, Carlsbad Field Office, 620 East Greene, Carlsbad, NM 88220. The modified-competitive sale will be held at the BLM Carlsbad Field Office.

FOR FURTHER INFORMATION CONTACT: Tammie Hochstein, Realty Specialist, at the address above, by telephone at 575-234-5902, or by email at thochste@blm.gov. 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 listed individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The land is hereby classified for disposal in accordance with Executive Order No. 6910, and with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315F. The lands proposed for disposal are described as follows:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 25 E.,

Sec. 31, Lots 1 thru 4, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.

T. 18 S., R. 24 E.,

Sec. 1,

T. 18 S., R. 25 E.,

Sec. 5, Lots 1 thru 3, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 7, Lot 1, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 8, N $\frac{1}{2}$ and SE $\frac{1}{4}$.

The area described aggregates 2,486.38 acres.

The sale parcel offered for the proposed modified-competitive sale is suitable for disposal, this action is in conformance with the 1988 Carlsbad Resource Management Plan, and Amendment dated 1997.

The locatable, salable, and leaseable mineral rights will be reserved by the United States. In accordance with 43 CFR 4110.4-2(b), which states that when public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittee shall be given 2 years prior notification before his or her grazing permit or permitted use may be canceled or reduced.

Additionally, 43 CFR 4110.4-2(b) provides an opportunity for the grazing permittee to waive the 2-year notification period. The grazing permittee for this land sale has agreed to the sale and signed the waiver/relinquishment agreement.

The use of the modified-competitive sale method is consistent with 43 CFR 2711.3-2(a)(1)(i) because the authorized officer has determined it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies. Under the modified competitive bidding procedure, a designated bidder is offered the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of his preference consideration. The authorized officer has identified Bill Kennedy as the designated bidder for this parcel.

The sale parcel, NMNM 90300, is being analyzed in Environmental Assessment Number DOI-BLM-NM-P020-2014-1493-EA. Upon publication of this notice, the EA is available at the BLM Carlsbad Field Office for public review and comments. Only written comments will be considered properly filed.

Any adverse comments regarding the sale will be reviewed by the BLM New Mexico State Director or other authorized official of the Department of Interior, who may sustain, vacate, or modify this realty action in whole or in part.

Before including your address, phone number, email address, or other personal identifying information, 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.

Information concerning the sale, appraisal, reservations, sale procedures and conditions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA), map delineating the sale parcel, mineral potential report, EA, and other environmental documents will be available for review during business hours, from 7:45 a.m. to 4:30 p.m., Mountain Time, Monday through Friday at the BLM Carlsbad Field Office except during federally recognized holidays.

Publication of this notice in the **Federal Register** segregates the subject lands from all other forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws, except sale under FLPMA. The segregation will terminate: (i) Upon issuance of a patent or other document of conveyance to such lands; (ii) Upon publication in the **Federal Register** of a termination of the segregation; or (iii) At the end of 2 years from the date of this publication in the **Federal Register**, whichever occurs first. On publication of this notice and until completion of the sale, the BLM is no longer accepting land-use applications affecting the sale parcel. However, land-use applications may be considered after completion of the sale if the parcel is not sold. The parcel may be subject to land-use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title or the FMV of the sale parcel.

The parcel is subject to limitations prescribed by law and regulation and, prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. In accordance with regulation at 43 CFR 2807.15(b), the BLM notified the valid existing right-of-way holders by letter of their ability to convert their rights-of-way to perpetual rights-of-way or easements. None of the holders requested conversion of their current authorizations, so the BLM will continue to administer their rights-of-way as authorized after the sale.

Terms and Conditions: All minerals for the parcel will be reserved to the United States in accordance with the BLM's approved Mineral Potential Report, dated June 6, 1996.

The following rights, reservations, and terms and conditions will appear on the conveyance document for these parcels:

1. A reservation for all mineral deposits in the land so patented, and to it or persons authorized by it, the right to enter the land and prospect for; mine; and remove such deposits from the same under applicable laws and such regulations as the Secretary of the Interior may prescribe shall be reserved to the United States;

2. A reservation for any right-of-way thereon for ditches and canals constructed by the authority of the United States, Reservation in Patent Right of Way for Ditches or Canals Act of August 30, 1890 (26 Stat. 291; 43

U.S.C. 945), including but not necessarily limited to the following rights of way:

NM-72756, NM-77814, NM-60190, NM-93139, NM-121560, NM-115291, NM-106778, NM-40925, NM-40738, NM-29305, NM-121143, NM-121142, NM-33339, NM-33338, NM-32422, NM-68029, NM-114258, NM-113331, NM-72654, NM-72655, NM-24321, NM-03604, NM-09542A, NM-11461, NM-15664, NM-71846, NM-71987, NM-71999, NM-72087, NM-72380, NM-72535, NM-343045, NM-440087, NM-471842, NM-487738, NM-0-196959.

3. The parcel is subject to valid existing rights, including but not limited to, rights-of-way for roads, public utilities, and flood control improvements;

4. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation on the patented lands. Pursuant to the requirements established by Section 120(h) of the, 42 U.S.C. 9620(h) CERCLA, as amended, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No representation, warranty, or covenant of any kind, express or implied, is given or made by the United States as to access to or from any parcel of land, the title, whether or to what extent the land may be developed, its physical condition, present or potential uses, or any other circumstance or condition. The conveyance of the sale parcel will not be on a contingency basis.

Sale Procedures: The designated bidder must appoint an authorized representative for this sale by submitting in writing a notarized document that identifies the level of capacity given to the authorized representative. The authorized representative of the designated bidder must be present at the sale. If the authorized representative does not submit the highest bid, the authorized representative will have the opportunity to meet and accept the highest bid as the purchase price of the parcel. Should the authorized representative refuse to meet the high bid, the party submitting the highest bid will be declared the successful bidder in accordance with 43 CFR 2711.3-2(c). Consistent with 43 CFR 2711.3-2 (e), acceptance or rejection of any offer to purchase shall

be in accordance with the procedures set forth in 43 CFR 2711.3-1(f) and (g).

Sealed bids will be presented for the sale parcel. Sealed-bid envelopes must be clearly marked on the front lower left corner with: "SEALED BID BLM LAND SALE" and the identification number for the sale parcel "BLM SERIAL NUMBER NMNM 90300." Each sealed bid shall be accompanied by a cashier's check, certified check, or U.S. postal money order, and made payable in U.S. dollars to "Department of the Interior—Bureau of Land Management" for not less than 20 percent of the amount bid. Personal or company checks will not be accepted. The sealed-bid envelope shall include a completed and signed Certificate of Eligibility.

Sealed bids will be opened and recorded to determine the high bidder on November 10, 2015, 10:00 a.m., Mountain Time at the BLM Carlsbad Field Office. The highest bidder among the qualified bids received for the sale will be announced under 43 CFR 2711.3-1(d). Following the end of the sale, all bid deposits will be returned to the unsuccessful bidders, if present, or by certified mail. If the winning bidder defaults on the parcel, the BLM may retain the bid deposit and cancel the sale. If the high bidder is unable to consummate the transaction for any reason, the BLM, in its sole discretion, may consider the second-highest bid and offer the sale to the person who submitted this bid. The BLM will send the successful bidder a high-bidder letter with detailed information for full payment.

Pursuant to regulation at 43 CFR 2711.2, bidders must be (1) United States citizens, 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of New Mexico; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the bid opening, the BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid. Unless other satisfactory arrangements are approved

in advance by a BLM authorized officer, conveyance of title will be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the BLM Carlsbad Field Office prior to 30 days before the prospective patentee has scheduled closing date. No exceptions will be made.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the BLM Carlsbad Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Mountain Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility to the BLM Carlsbad Field Office in writing. Certificates of Eligibility are available at the BLM Carlsbad Field Office.

The remainder of the full bid price for the sale parcel must be received no later than 4:30 p.m. Mountain Time, within 180th day following the day of the sale. Payment must be submitted in the form of a, certified check, postal money order, bank draft or cashier's check or made available by electronic fund transfer made payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management." The BLM will not accept personal or company checks.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3-1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. In accordance with 43 CFR 2711.3-1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

The parcel, if not sold by modified-competitive, sealed-bid sale, may be identified for sale later without further legal notice.

It is the bidder's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the bidder's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws, regulations, and policies, and to seek any required local approvals for future uses. Bidders should also make themselves aware of any Federal or State law or regulation that may affect the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Authority: 43 CFR 2710 and 2711.1-2 (a) and (c)

James K. Stovall,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2015-22797 Filed 9-9-15; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Submission of Information Collections Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Second notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is announcing its submission, concurrently with the publication of this notice or soon thereafter, of the following information collection requests to the Office of Management and Budget (OMB) for review and approval.

The Commission is seeking comments on the renewal of information collections for the following activities: (i) Indian gaming management contract-related submission requirements, as authorized by OMB Control Number 3141-0004 (expires on October 31, 2015); (ii) Indian gaming fee payment-

related submission requirements, as authorized by OMB Control Number 3141-0007 (expires on November 30, 2015); (iii) minimum internal control standards for class II gaming submission and recordkeeping requirements, as authorized by OMB Control Number 3141-0009 (expires on October 31, 2015); (iv) facility license-related submission and recordkeeping requirements, as authorized by OMB Control Number 3141-0012 (expires on October 31, 2015); and (v) minimum technical standards for class II gaming systems and equipment submission and recordkeeping requirements, as authorized by OMB Control Number 3141-0014 (expires on November 30, 2015).

In addition, the Commission is seeking comments on its request for a new information collection, *i.e.*, voluntary stakeholder surveys to be conducted by the NIGC in order to gather tribal stakeholder feedback on services, trainings, and/or technical assistance that the NIGC provides to gaming tribes.

DATES: The OMB has up to 60 days to approve or disapprove the information collection requests, but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 13, 2015 in order to be assured of consideration.

ADDRESSES: Submit comments directly to OMB's Office of Information and Regulatory Affairs, Attn: Policy Analyst/Desk Officer for the National Indian Gaming Commission. Comments can also be emailed to *OIRA_Submission@omb.eop.gov*, include reference to "NIGC PRA Renewals" in the subject line.

FOR FURTHER INFORMATION CONTACT: For further information, including copies of the proposed information collection requests and supporting documentation, contact Armando J. Acosta at (202) 632-7003; fax (202) 632-7066 (not toll-free numbers). You may also review these information collection requests by going to <http://www.reginfo.gov> (Information Collection Review, Currently Under Review, Agency: National Indian Gaming Commission).

SUPPLEMENTARY INFORMATION:

I. Abstract

The gathering of this information is in keeping with the purposes of the Indian Gaming Regulatory Act of 1988 (IGRA or the Act), Public Law 100-497, 25 U.S.C. 2701, *et seq.*, which include: Providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and

strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of the Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702. The Act established the Commission and laid out a comprehensive framework for the regulation of gaming on Indian lands.

II. Data

Title: Management Contract Provisions.

OMB Control Number: 3141-0004.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chairman to review and approve all management contracts for the operation and management of class II and/or class III gaming activities, and to conduct background investigations of persons with direct or indirect financial interests in, and management responsibility for, management contracts. 25 U.S.C. 2710, 2711. The Commission is authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated parts 533, 535, and 537 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 533.2 requires a tribe or management contractor to submit a management contract for review within 60 days of execution, and to submit all of the items specified in § 533.3. Section 535.1 requires a tribe to submit an amendment to a management contract within 30 days of execution, and to submit all of the items specified in § 535.1(c). Section 535.2 requires a tribe or a management contractor, upon execution, to submit the assignment by a management contractor of its rights under a previously approved management contract. Section 537.1 requires a management contractor to submit all of the items specified in § 537.1(b), (c) in order for the Commission to conduct background investigations on: each person with management responsibility for a management contract; each person who is a director of a corporation that is a party to a management contract; the ten persons who have the greatest direct or indirect financial interest in a management contract; any entity with a

financial interest in a management contract; and any other person with a direct or indirect financial interest in a management contract, as otherwise designated by the Commission. This collection is mandatory, and the benefit to the respondents is the approval of Indian gaming management contracts, and any amendments thereto.

Respondents: Tribal governing bodies and management contractors.

Estimated Number of Respondents: 20.

Estimated Annual Responses: 43 (submissions of contracts, contract amendments, contract assignments, and background investigation material).

Estimated Time per Response: Depending on the type of collection, the range of time can vary from 10.0 burden hours to 20.0 burden hours for one item.

Frequency of Response: Varies; usually no more than once per year.

Estimated Total Annual Burden Hours on Respondents: 692.

Estimated Total Non-hour Cost Burden: \$500,000.

Title: Fees.

OMB Control Number: 3141-0007.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct a class II and/or class III gaming activity to pay annual fees to the Commission on the basis of the assessable gross revenues of each gaming operation using rates established by the Commission. 25 U.S.C. 2717. The Commission is authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 514 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 514.6 requires a tribe to submit, along with its fee payments, quarterly fee statements (worksheets) showing its assessable gross revenues for the previous fiscal year in order to support the computation of fees paid by each gaming operation. Section 514.7 requires a tribe to submit a notice within 30 days after a gaming operation changes its fiscal year. Section 514.15 allows a tribe to submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI), along with a fee to cover the NIGC's and FBI's costs to process the fingerprint cards on behalf of the tribes. Parts of this collection are mandatory and the other part is voluntary. The required submission of the fee worksheets allows the Commission to both set and adjust fee rates, and to support the computation of fees paid by

each gaming operation. In addition, the voluntary submission of fingerprint cards allows a tribe to conduct statutorily mandated background investigations on applicants for key employee and primary management official positions.

Respondents: Indian gaming operations.

Estimated Number of Respondents: 651.

Estimated Annual Responses: 71,375.

Estimated Time per Response: Depending on the type of collection, the range of time can vary from 0.5 burden hours to 2.0 burden hours for one item.

Frequency of Response: Quarterly (for fee worksheets); varies (for fingerprint cards and fiscal year change notices).

Estimated Total Annual Burden on Respondents: 38,292.5.

Estimated Total Non-hour Cost Burden: \$1,467,585.

Title: Minimum Internal Control Standards for Class II Gaming.

OMB Control Number: 3141-0009.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to protect such gaming as a means of generating tribal revenue, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Commission is also authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 543 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming on a continuing basis.

Section 543.3 requires a tribal gaming regulatory authority (TGRA) to submit to the Commission a notice requesting an extension to the deadline (by an additional six months) to achieve compliance with the requirements of the new tier after a gaming operation has moved from one tier to another. Section 543.5 requires a TGRA to submit a detailed report after the TGRA has approved an alternate standard to any of the NIGC's minimum internal control standards, and the report must contain all of the items specified in § 543.5(a)(2). Section 543.23(c) requires a tribe to maintain internal audit reports and to make such reports available to the Commission upon request. Section 543.23(d) requires a tribe to submit two copies of the agreed-upon procedures

(AUP) report within 120 days of the gaming operation's fiscal year end. This collection is mandatory and allows the NIGC to confirm tribal compliance with the minimum internal control standards in the AUP reports.

Respondents: Tribal governing bodies.
Estimated Number of Respondents: 466.

Estimated Annual Responses: 834.

Estimated Time per Response: Depending on the type of collection, the range of time can vary from 1.0 burden hours to 108.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Hourly Burden to Respondents: 11,340.

Estimated Total Non-hour Cost Burden: \$8,736,040.

Title: Facility License Notifications and Submissions.

OMB Control Number: 3141-0012.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct class II and/or class III gaming to issue "a separate license . . . for each place, facility, or location on Indian lands at which class II [and class III] gaming is conducted," 25 U.S.C. 2710(b)(1), (d)(1), and to ensure that "the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety." 25 U.S.C. 2710(b)(2)(E). The Commission is authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 559 of title 25, Code of Federal Regulations, to implement these requirements.

Section 559.2 requires a tribe to submit a notice (that a facility license is under consideration for issuance) at least 120 days before opening any new facility on Indian lands where class II and/or class III gaming will occur, with the notice containing all of the items specified in § 559.2(b). Section 559.3 requires a tribe to submit a copy of each newly issued or renewed facility license within 30 days of issuance. Section 559.4 requires a tribe to submit an attestation certifying that by issuing the facility license, the tribe has determined that the construction, maintenance, and operation of that gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. Section 559.5 requires a tribe to submit a notice within 30 days if a facility license is terminated or

expires or if a gaming operation closes or reopens. Section 559.6 requires a tribe to maintain applicable and available Indian lands or environmental and public health and safety documentation, and provide that documentation if requested by the NIGC. This collection is mandatory and enables the Commission to perform its statutory duty by ensuring that tribal gaming facilities on Indian lands are properly licensed by the tribes.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 110.

Estimated Annual Responses: 269.

Estimated Time per Response:

Depending on the type of collection, the range of time can vary from 0.5 burden hours to 13.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Hourly Burden to Respondents: 2,232.

Estimated Total Non-hour Cost Burden: \$6,663.

Title: Minimum Technical Standards for Class II Gaming Systems and Equipment.

OMB Control Number: 3141-0014.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to protect such gaming as a means of generating tribal revenue, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Act allows Indian tribes to use "electronic, computer, or other technologic aids" to conduct class II gaming activities. 25 U.S.C. 2703(7)(A). The Commission is authorized to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 547 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming facilities that are using electronic, computer, or other technologic aids to conduct class II gaming.

Section 547.5(b)(2) requires a tribal gaming regulatory authority (TGRA) to submit a notice regarding a grandfathered class II gaming system's approval. Section 547.5(b)(5) requires a TGRA to maintain records of approved modifications that affect the play of a grandfathered class II gaming system, and must make the records available to the Commission upon request. Section

547.5(d)(3) requires a TGRA to maintain records of approved emergency hardware and software modifications to a class II gaming system (and a copy of the testing laboratory report) so long as the gaming system remains available to the public for play, and must make the records available to the Commission upon request. Section 547.5(f) requires a TGRA to maintain records of its following determinations: (i) Regarding a testing laboratory's (that is owned or operated or affiliated with a tribe) independence from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions; (ii) regarding a testing laboratory's suitability determination based upon standards no less stringent than those set out in 25 CFR 533.6(b)(1)(ii) through (v) and based upon no less information than that required by 25 CFR 537.1; and/or (iii) the TGRA's acceptance of a testing laboratory's suitability determination made by any other gaming regulatory authority in the United States. The TGRA must maintain said records for a minimum of three years and must make the records available to the Commission upon request. Section 547.17 requires a TGRA to submit a detailed report for each enumerated standard for which the TGRA approves an alternate standard, and the report must contain the items identified in § 547.17(a)(2). This collection is mandatory and allows the NIGC to confirm tribal compliance with NIGC regulations on "electronic, computer, or other technologic aids" to conduct class II gaming activities.

Respondents: Tribal governing bodies.
Estimated Number of Respondents: 492.

Estimated Annual Responses: 500.

Estimated Time per Response:

Depending on the type of collection, the range of time can vary from 2.0 burden hours to 6.0 burden hours for one item.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 2,456.

Estimated Total Non-hour Cost Burden: \$0.

Title: Voluntary NIGC Stakeholder Satisfaction Surveys.

OMB Control Number: 3141-_____.

Brief Description of Collection:

Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to provide trainings and technical assistance to tribal gaming operations regulated by IGRA. 25 U.S.C. 2706(d)(2).

The Commission is requesting a new clearance to conduct voluntary stakeholder surveys in order to: (i) Determine the stakeholders' satisfaction with the level(s) of service, trainings,

and/or technical assistance provided by the Commission; (ii) identify any perceived weaknesses in those services, trainings, and/or technical assistance; (iii) seek any other information on the service, training, and/or technical assistance received; (iv) seek suggestions on improving the product or its format; and (v) seek suggestions for other services, trainings, and/or technical assistance. This new collection will be voluntary and the information gleaned from these surveys will be used to help direct service, training, and/or technical assistance improvement efforts, and to assist the Commission in better identifying the needs of its stakeholders. The Commission will take precautions to ensure that the respondents are aware that they are not under any risk for not responding or for the content of their responses.

Respondents: Tribal governing bodies.

Average Expected Annual Number of Stakeholder Satisfaction Surveys: 2.

Respondents: 242.

Annual Responses: 484.

Frequency of Response: Once per survey (average of 15 minutes per response).

Burden Hours: 121.

Estimated Total Non-hour Cost

Burden: \$0.

III. Request for Comments

Regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public have an opportunity to comment on an agency's information collection and recordkeeping activities. See 5 CFR 1320.8(d). To comply with the public consultation process, the Commission previously published its 60-day notice and request for comments and of its intent to submit the above-mentioned information collection requests to OMB for approval. See 80 FR 32176 (June 5, 2015). The Commission did not receive any comments in response to that notice and request for comments.

The Commission will submit the preceding requests to OMB to renew its approval of the information collections and to approve its request for a new information collection to conduct voluntary stakeholder satisfaction surveys. The Commission is requesting a three-year term of approval for each of these information collection and recordkeeping activities.

You are again invited to comment on these collections in order for the Commission to: (i) Evaluate whether the proposed information collection is necessary for the agency to perform its duties, including whether the

information is useful; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection; (iii) enhance the quality, usefulness, and clarity of the information to be collected; and (iv) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. It should be noted that as a result of the Commission reviewing its own records that track the number of tribal and/or management contractor submissions and after surveying tribal gaming operators, TGRAs, and management contractors regarding the Commission's submission and recordkeeping requirements, many of the previously published burden estimates have changed since the publication of the Commission's 60-day notice on June 5, 2015. If you wish to comment in response to this notice, you may send your comments to the office listed under the **ADDRESSES** section of this notice by October 13, 2015.

Comments submitted in response to this second notice will be summarized and become a matter of public record. The NIGC will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid OMB Control Number.

Dated: September 4, 2015.

Shannon O'Loughlin,
Chief of Staff.

[FR Doc. 2015-22847 Filed 9-9-15; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02054000, 15XR0680A1,
RX.02148943.3320900]

Notice of Availability for the Final Environmental Impact Statement for the Central Valley Project Municipal and Industrial Water Shortage Policy, Central Valley, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation has prepared a Final Environmental Impact Statement (EIS) for the Central Valley Project Municipal and Industrial Water Shortage Policy. The Final EIS addresses updating the Central Valley Project Municipal and Industrial Water Shortage Policy and implementation guidelines. The Central Valley Project Municipal and Industrial Water Shortage Policy would be used by Reclamation to: (1) Define water

shortage terms and conditions for applicable Central Valley Project water service contractors, as appropriate; (2) establish Central Valley Project water supply allocations that, together with the municipal and industrial water service contractors' drought water conservation measures and other water supplies, would assist the municipal and industrial water service contractors in their efforts to protect public health and safety during severe or continuing droughts; and (3) provide information to water service contractors for their use in water supply planning and development of drought contingency plans.

DATES: The Bureau of Reclamation will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency releases the Final EIS. After the 30-day period, the Bureau of Reclamation will complete a Record of Decision. The Record of Decision will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Send written correspondence or requests for copies of the Final EIS to Mr. Tim Rust, Bureau of Reclamation, Resources Management Division, 2800 Cottage Way, Sacramento, CA 95825, or via email to trust@usbr.gov. To request a compact disc of the Final EIS, please contact Mr. Tim Rust as indicated above, or call (916) 978-5516.

The Final EIS may be viewed at the Bureau of Reclamation's Web site at <http://www.usbr.gov/mp/cvp/mandi/index.html>. See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final EIS are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Rust, Program Manager, Bureau of Reclamation, via email at trust@usbr.gov, or at (916) 978-5516.

SUPPLEMENTARY INFORMATION: The Central Valley Project is operated under Federal statutes authorizing the Central Valley Project, and by the terms and conditions of water rights acquired pursuant to California law. During any year, constraints may occur on the availability of Central Valley Project water for municipal and industrial water service contractors. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal and environmental obligations or mandates. Those legal and environmental obligations include, but are not limited to, the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on Central Valley Project water rights by

the California State Water Resources Control Board. The 2001 draft Central Valley Project Municipal & Industrial Water Shortage Policy, as modified by Alternative 1 B of the 2005 draft environmental assessment (EA), establishes the terms and conditions regarding the constraints on availability of water supply for the Central Valley Project municipal and industrial water service contracts.

Allocation of Central Valley Project water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in Central Valley Project reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with CVPIA. In some cases, municipal and industrial allocations in water shortage years may differ between Central Valley Project divisions due to regional Central Valley Project water supply availability, system capacity, or other operational constraints.

The purpose of the update to the 2001 Central Valley Project Municipal & Industrial Water Shortage Policy, as modified by Alternative 1 B of the 2005 draft EA, is to provide detailed, clear, and objective guidelines for the distribution of Central Valley Project water supplies during water shortage conditions, thereby allowing Central Valley Project water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions.

The increased level of clarity and understanding that will be provided by the update to the 2001 draft Central Valley Project Municipal & Industrial Water Shortage Policy is needed by water managers and the entities that receive Central Valley Project water to better plan for and manage available Central Valley Project water supplies, and to better integrate the use of Central Valley Project water with other available non-Central Valley Project water supplies. The update to the 2001 draft Central Valley Project Municipal & Industrial Water Shortage Policy is also needed to clarify certain terms and conditions with regard to its applicability and implementation. The proposed action is the adoption of an updated Central Valley Project Municipal & Industrial Water Shortage Policy and its implementation guidelines.

The EIS analyzes five alternative actions. Alternative 1 is No Action, and represents the current 2001 draft Central Valley Project Municipal & Industrial Water Shortage Policy, as modified by Alternative 1 B of the 2005 EA, which

is currently guiding Reclamation's allocation of water to agricultural and municipal and industrial water service contractors during water shortage years. Alternative 2, Equal Agricultural and Municipal & Industrial Allocation, provides municipal and industrial and agricultural water service contractors with equal allocation percentages during water shortage conditions. Alternative 3, Full Municipal & Industrial Allocation Preference, provides municipal and industrial contractors with 100 percent of their contract allocation until Central Valley Project supplies are not available to meet those demands, while agricultural water service contractor deliveries are reduced as needed. Alternative 4, Updated Municipal & Industrial Water Shortage Policy [PREFERRED ALTERNATIVE], modifies Alternative 1 to provide a different definition of unconstrained years used in calculating historical use, and provides higher level of deliveries to municipal and industrial water service contractors by attempting to provide minimum unmet public health and safety demand without a guarantee. Alternative 5, Municipal & Industrial Contractor Suggested Water Shortage Policy, is similar to Alternative 4 but attempts to meet unmet public health and safety demands.

A Notice of Availability of the Draft EIS was published in the **Federal Register** on November 19, 2014 (79 FR 68912). Reclamation filed a Notice of Public Review and Comment Period Extension in the **Federal Register** on January 9, 2015 (80 FR 1431). The comment period for the Draft EIS ended on March 13, 2015. The Final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

Copies of the Final EIS are available for public review at the following locations:

1. Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825
2. Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240-0001

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in any communication, you should be aware that your entire communication—including your personal identifying information—may be made publicly available at any time. While you can ask us in your communication to withhold

your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 1, 2015.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2015-22787 Filed 9-9-15; 8:45 am]

BILLING CODE 4332-90-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[Docket ID: OSM-2010-0018; OSM-2010-0021; OSM-2015-0002 S1D1
SS08011000SX064A000156S180110;
S2D2SS08011000SX064A00015X501520]

Stream Protection Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice, extension of comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing extension of the comment period on the proposed stream protection rule and the draft environmental impact statement (DEIS) and draft regulatory impact analysis (RIA) prepared in connection with that rule.

DATES: We will accept electronic or written comments on the proposed rule, DEIS, and RIA that we receive on or before October 26, 2015.

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

Federal eRulemaking Portal: <http://www.regulations.gov>. The Docket ID for the proposed rule is OSM-2010-0018, while the Docket ID for the draft environmental impact statement is OSM-2010-0021 and the docket ID for the draft regulatory impact analysis is OSM-2015-0002. Please follow the online instructions for submitting comments.

Mail/Hand-Delivery/Courier: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240. Please include the appropriate Docket ID: OSM-2010-0018 for the proposed rule, OSM-2010-0021 for the draft environmental impact statement, or OSM-2015-0002 for the draft regulatory impact analysis.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Department of the Interior Desk Officer at OMB—OIRA, via email at

OIRA_Submission@omb.eop.gov, or via facsimile at (202) 395-5806. Also, send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Room 203 SIB, Washington, DC 20240, or via email at jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT:

For the proposed rule: Dennis G. Rice, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2829.

For the draft environmental impact statement: Robin T. Ferguson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2802.

For the draft regulatory impact analysis: Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2716.

SUPPLEMENTARY INFORMATION:

On July 16, 2015, we announced that the proposed rule, DEIS, and draft RIA were available for review at www.regulations.gov, on our Web site (www.osmre.gov), and at selected OSMRE offices.

On July 17, 2015, we published a notice in the **Federal Register** announcing the availability of the DEIS for public review. See 80 FR 42535-42536. The notice reiterated that the DEIS was available for review at www.regulations.gov, www.osmre.gov, and the OSMRE offices listed in the notice. The comment period for the DEIS was scheduled to close on September 15, 2015.

On July 27, 2015, we published the proposed stream protection rule in the **Federal Register**. See 80 FR 44436-44698. That document reiterated that the proposed rule, DEIS, and draft RIA were available for review at www.regulations.gov, www.osmre.gov, and the OSMRE offices listed in Part XII of that document (80 FR 44580). The comment period for the proposed rule and draft RIA was scheduled to close on September 25, 2015.

In response to requests for additional time to review and prepare comments on all three documents, we are extending the comment period for the proposed rule, DEIS, and RIA through October 26, 2015. Please follow the instructions for submission of comments in Part XII of the proposed rule. See 80 FR 44580 (Jul. 27, 2015).

Dated: September 3, 2015.

Yolande Norman,

Acting Assistant Director, Program Support.

[FR Doc. 2015-22878 Filed 9-9-15; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-552]

Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions

AGENCY: United States International Trade Commission.

ACTION: Expansion of scope of investigation; extension of deadline for filing written submissions.

SUMMARY: Following receipt of a letter on August 19, 2015, from the Committee on Finance of the United States Senate (Committee), the Commission has expanded the scope of investigation No. 332-552, *Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions*, and extended to October 23, 2015, the deadline for filing written submissions to the Commission.

DATES: October 23, 2015: Deadline for filing all written submissions.

March 17, 2016: Transmittal of Commission report to the Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov/edis3-internal/app>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Heidi Colby-Oizumi (202-205-3391; heidi.colby@usitc.gov) or Deputy Project Leader Alissa Tafti (202-205-3244; alissa.tafti@usitc.gov). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202-205-3091; william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819; margaret.olaughlin@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet address (<http://www.usitc.gov>). Hearing impaired individuals may obtain information on

this matter by contacting the Commission's TDD terminal at 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.

Background: The Commission instituted the investigation in response to a letter from the Committee on Finance dated December 17, 2014. In that letter the Committee asked that the Commission institute an investigation and provide a report that includes, to the extent possible, the following: (1) An overview of Cuba's imports of goods and services from 2005 to the present, including identification of major supplying countries, products, and market segments; (2) a description of how U.S. restrictions on trade, including those relating to export financing terms and travel to Cuba by U.S. citizens, affect Cuban imports of U.S. goods and services; and (3) for sectors where the impact is likely to be significant, a qualitative and, to the extent possible, quantitative estimate of U.S. exports of goods and services to Cuba in the event that statutory, regulatory, or other trade restrictions on U.S. exports of goods and services as well as travel to Cuba by U.S. citizens are lifted. The Committee also asked that the report include, to the extent possible, state-specific analysis of the impacts described above, and that the report be transmitted by September 15, 2015. In response, the Commission instituted the current investigation and published a notice of the investigation in the **Federal Register** on February 4, 2015 (80 FR 6137). The Commission also announced that it would hold a hearing in the course of the investigation, and the hearing was subsequently rescheduled to and held on June 2, 2015, with post-hearing briefs and statements due on June 9, 2015, and all other written submissions due on June 19, 2015 (see Commission notice published in the **Federal Register** on March 4, 2015, 80 FR 11689).

In a letter dated and received on August 19, 2015, the Committee asked that the Commission expand the scope of its report to include:

(1) A qualitative analysis of existing Cuban non-tariff measures, Cuban institutional and infrastructural factors, and other Cuban barriers that inhibit or affect the ability of U.S. and non-U.S. firms to conduct business in and with Cuba, with such measures, factors, and barriers to include, to the extent feasible, but not be limited to, the following topics: restrictions on trade and investment; property rights and ownership; customs duties and

procedures; sanitary and phytosanitary measures; state trading; protection of intellectual property rights; and infrastructure as it affects telecommunications, port facilities, and the storage, transport, and distribution of goods;

(2) a qualitative analysis of any effects that such measures, factors, and barriers would have on U.S. exports of goods and services to Cuba in the event of changes to statutory, regulatory, or other trade restrictions on U.S. exports of goods and services to Cuba; and

(3) to the extent feasible, a quantitative analysis of the aggregate effects of Cuban tariff and non-tariff measures on the ability of U.S. and non-U.S. firms to conduct business in and with Cuba.

In its letter of August 19, 2015, the Committee asked that the Commission transmit its completed report by March 17, 2016.

Written Submissions: The Commission does not plan to hold a further public hearing in this investigation. However, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions should be received no later than 5:15 p.m., October 23, 2015. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information (CBI) must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly

identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Committee has asked that the Commission's report not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will identify the name of the organization furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: September 3, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-22697 Filed 9-9-15; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-921]

Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof; Notice of Commission Determination To Review the Final Initial Determination in Part; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination

("ID") issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation on July 2, 2015. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT:

Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 14, 2014, based on a complaint filed by Navico, Inc. of Tulsa, Oklahoma, and Navico Holding AS, of Egersund, Norway (collectively, "Navico"). 79 *Fed. Reg.* 40778 (July 14, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof. *Id.* The complaint alleged the infringement of certain claims of U.S. Patent Nos. 8,305,840 ("the '840 patent"), 8,300,499 ("the '499 patent"), and 8,605,550 ("the '550 patent"). *Id.* The notice of investigation named Garmin International, Inc. and Garmin USA, Inc., each of Olathe, Kansas, Garmin (Asia) Corporation of New Taipei City, Taiwan (collectively, "Garmin"), and Garmin North America, Inc. as respondents. *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a party. *Id.* The Commission later terminated the investigation as to Garmin North

America, Inc. and various of the asserted claims. Notice (Dec. 31, 2014) (determining not to review Order No. 10 (Dec. 2, 2014)); Notice (Jan. 9, 2015) (determining not to review Order No. 11 (Dec. 11, 2014)); Notice (Jan. 13, 2015) (determining not to review Order No. 13 (Dec. 17, 2014)).

On July 2, 2015, the ALJ issued a final ID finding no violation of section 337 with respect to all three asserted patents. Specifically, the ALJ found that the asserted claims of each patent are not infringed and were not shown to be invalid for anticipation or obviousness. The ALJ found that the economic prong of the domestic industry requirement was not satisfied with respect to the '550 patent. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending, if the Commission finds a section 337 violation, that a limited exclusion order and a cease and desist order should issue and that a bond should be imposed at a reasonable royalty of eight percent for each infringing device imported during the period of presidential review.

On July 20, 2015, Navico, Garmin, and OUII timely filed petitions for review challenging various findings in the final ID. On July 28, 2015, the parties filed responses. On August 5, 2015, Navico and Garmin filed a post-RD statement on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public. *See* 80 *FR* 39799 (July 10, 2015).

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's determination of no violation in part. Specifically, the Commission has determined to review (1) the ALJ's construction of the limitation "single linear downscan transducer element" recited in claims 1 and 23 of the '840 patent (and its variants in the '499 and '550 patents); (2) the ALJ's construction of the limitation "combine" (and its variants) recited in claims 1, 24, and 43 of the '499 patent; (3) the ALJ's findings of noninfringement with respect to the three asserted patents; (4) the ALJ's findings of validity with respect to the three asserted patents; and (5) the ALJ's finding regarding the economic prong of the domestic industry requirement with respect to the '550 patent.

The Commission has determined not to review the remaining issues decided in the final ID.

The parties are requested to brief their positions on the issues under review

with reference to the applicable law and the existing evidentiary record. In connection with its review, the Commission requests responses to the following questions only.

1. Discuss whether the limitation “single linear downscan transducer element” as recited in claims 1 and 23 of the ’840 patent (and its variants in the ’499 and ’550 patents) should be construed as “a single downwardly pointed transducer that is formed from a single element or a plurality of elements that act together as if they were a single element.” Discuss whether the phrase “act together” in this construction means act simultaneously or in phase. If the variants of the limitation “single linear downscan transducer element” in the ’499 and ’550 patents should be construed differently, please explain any such differences.

2. Applying the construction in Question No. 1, discuss whether the accused products satisfy the limitation “single linear downscan transducer element.”

3. Applying the construction in Question No. 1, discuss whether the prior art anticipates or renders obvious the asserted claims with respect to the limitation “single linear downscan transducer element.”

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public

health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant Navico is also requested to submit proposed remedial orders for the Commission’s consideration. Navico is also requested to state the date that the asserted patent expires and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on Monday, September 14, 2015. Initial written submissions by the parties shall be no more than 40 pages, excluding any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on Monday, September 21, 2015. Reply submissions by the parties shall be no more than 20 pages, excluding any exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day

pursuant to section 210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-921”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 3, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-22735 Filed 9-9-15; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.
DATES: October 9, 2015.

Time: 8:30 a.m. to 3:00 p.m.

ADDRESSES: The John Marshall Law School, 315 South Plymouth Court, Room 1200, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT:

Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: September 3, 2015.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2015-22756 Filed 9-9-15; 8:45 am]

BILLING CODE 2210-55-P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 08-15]

Sunshine Act Meeting

Foreign Claims Settlement Commission, U.S. Department of Justice, Washington, DC 20579.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, September 17, 2015:

10 a.m.—Oral hearings on Objection to Commission's Proposed Decisions in Claim Nos. LIB-III-021 and LIB-III-030.

11:45 a.m.—Issuance of Proposed Decisions in claims against Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616-6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2015-22923 Filed 9-8-15; 4:15 pm]

BILLING CODE 4410-BA-P

DEPARTMENT OF JUSTICE

[OMB Number 1105-0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Federal Coal Lease Request

AGENCY: Antitrust Division, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Antitrust Division (ATR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 9, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Attorney, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530 (phone: 202-307-6607).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Coal Lease Reserves.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are ATR-139 and

ATR-140. The applicable component within the Department of Justice is the Antitrust Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for profit. Other: None. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's existing coal reserves. The Department uses this information to determine whether the issuance, transfer or exchange of the federal coal lease is consistent with the antitrust laws.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20 respondents will complete each form, with each response taking approximately two hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40 annual burden hours associated with this collection, in total.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 4, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015-22765 Filed 9-9-15; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office

of Standards, Regulations, and Variances on or before October 13, 2015.

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist’s desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), barron.barbara@dol.gov (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–016–C.

Petitioner: Booth Energy LLC, P. O. Box 190, Lovely, Kentucky 41231.

Mines: Matrix Energy LLC, No. 1 Mine, MSHA I.D. No. 15–18575; Coalburg Enterprises Inc., No. 9 Mine,

MSHA I.D. No. 15–19625; Eagle Coal Company Inc., No. 25 Mine, MSHA I.D. No. 15–19488, all located in Martin County, Kentucky; and Coalburg Enterprises Inc., No. 7 Mine, MSHA I.D. No. 15–19509, located in Lawrence County, Kentucky.

Regulation Affected: 30 CFR 75.1506(a)(1) (Refuge alternatives).

Modification Request: The petitioner requests a modification of the existing standard to allow for alternate examination of Mine Shield underground shelters. The petitioner seeks modification of the standard as it applies to testing, examinations, and repairs by the refuge manufacturer (Mine Shield LLC located at 322 Crab Orchard Road, Lancaster, Kentucky 40444). The petitioner states that:

(1) There are a total of 17 shelters installed in the mines listed above, which are of three different types manufactured by Mine Shield LLC. Type A is the CF210A model; type B is the CF208A model; and type C is the CF208B model. All the units have been retrofitted as prescribed by MSHA.

(2) Testing and examination cannot be accomplished according to the manufacturer’s recommendation since Mine Shield LLC is no longer in business.

(3) The testing, examinations and repairs as required by the manufacturer’s recommendation cannot be conducted since the manufacturer’s technicians are no longer available. The petitioner proposes to:

—Have certified and qualified persons as defined in 30 CFR 75.151 conduct all testing, examination, and repairs. Items to be tested, examined, and repaired are listed in Attachment C of this petition. A sufficient number of trained personal will be provided, a list of qualified examiners will be posted at each mine, and proof of training will be verifiable by MSHA forms 5000–23.

—Adhere to and comply with all provisions of the Manufacturer’s Service Manual on all shelters.

—Train all examiners and repairmen through the WHA International Inc., Mr. Elliot Forsyth, BSME PE Chief, Technical Training Officer, Senior Oxygen Safety & Forensic Engineer, or his equivalent, on Level 1, Level 2, and Level 3.

—Train all examiners and repairmen in use of, and equip them with, a state of the art IBRID MX6 Gas Monitor (MSHA approval #07–LPA–130006, Part Approval #222–A080002–0) gas monitoring device manufactured by Industrial Scientific Inc.

—Record and retain the results of all examinations, tests, and repairs for

one year and make available to MSHA.

Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved part 48 training plan to the District Manager. These proposed revisions will specify initial and refresher training regarding the terms and conditions stated in the PDO.

The petitioner asserts that application of the existing standard will result in diminution of safety the miners and that the proposed alternative method will guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2015–017–C.

Petitioner: ICG Illinois, LLC, 5945 Lester Road, Williamsville, Illinois 62693.

Mine: Viper Mine, MSHA I.D. No. 11–02664, located in Sangamon County, Illinois.

Regulation Affected: 30 CFR 75.312(c) (Main mine fan examinations and records).

Modification Request: The petitioner requests a modification of the existing standard to allow the automatic fan signal device to be tested every 31 days without stopping the fan each time the device is tested. The petitioner states that:

1. The Viper Mine’s existing automatic fan signal device is a Model CT7100 Omega Circular Chart Recorder. The device continuously monitors and records the fan’s operating pressure.

2. The main mine fan has a normal operating pressure of approximately 8 inches of water gauge, as measured by the chart recorder.

3. An alarm signal will be activated when the fan pressure falls below 6 inches of water gauge. The petitioner proposes to:

—Install a lockable ball valve in the tubing connecting the chart recorder to the fan ductwork where pressure is measured and another between the tubing and the natural atmosphere.

—Close the valve to the atmosphere and open the valve to the fan ductwork during normal operation to allow the chart recorder to continuously monitor the fan pressure when the fan is running.

—Close the valve to the fan ductwork and open the valve to the atmosphere during the 31-day checks to allow the pressure to the chart recorder to drop and signal the alarm indicating loss of fan pressure. In conjunction with the proposed 31-day fan signal checks, the petitioner will conduct a fan

signal check by stopping the fan at intervals not to exceed six months.

The petitioner asserts that the proposed alternative method will guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2015–018–C.

Petitioner: Macoupin Energy, LLC, P.O. Box 615, 14300 Brushy Mound Road, Carlinville, Illinois 62626.

Mine: Shay #1 Mine, MSHA I.D. No. 11–00726, located in Macoupin County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests an amendment to a previously granted petition for modification of January 2, 2000, for the Monterey Coal Company, Docket Number M–1999–56–C, to train operators to lower the moldboard (grader blade) in emergency conditions, which will provide an equivalent level of safety to the standard's requirement that each wheel of the grader be equipped with services brakes. The petitioner states that:

1. On January 22, 2009, Macoupin Energy, LLC acquired Monterey #1 Mine from Monterey Coal Company and renamed the mine Shay #1 Mine. The MSHA Mine I.D. (No. 11–00726) and the address remain the same. MaRyan Mining, LLC is the contracted operator of the mine.

2. The approved petition is for a Getman Grader Model No. RDG 1504S, Serial No. 6345.

3. Macoupin Energy is requesting the approved petition be amended to add a second Getman Grader Model No. RDG 1504C, Serial No. 6718. This grader is similar to the currently approved grader and would also be provided an equivalent level of safety to the standard's requirement that each wheel of the grader be equipped with service brakes by training the grader operator to lower the moldboard in emergency conditions.

4. The grader has 12.00 × 20.00 tires, which also limit the speed to 10 miles per hour.

The petitioner requests that the terms and conditions of the previously granted petition be applied to the additional grader, which the petitioner asserts will provide an equivalent level of safety as the existing standard.

Dated: September 3, 2015.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2015–22736 Filed 9–9–15; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–061]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App) and the second United States Open Government National Action Plan (NAP) released on December 5, 2013, NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be on October 20, 2015, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by 5:00 p.m. EDT on October 19, 2015.

ADDRESSES: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW.; Archivist's Reception Room (Room 105); Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Christa Lemelin, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5773, or by email at Christa.Lemelin@nara.gov.

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: You may find all meeting materials at <https://ogis.archives.gov/foia-advisory-committee/meetings.htm>. The purpose of this meeting is to discuss the FOIA issues on which the Committee is focusing its efforts: oversight and accountability, proactive disclosures, and fees.

Procedures: The meeting is open to the public. Due to space limitations and access procedures, you must register in advance if you wish to attend the meeting. You will also go through security screening when you enter the building. Seating in the meeting room is limited and will be available on a first-come, first-served basis. Registration for the meeting will go live via Eventbrite on October 1, 2015, at 10:00 a.m. EDT. To register for the meeting, please do so at this Eventbrite link: <http://www.eventbrite.com/e/freedom-of-information-act-foia-advisory-committee-meeting-october-20-2015-registration-17926592922>. Members of the media who wish to register, those

who are unable to register online, and those who require special accommodations, should contact Christa Lemelin at the phone number, mailing address, or email address listed above.

Dated: August 31, 2015.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2015–22685 Filed 9–9–15; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0177]

Information Collection: “Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct Material”

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of the Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is titled, “Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.” The NRC regulations that are the subject of this information collection establish procedures and criteria for the issuance of licenses to manufacture or transfer certain items containing byproduct material. Information concerning the annual estimated burdens associated with the recordkeeping, reporting, and third party notification requirements imposed by these regulations is provided in the Supporting Statement for 10 CFR part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material, and NRC Form 653, 653A and 653B, “Transfers of Industrial Devices Report.”

DATES: Submit comments by November 9, 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 on or before this date.

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

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0177. 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:* Tremaine Donnell, Office of Information Services, Mail Stop: T-5 F53, 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: Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: INFOCOLLECTS.Resource@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2015-0177 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-2015-0177.

- *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 supporting statement and NRC Form 653, 653A and 653B are available in ADAMS under Accession Nos. ML15176A520 and ML15226A321.

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

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: INFOCOLLECTS.Resource@NRC.GOV.

B. Submitting Comments

Please include Docket ID NRC-2015-0177 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions 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, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material."

2. *OMB approval number:* 3150-0001.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 653, NRC Form 653A, and NRC Form 653B.

5. *How often the collection is required or requested:* There is a one-time submittal of information to receive a certificate of registration for a sealed source and/or device. Certificates of registration for sealed sources and/or devices can be amended at any time. In addition, licensee recordkeeping must be performed on an on-going basis, and reporting of transfer of byproduct material must be reported every calendar year, and in some cases, every calendar quarter.

6. *Who will be required or asked to respond:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale

or distribution to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device.

7. *The estimated number of annual responses:* 4,036 (2,807 NRC, 1,176 Agreement States and 53 third-party).

8. *The estimated number of annual respondents:* 713 (204 NRC licensees, registration certificate holders and 509 Agreement State licensees and registration certificate holders).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 162,393 (13,139 reporting hours, 149,176 recordkeeping hours, and 78 third-party disclosures hours).

10. *Abstract:* Part 32 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees, or persons exempt from licensing, medical use product distributors to specific licensees, and those requesting a certificate of registration for a sealed source and/or device. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a certificate of registration for a sealed source and/or device, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. As mentioned, 10 CFR part 32 also prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by the NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

For the Nuclear Regulatory Commission.
Tremaine Donnell,
NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015-22794 Filed 9-9-15; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

Cancellation Notice—OPIC September 10, 2015 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (80 FR 50051) on August 18, 2015. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., September 10, 2015 in conjunction with OPIC's September 17, 2015 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION:

Information on the hearing cancellation may be obtained from Catherine F.I. Andrade at (202) 336-8768, or via email at Catherine.Andrade@opic.gov.

Dated: September 8, 2015.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2015-22956 Filed 9-8-15; 4:15 pm]

BILLING CODE 3210-1-P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before November 9, 2015.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/

Privacy Act Officer. Denora Miller can be contacted by telephone at 202-692-1236 or email at pcf@peacecorps.gov. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Post Service Survey.

OMB Control Number: 0420-XXXX.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Returned Peace Corps Volunteers.

Burden to the Public

a. *Estimated number of respondents:* 12,000.

b. *Estimated average burden per response:* 5 minutes.

c. *Frequency of response:* One time.

d. *Annual reporting burden:* 1,000 hours.

e. *Estimated annual cost to respondents:* \$0.00.

General description of collection: The Peace Corps Office Health Service (OHS) is interested in the satisfaction levels of Returned Peace Corps Volunteers (RPCVs) with the services received through the Post-Service Unit. In addition, OHS is interested in the various experiences that RPCVs have with the Federal Employees' Compensation Act (FECA) program so that OHS can better explain and assist RPCVs through the FECA application process. The information will be used by OHS to improve both our customer service as well as improve our ability to provide RPCVs with information related to the FECA system and the process by which RPCVs can apply and obtain benefits.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on September 4, 2015.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2015-22804 Filed 9-9-15; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: U.S. Office of Personnel Management.

ACTION: October 22, 2015 Council Meeting.

SUMMARY: The Hispanic Council on Federal Employment (Council) meeting will be held on Thursday, October 22, 2015 at the location shown below from 2:00 p.m. to 3:30 a.m.

The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Director of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

ADDRESSES: U.S. Office of Personnel Management, 1900 E St. NW., Executive Conference Room, 5th Floor, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Sharon Wong, Acting Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606-0020 FAX (202) 606-6012 or email at sharon.wong@opm.gov.

U.S. Office of Personnel Management.

Beth F. Cobert,
Acting Director.

[FR Doc. 2015-22810 Filed 9-9-15; 8:45 am]

BILLING CODE 6820-B2-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–81 and CP2015–135; Order No. 2698]

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 Express Contract 27 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:* September 11, 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
- II. Notice of Commission Action
- III. Ordering Paragraphs

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 Express Contract 27 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 Express Contract 27 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 3, 2015 (Request).

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–81 and CP2015–135 to consider the Request pertaining to the proposed Priority Mail Express Contract 27 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 September 11, 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. MC2015–81 and CP2015–135 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 September 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2015–22819 Filed 9–9–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–80 and CP2015–134; Order No. 2697]

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 141 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:* September 11, 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
- II. Notice of Commission Action
- III. Ordering Paragraphs

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 141 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. MC2015–80 and CP2015–134 to consider the Request pertaining to the proposed Priority Mail Contract 141 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 September 11, 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. MC2015–80 and CP2015–134 to

¹ Request of the United States Postal Service to Add Priority Mail Contract 141 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 3, 2015 (Request).

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 September 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015-22818 Filed 9-9-15; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015-136; Order No. 2699]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of a Foreign Postal Operators 1 negotiated service agreement with China Post Group 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:* September 11, 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
- II. Notice of Commission Action
- III. Ordering Paragraphs

I. Introduction

On September 3, 2015, the Postal Service filed notice that it has entered into an additional Foreign Postal Operators 1 negotiated service agreement (Agreement).¹

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, September 3, 2015 (Notice).

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. CP2015-136 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 September 11, 2015. The public portions of the filing can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015-136 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow 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 September 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015-22820 Filed 9-9-15; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Product Change—Priority Mail 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:* September 10, 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 September 3, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 141 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2015-80, CP2015-134.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015-22718 Filed 9-9-15; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express 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:* September 10, 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 September 3, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 27 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2015-81, CP2015-135.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015-22721 Filed 9-9-15; 8:45 am]

BILLING CODE 7710-12-P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, October 8, 2015, at the

Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to take action on the minutes of a previous Board meeting; to provide the Chairperson's report; to provide the Interim Leadership Team's report; to provide partners' reports; to provide committee reports; to take action on the formation and composition of Board committees; to take action on the Audit, Finance, Governance and Human Resources, Planning and Real Estate, and Programs and Communications committee charters; and to receive public comment in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to October 1, 2015.

Time: The meeting will begin at 6:30 p.m. on Thursday, October 8, 2015.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Andrea Andersen, Acting General Counsel, the Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, California 94129-0052, Telephone: 415.561.5300.

Dated: September 3, 2015.

Andrea Andersen,
Acting General Counsel.

[FR Doc. 2015-22857 Filed 9-9-15; 8:45 am]

BILLING CODE 4310-4R-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75827; File No. SR-BX-2015-032]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish a New Auction, BX PRISM

September 3, 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 August 19, 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. On September 2, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX rules at Chapter VI, Section 9, which is currently reserved, to establish a price-improvement mechanism 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 purpose of the proposed rule change is to establish a price-improvement mechanism, "PRISM," on the Exchange, which includes auto-match functionality in which a Participant (an "Initiating Participant") may electronically submit for execution an order it represents as agent on behalf of a Public Customer,⁴ Professional

³ BX filed Amendment No. 1 to correct an inadvertent rule text error in Chapter VI, Section 9(ii)(A)(6) by removing stray brackets. Also, BX filed this amendment to conform rule text in Chapter VI, Section 9(ii)(K) to the language in the proposed 19b4 for clarity and consistency.

⁴ For purposes of this Rule, a Public Customer order does not include a Professional order, and therefore a Professional would not be entitled to Public Customer priority as described herein. A Public Customer means a person that is not a broker or dealer in securities. See BX Options Rules at Chapter I, Section 1(a)(50). A Public Customer order

customer, broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PRISM Order for electronic execution into the PRISM Auction ("Auction") pursuant to the proposed Rule.⁵ The Exchange intends to retitle Chapter VI, Section 9, which is currently reserved, as "Price Improvement Auction ("PRISM")." The Exchange believes that the PRISM auction, as proposed herein, will encourage BX Market Makers to quote at the NBBO with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BX. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM auction up to the size of their quote, a BX Market Maker will be encouraged to quote with additional size outside of the PRISM auction at the best and most aggressive prices. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX's market quality. Within the PRISM auction, BX believes that the rules that are proposed will encourage BX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process.

Auction Eligibility Requirements

All options traded on the Exchange are eligible for PRISM. Proposed Rule Chapter VI, Section 9(i) describes the circumstances under which an Initiating Participant may initiate an Auction. The Initiating Participant may initiate an Auction provided the conditions which follow are met: If the PRISM Order is for the account of a Public Customer the Initiating Participant must stop the entire PRISM Order at a price that is equal to or better than the National Best Bid/Offer displayed ("NBBO") on the opposite side of the market from the PRISM Order, provided that such price must be at least one minimum trading increment specified in Chapter VI, Section 5⁶ better than any limit order

does not include a Professional order for purposes of BX Rule at Chapter VI, Section 10(a)(C)(1)(a), which governs allocation priority. A "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. See BX Rules at Chapter I, Section 1(a)(49).

⁵ BX will only conduct an auction for Simple Orders.

⁶ The Board may establish minimum quoting increments for options contracts traded on BX

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the limit order book on the same side of the market as the PRISM Order.⁷ If the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer, the Initiating Participant must stop the entire PRISM at a price that is the better of: (i) The displayed BX BBO price improved by at least the minimum trading increment on the same side of the market as the PRISM Order, or (ii) the PRISM Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the displayed NBBO.⁸ There is a distinction between proposed Chapter VI, Section 9(i)(A) and Section 9(i)(B) in that a PRISM Order that is a Public Customer Order must trade at an improved price if there is a limit order on the book. A PRISM Order that is for a non-Customer (account of a broker-dealer or any other person or entity that is not a Public Customer) is always required to improve the same side of the BX BBO even if there is no resting limit order on the book.

PRISM Orders that do not comply with these aforementioned requirements are not eligible to initiate an Auction and will be rejected. Also, PRISM Orders submitted at or before the opening of trading are not eligible to initiate an Auction and will be rejected. PRISM Orders submitted during the final two seconds of the trading session in the affected series are not eligible to initiate an Auction and will be rejected. Finally, an Initiating Order may not be a solicited order for the account of any BX Options Market Maker assigned in the affected series.⁹

Auction Process

Only one Auction may be conducted at a time in any given series. Once commenced, an Auction may not be cancelled and would proceed as described herein. To initiate the Auction, the Initiating Participant must mark the PRISM Order for Auction processing, and specify either: (a) A single price at which it seeks to execute the PRISM Order (a "stop price"); (b) that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all PRISM Auction Notifications ("PAN") responses, and trading interest ("auto-match") in which case the PRISM Order will be stopped at the NBBO on the

Initiating Order side;¹⁰ or (c) that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses and trading interest at a price or prices that improve the stop price to a specified price (a "No Worse Than" or "NWT" price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side, and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the BX BBO on the same side of the market as the PRISM Order represents a limit order on the book, the stop price must be at least the Minimum Increment better than the booked limit order's limit price. Once the Initiating Participant has submitted a PRISM Order for processing as described herein, such PRISM Order may not be modified or cancelled. Under no circumstances will the Initiating Participant receive an allocation percentage of more than 50% with one competing order or 40% with multiple competing orders at the final price point, except for rounding, when competing orders have contracts available for execution.¹¹ Under any of the circumstances described above, the stop price or NWT price may be improved to the benefit of the PRISM Order during the Auction, but may not be cancelled. When starting an Auction, the Initiating Participant may submit the Initiating Order with a designation of "surrender" to other PRISM Participants ("Surrender"), which will result in the Initiating Participant forfeiting priority and trade allocation privileges.¹² If Surrender is specified the Initiating Order will only trade if there is not enough interest available to fully execute the PRISM Order at prices which are equal to or improve upon the stop price.¹³ The Surrender function will never result in more than the maximum allowable allocation percentage to the Initiating Participant than that which the Initiating Participant would have otherwise

received in accordance with the allocation procedures set forth in this Rule.¹⁴ Surrender information will not be available to other market participants and may not be modified.

When the Exchange receives a PRISM Order for Auction processing, a PAN detailing the side, size and options series of the PRISM Order will be sent over the Exchange's Specialized Quote Feed ("SQF").¹⁵ The Auction will last for a period of time, as determined by the Exchange and announced on the Nasdaq Trader Web site. The Auction period will be no less than one hundred milliseconds¹⁶ and no more than one second.¹⁷ Any person or entity may submit a response to the PAN, provided such response is properly marked specifying price, size and side of the market. PAN responses will not be visible to Auction participants, including the initiator, and will not be disseminated to OPRA. The minimum price increment for PAN responses and for an Initiating Participant's stop price and/or NWT price would be the minimum price improvement increment established pursuant to proposed rule at Chapter VI, Section 9(ii)(A)(1).¹⁸

NASDAQ OMX PHLX LLC ("Phlx") staff distributed a survey to all Phlx market maker firms inquiring as to the timeframe within which these market participants respond to an auction with a duration time ranging from less than fifty (50) milliseconds to more than one (1) second. The market maker firms on Phlx represent membership similar to BX Market Makers.¹⁹ An overwhelming number of the market maker firms that responded to the survey indicated that they were capable of responding to auctions with a duration time of at least 50 milliseconds.²⁰ Based on the results of the survey, the Exchange believes that allowing for an auction period of no less than one hundred (100) milliseconds

¹⁴ This concept of Surrender is similar to a forfeiture concept on the BOX Options Exchange LLC ("BOX"). See BOX Rule 7150(g) regarding PIP, its price improvement auction.

¹⁵ SQF is available to Market Makers at no cost. The Depth Feed is available to all other market participants that pay to subscribe to the service to receive broadcast information regarding auctions.

¹⁶ BOX's PIP auction is a duration of one hundred milliseconds, commencing on the dissemination of the PIP broadcast. See BOX Rule 7150(f)(1).

¹⁷ CBOE's AIM auction is a duration of one second. See CBOE Rule 6.74A(b)(1)(C).

¹⁸ See proposed rule at Chapter VI, Section 9(ii)(A)(2) through (6).

¹⁹ Ninety (90) percent of the BX Market Maker firms participated in the survey.

²⁰ Of the thirty five (35) Phlx market maker firms that were surveyed, twenty (20) of these market makers responded to the survey and of those respondents 100% indicated that that their firm could respond to auctions with a duration time of at least 50 milliseconds. This survey was conducted in May 2014.

Options. The minimum trading increment for options contracts traded on BX Options will be one (1) cent for all series ("Minimum Increment"). See BX Rules at Chapter VI, Section 5(b).

⁷ See proposed rule at Chapter VI, Section 9(i)(A).

⁸ See proposed rule at Chapter VI, Section 9(i)(B).

⁹ See proposed rule at Chapter VI, Section 9(i)(C) through (G).

¹⁰ This is accomplished by marking the Initiating Order with a market (MKT) price.

¹¹ See proposed rule at Chapter VI, Section 9(ii)(A)(1).

¹² The Chicago Board Options Exchange, Incorporated's ("CBOE") has a process whereby initiating participants may elect to receive last priority in an allocation. See CBOE Rule 6.74A(b)(3)(j) (Automated Improvement Mechanism ("AIM")). See also MIA Exchange Rule 5.15(A)(a)(2)(iii)(f). BX will allow surrender only for the entire amount, not for a partial amount.

¹³ Surrender will not be applied if both the Initiating Order and PRISM Order are Public Customer Orders.

and no more than one (1) second would provide a meaningful opportunity for BX Participants to respond to the PRISM Auction while at the same time facilitating the prompt execution of orders. The Exchange believes that BX Participants will have sufficient time to ensure competition for PRISM Orders, and could provide orders within the PRISM auction additional opportunities for price improvement.

BX believes the proposed rule change could provide orders within PRISM an opportunity for price improvement. Also, the shorter duration of time for the auction reduce the market risk for all Participants executing trades in PRISM. Initiating Participants are required to guarantee an execution at the NBBO or at a better price, and are subject to market risk while their PRISM Order is exposed to other BX Participants. While other Participants are also subject to market risk, those providing responses in PRISM may cancel or modify their orders. BX believes that the Initiating Participant acts in a critical role within the PRISM auction. Their willingness to guarantee the orders entered into PRISM an execution at NBBO or a better price is the keystone to an order gaining the opportunity for price improvement. BX believes that allowing for an auction period of no less than one hundred milliseconds and no more than one second will benefit Participants trading in PRISM. BX believes it is in these Participants' best interests to minimize the auction time while continuing to allow Participants adequate time to electronically respond. Both the order being exposed and the responding orders are subject to market risk during the auction.

While some Participants may wait to respond until later in the auction, presumably to minimize their market risk, the Exchange believes that a majority of the orders would respond earlier in the auction. Based on experience with the Phlx's PIXL mechanism on BX's affiliated exchange, BX believes that 100 milliseconds will continue to provide all market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk. The proposed rule allows people to respond quickly at the most favorable price while reducing the risk that the market will move against the response.

BX believes that its Participants operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a

second. BX believes that its Participants will be able to compete within 100 milliseconds and this is a sufficient amount of time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Finally, with respect to the impact of this proposal, more specifically the timing of the responses proposed herein, on System²¹ capacity, BX has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with auction transactions resulting specifically from the implementation of the auction period of no less than one hundred milliseconds and no more than one second. Additionally, in terms of overall capacity the Exchange represents that its Systems will be able to sufficiently maintain an audit trail for order and trade information with the PRISM auction.

A PAN response size at any given price point may not exceed the size of the PRISM Order. A PAN response with a size greater than the size of the PRISM Order will be rejected. A PAN response must be equal to or better than the NBBO at the time of receipt of the PAN response. PAN responses may be modified or cancelled during the Auction.²² A PAN response submitted with a price that is outside the displayed NBBO will be rejected. PAN responses on the same side of the market as the PRISM Order are considered invalid and will be rejected. Finally, multiple PAN responses from the same Participant may be submitted during the Auction. Multiple orders at a particular price point submitted by a Participant in response to a PAN may not exceed, in the aggregate, the size of the PRISM Order.²³

Conclusion of an Auction

The PRISM Auction would conclude at the earlier of the end of the Auction period, any time the BX BBO crosses the PRISM Order stop price on the same side of the market as the PRISM Order²⁴

or any time there is a trading halt²⁵ on the Exchange in the affected series.²⁶

If the Auction concludes at the earlier of the BX BBO crossing the PRISM Order stop price on the same side of the market as the PRISM Order or any time there is a trading halt on the Exchange in the affected series, the entire PRISM Order will be executed as follows: (1) In the case of the BX BBO crossing the PRISM Order stop price, the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to or better than the price of a limit order resting on the Order Book on the same side of the market as the PRISM Order, in which case the PRISM Order will be executed against that response, but at a price that is at the minimum trading increment better than the price of such limit order at the time of the conclusion of the Auction; or (2) in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PRISM Order will be executed solely against the Initiating Order. In the event of a trading halt, since the Initiating Participant has guaranteed that an execution will occur at the stop price (or better), and PAN responses offer no such guarantee, the stop price is the only valid price at which to execute the PRISM Order, and the Initiating Member is the appropriate contra-side.

Any unexecuted PAN responses will be cancelled.²⁷ An unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction.²⁸ If contracts remain from such unrelated order at the time the auction ends, they will be considered for participation in the order allocation process.²⁹

Order Allocation—Size Pro-Rata

At the conclusion of the Auction, the PRISM Order will be allocated at the best price(s) as follows for underlying symbols which are designated as Size

period scheduled to expire July 18, 2016, as proposed.

²⁵ This provision regarding the trading halt, as a conclusion to a PRISM Auction, shall be effective subject to a pilot period scheduled to expire July 18, 2016, as proposed.

²⁶ See proposed rule at Chapter VI, Section 9(ii)(B).

²⁷ See proposed rule at Chapter VI, Section 9(ii)(C). The Exchange will not route away any orders to another market center submitted into the PRISM auction.

²⁸ See proposed rule at Chapter VI, Section 9(ii)(D).

²⁹ This provision shall be effective for a pilot period scheduled to expire on July 18, 2016, as proposed.

²¹ The term "System" is defined in BX Rules at Chapter VI, Section 1(a).

²² The modification and cancellation of a PAN response will be similar to the manner in which a cancel-replace order would be handled outside of the auction process. See BX Rules at Chapter VI, Section 1(e)(1).

²³ See proposed rule at Chapter VI, Section 9(ii)(A)(7) through (10).

²⁴ This provision regarding the BX BBO crossing the PRISM Order stop price on the same side of the market as the PRISM Order, as a conclusion to a PRISM Auction, shall be effective subject to a pilot

Pro-Rata, as described in Chapter VI, Section 10(1)(C)(1)(a) with priority as is described below. First, Public Customer orders would have time priority at each price level. Next, the Initiating Participant would be allocated after Public Customer Orders.

If the Initiating Participant selected the single stop price option of the PRISM Auction, PRISM executions will occur at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after Public Customer interest is satisfied being allocated to the Initiating Participant the stop price. However, if only one other Participant matches the stop price, then the Initiating Participant may be allocated up to 50% of the contracts executed at such price. Remaining contracts would be allocated, pursuant to proposed Chapter VI, Section 9(ii)(E)(3) through (5), among remaining quotes, orders and PAN responses at the stop price. Thereafter, remaining contracts, if any, would be allocated to the Initiating Participant. The allocation will account for Surrender, if applicable.

If the Initiating Participant selected the auto-match option of the PRISM Auction the Initiating Participant would be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Participant would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the stop price is the final price) after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to proposed Chapter VI, Section 9(ii)(E)(3) through (5). Any remaining contracts would be allocated to the Initiating Participant.

In the case of a PRISM, if the Initiating Participant selected the “stop and NWT” option of the PRISM Auction, contracts would be allocated as follows: (i) First to quotes, orders and PAN responses at prices better than the NWT price (if any), beginning with the best price, pursuant to proposed Chapter VI, Section 9(ii)(E)(3) through (5), at each price point; and (ii) next, to quotes, orders and PAN responses at prices at the Initiating Participant’s NWT price and better than the Initiating Participant’s stop price, beginning with the NWT price. The Initiating Participant would be allocated an equal number of contracts as the aggregate size

of all other quotes, orders and PAN responses at each price point, except that the Initiating Participant would be entitled to receive up to 40% (multiple competing orders) or 50% (one competing order) of the contracts remaining at the final price point (including situations where the final price is the stop price), after Public Customer interest has been satisfied but before remaining interest. In the case of an Initiating Order with a NWT price at the market, the Initiating Participant would be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at all price points, except that the Initiating Participant would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price is the stop price), after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to proposed Chapter VI, Section 9(ii)(E)(3) through (5). Any remaining contracts would be allocated to the Initiating Participant.³⁰

Next, BX Options Market Makers that were at a price that is equal to or better³¹ than the displayed NBBO on the opposite side of the market from the PRISM Order at the time of initiation of the PRISM Auction (“Priority Market Makers”) would have priority up to their displayed quote size in the NBBO which was present when the PRISM Auction was initiated (“Initial Displayed NBBO”) at each price level at or better than such Initial Displayed NBBO after Public Customer and Initiating Participants have received allocations.³² Priority Market Maker quotes, orders, and PAN responses will be allocated pursuant to the Size Pro-Rata algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(B).³³

³⁰ See proposed rule at Chapter VI, Section 9(ii)(E)(2)(a) through (c).

³¹ Price Improving Orders are submitted to the System at price increments smaller than the displayed Minimum Price Variation and are displayed as part of the BX BBO at the Minimum Price Variation. See BX Rules at Chapter VI, Section 1(e)(6). Price Improving interest from a BX Market Maker will be considered as Priority Market Maker interest provided the BX BBO is equal to the NBBO.

³² MIAX allocates executions resulting from Priority Public Customer interest and priority Market Maker quotes ahead of other interest. MIAX’s system may designate Market Maker quotes as either priority quotes or non-priority quotes in accordance with the provisions in MIAX Rule 517(b). The Exchange is prioritizing Priority Market Maker allocations in the proposed BX PRISM Auction in a similar manner, ahead of other non-Public Customer interest.

³³ See proposed rule at Chapter VI, Section 9(ii)(E)(3).

Priority Market Maker status is only valid for the duration of the particular PRISM auction.

Next, Non-Priority Market Makers and Priority Market Maker interest which exceeded their displayed size in the Initial Displayed NBBO would have priority at each price level at or better than the Initial Displayed NBBO after Public Customer. Initiating Participants and Priority Market Makers have received allocations. Non-Priority Market Maker and Priority Market Maker interest which exceeded their displayed size in the Initial Displayed NBBO will be allocated pursuant to the Size Pro-Rata algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(B).³⁴

Finally, all other interest will be allocated, after proposed Chapter VI, Section 9(ii)(E)(1) through (4) have been satisfied. Such interest will be allocated pursuant to the Size Pro-Rata algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(B).³⁵

Order Allocation—Price/Time

At the conclusion of the Auction, the PRISM Order will be allocated at the best price(s) as indicated below for underlying symbols designated as Price/Time as described in proposed Chapter VI, Section 10(1)(C)(2)(i). First, Public Customer orders would have time priority at each price level. Next, the Initiating Participant would be allocated after Public Customer Orders.

If the Initiating Participant selected the single stop price option of the PRISM Auction, PRISM executions will occur at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after Public Customer interest is satisfied being allocated to the Initiating Participant the stop price. However, if only one other Participant matches the stop price, then the Initiating Participant may be allocated up to 50% of the contracts executed at such price. Remaining contracts would be allocated pursuant to proposed Chapter VI, Section 9(ii)(F)(3) and (4), among remaining quotes, orders and PAN responses at the stop price. Thereafter, remaining contracts, if any, would be allocated to the Initiating Participant. The allocation will account for Surrender, if applicable.

If the Initiating Participant selected the auto-match option of the PRISM Auction the Initiating Participant would be allocated an equal number of

³⁴ See proposed rule at Chapter VI, Section 9(ii)(E)(4).

³⁵ See proposed rule at Chapter VI, Section 9(ii)(E)(5).

contracts as the aggregate size of all other quotes, orders and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Participant would be entitled to receive up to 40% or 50% of the contracts remaining at the final price point (including situations where the stop price is the final price), after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to proposed Chapter VI, Section 9(ii)(F)(3) and (4). Any remaining contracts would be allocated to the Initiating Participant. In the case of a PRISM, if the Initiating Participant selected the “stop and NWT” option of the PRISM Auction, contracts would be allocated as follows: (i) First to quotes, orders and PAN responses at prices better than the NWT price (if any), beginning with the best price, pursuant to proposed Chapter VI, Section 9(ii)(F)(3) and (4), at each price point; and (ii) next, to quotes, orders and PAN responses at prices at the Initiating Participant’s NWT price and better than the Initiating Participant’s stop price, beginning with the NWT price. The Initiating Participant would be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at each price point, except that the Initiating Participant would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price is the stop price), after Public Customer interest has been satisfied but before remaining interest. In the case of an Initiating Order with a NWT price at the market, the Initiating Participant would be allocated an equal number of contracts as the aggregate size of all other quotes, orders and PAN responses at all price points, except that the Initiating Participant would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price is the stop price), after Public Customer interest has been satisfied but before remaining interest. If there are other quotes, orders and PAN responses at the final price point the contracts will be allocated to such interest pursuant to proposed Chapter VI, Section 9(ii)(F)(3) and (4). Any remaining contracts would be allocated to the Initiating Participant.

Next, Priority Market Makers that were at a price that is equal to or better than the displayed NBBO on the opposite side of the market from the PRISM Order at the time of initiation of

PRISM Auction would have priority up to their displayed quote size in the Initial Displayed NBBO at each price level better than the Initial Displayed NBBO, after Public Customer and Initiating Participants have received allocations. Priority Market Maker interest at prices better than the Initial Displayed NBBO will be allocated pursuant to the Size Pro-Rata algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(B). Priority Market Maker interest at a price equal to or inferior to the Initial Displayed NBBO will not have priority over other participants and will be allocated pursuant to the Price/Time algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(A).³⁶

Finally, all other interest will be allocated, after proposed Chapter VI, Section 9(ii)(E)(1) through (3) have been satisfied. Such interest will be allocated pursuant to the Price/Time algorithm set forth in Exchange Rules at Chapter VI, Section 10(1)(A).³⁷ The Exchange believes using the Price/Time allocation method for interest remaining after proposed Chapter VI, Section 9(ii)(E)(1) through (3) have been satisfied provides consistency with the underlying symbol allocation designation. Since the Exchange considers all interest present in the System, and not solely auction Responses, for execution against the PRISM Order, those participants who are not explicit responders to the auction will expect executions based on their Price/Time priority. In addition, the Exchange believes executing such remaining interest in a Price/Time fashion does not unfairly advantage/disadvantage one participant over another since executions are done with price priority first and time only becoming a factor when considering equally priced interest for execution.³⁸ Other options markets utilize Price/Time in auctions.³⁹ With respect to either allocation method, Size Pro-Rata or Price/Time, a single quote, order or PAN response would not be allocated a number of contracts that is greater than its size. Residual odd lots will be allocated in time-priority among interest with the highest priority. Rounding of

the Initiating Participant will be up or down to the nearest integer,⁴⁰ all other rounding is down to the nearest integer. If rounding results in an allocation of less than one contract, then one contract will be allocated to the Initiating Participant only if the Initiating Participant did not otherwise receive an allocation.⁴¹ The Initiating Participant is not eligible to receive residual contracts if already allocated, unless no other interest is available to trade. If there are PAN responses that cross the then-existing NBBO (provided such NBBO is not crossed), such PAN responses will be executed, if possible, at their limit price(s). If the price of the PRISM Auction is the same as that of an order on the limit order book on the same side of the market as the PRISM Order, the PRISM Order may only be executed at a price that is at least one minimum trading increment better than the resting order’s limit price or, if such resting order’s limit price is equal to or crosses the stop price, then the entire PRISM Order will trade at the stop price with all better priced interest being considered for execution at the stop price. Any unexecuted PAN responses will be cancelled.⁴²

With respect to Intermarket Sweep Orders or “ISO” Orders,⁴³ under any allocation, if a PRISM Auction is initiated for an order designated as an ISO Order, all executions which are at a price inferior to the Initial Displayed NBBO would be allocated pursuant to the Size Pro-Rata execution algorithm, as described in Chapter VI, Section 10(1)(C)(1)(a), or Price/Time execution algorithm, as described in Chapter VI, Section 10(1)(C)(2)(i), and the aforementioned priority in proposed Chapter VI, Section 9(ii)(E) and (F) would not apply, with the exception of allocating to the Initiating Participant, which will be allocated in accordance with the priority as specified in proposed Chapter VI, Section 9(ii)(E)

⁴⁰ When the decimal is exactly 0.5, the rounding direction is up to the nearest integer.

⁴¹ Similar rounding exists for BX’s Direct Market Maker and Lead Market Maker. See BX Rules at Chapter VI, Section 10.

⁴² See proposed rule at Chapter VI, Section 9(ii)(G)–(J).

⁴³ An “Intermarket Sweep Order” or “ISO” are limit orders that are designated as ISOs in the manner prescribed by BX and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in BX Rules at Chapter XII, Section 1. ISOs may have any time-in-force designation except WAIT, are handled within the System pursuant to BX Rules at Chapter VI, Section 10 and would not be eligible for routing as set out in BX Rules at Chapter VI, Section 11. ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. See BX Options Rules at Chapter VI, Section 1(e)(7).

³⁶ See proposed rule at Chapter VI, Section 9(ii)(F)(3).

³⁷ See proposed rule at Chapter VI, Section 9(ii)(F)(4).

³⁸ See proposed rule at Chapter VI, Section 9(ii)(F)(2)(a) through (c).

³⁹ The International Securities Exchange, LLC (“ISE”) executes Priority Customer interest in a Price/Time fashion within its PIM auction. See ISE Rule 723. Complex orders are also executed within its auction in price time priority. See ISE Rule 722. BOX also permits Price/Time priority within PIP and COPIP. See BOX Rules 7150(g) and 7245(g). See also example number 14 below.

and (F).⁴⁴ Specifically, a PRISM ISO is the transmission of two orders for crossing without regard for better priced Protected Bids or Protected Offers because the Participant transmitting the PRISM ISO to the Exchange has, simultaneously with the routing of the PRISM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRISM Auction price and has swept all interest in the Exchange's book priced better than the proposed PRISM Auction starting price. The Exchange will accept a PRISM ISO provided the order adheres to the PRISM Order acceptance requirements, but without regard to the NBBO. The Exchange will execute the PRISM ISO in the same manner as other PRISM Orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with submitting the PRISM ISO Order. There is no other impact to PRISM functionality. Specifically, liquidity present at the end of the PRISM Auction will continue to be included in the PRISM Auction as it is with PRISM Orders not marked as ISOs. This order type is offered by other options exchanges.⁴⁵

With respect to Post Only Orders resting on the book at the time the PRISM Auction is initiated,⁴⁶ these orders will be executed if such order would not result in the removal of liquidity when executing in the PRISM Auction, in accordance with Chapter VI, Section 1(e)(10). A Post Only Order will

⁴⁴ See proposed rule at Chapter VI, Section 9(ii)(K).

⁴⁵ See NASDAQ OMX PHLX LLC Rules at 1080(n). PIXL ISO Orders are permissible. See also CBOE Rule 6.53(q).

⁴⁶ "Post-Only Orders" are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel. See BX Options Rules at Chapter VI, Section 1(e)(10).

be cancelled if it is eligible for an execution in the PRISM Auction and would be considered the remover of liquidity.⁴⁷ Post Only Orders submitted by a Marker Maker during a PRISM Auction will not be considered as Priority Market Maker interest⁴⁸ but will be considered pursuant to proposed Chapter VI, Section 9(ii)(E)(4) and Section 9(ii)(F)(4).

Regulatory Concerns—Bona Fide Transactions

The PRISM Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of this Rule and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 if an Initiating Participant submits a PRISM Order (initiating an Auction) and also submits its own PAN response in the same Auction.⁴⁹ A pattern or practice of submitting multiple orders in response to a PAN at a particular price point that exceed, in the aggregate, the size of the PRISM Order, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110.⁵⁰ A pattern or practice of submitting unrelated orders or quotes that cross the stop price, causing a PRISM Auction to conclude before the end of the PRISM Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110. It will also be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 to engage in a pattern of conduct where the Initiating Participant breaks up a PRISM Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in proposed subparagraph (ii)(E) and (ii)(F) to Chapter VI, Section 9.⁵¹

Crossing and Agency Orders

In lieu of the procedures in proposed paragraphs (i)–(ii) to Chapter VI, Section 9, an Initiating Participant may enter a PRISM Order for the account of a Public

⁴⁷ See proposed rule at Chapter VI, Section 9(ii)(L).

⁴⁸ Only Market Maker interest submitted through SQF will be eligible for Priority Market Maker interest.

⁴⁹ See proposed rule at Chapter VI, Section 9(iii). BX Rule 2110 states that, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

⁵⁰ See proposed rule at Chapter VI, Section 9(iv).

⁵¹ See proposed rule at Chapter VI, Section 9(v).

Customer paired with an order for the account of a Public Customer and such paired orders will be automatically executed without a PRISM Auction. The execution price for such a PRISM Order must be expressed in the quoting increment applicable to the affected series. Such an execution may not trade through the NBBO or at the same price as any resting Public Customer order.⁵²

BX Rules at Chapter VII, Section 12⁵³ prevents a Participant from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Participant was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for a Participant to establish a relationship with a Public Customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It would be a violation of BX Rules at Chapter VII, Section 12 for a Participant to circumvent Chapter VII, Section 12 by providing an opportunity for (i) a Public Customer affiliated with the Participant, or (ii) a Public Customer with whom the Participant has an arrangement that allows the Participant to realize similar economic benefits from the transaction as the Participant would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as PRISM Public Customer-to-Public Customer immediate crosses.⁵⁴

Pilot Program Information to the Commission

Subject to a Pilot expiring July 18, 2016, there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period,

⁵² See proposed rule at Chapter VI, Section 9(vi).

⁵³ BX Rules at Chapter VI, Section 12, entitled "Anonymity" provides, "The transaction reports produced by the System will indicate the details of the transactions, and would not reveal contra party identities. BX would reveal a Participant's identity in the following circumstances: (1) When a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades; (2) for regulatory purposes or to comply with an order of an arbitrator or court; (3) if both Participants to the transaction consent; and (4) unless otherwise instructed by a member, BX will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's order has been decremented by another order submitted by that same member.

⁵⁴ See proposed rule at Chapter VI, Section 6(vi)(a).

the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders, there are opportunities for significant price improvement for orders executed through PRISM and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.⁵⁵

The Exchange represents that, in support of its proposed pilot program, it proposes three components on a pilot basis: (1) Auction eligibility requirements; (2) the early conclusion of the PRISM Auction; and (3) no minimum size requirement of orders. The Exchange will provide the following additional information on a monthly basis:

(1) The number of contracts (of orders of 50 contracts or greater) entered into the PRISM;

(2) The number of contracts (of orders of fewer than 50 contracts) entered into the PRISM;

(3) The number of orders of 50 contracts or greater entered into the PRISM; and

(4) The number of orders of fewer than 50 contracts entered into the PRISM.

Implementation

If the Commission approves this proposed rule change, as amended, the Exchange anticipates that it will deploy PRISM within 45 days of approval. Members will be notified of the deployment date by way of an Options Trader Alert posted on the Exchange's Web site.

Examples of PRISM Order Executions

EXAMPLE #1 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (PRISM Contra & Priority Market Maker interest fully satisfies PRISM order for Pro-Rata or Price/Time):

NBBO = .97 – 1.03

BX BBO = .95 – 1.03 (60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 100 contracts stopped at 1.02 is received.
Auction begins.

During auction, Market Maker C responds to sell 20 at 1.02 and Market Maker A and Market Maker B each respond to sell 30 contracts at 1.02.

Auction ends, PRISM contra is allocated 40 contracts at 1.02 (40% carve out); Market Maker A and Market

Maker B each trade 30 contracts since they are Priority Market Makers for 30 contracts. Market Maker C does zero.

The outcome in this example is the same regardless of the underlying symbol being designated as Pro-Rata or Price/Time.

EXAMPLE #2 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Pro-Rata among Priority Market Maker interest):

NBBO = .97 – 1.03

BX BBO = .95 – 1.03(60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 100 contracts stopped at 1.02 is received.
Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 30 contracts at 1.02, and Market Maker D responds to sell 10 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price, PRISM contra is allocated 36 contracts at 1.02 (40% carve out); Market Maker A and Market Maker B each trade 27 contracts (pro rata among Priority Market Makers A and B). Market Maker D does zero since there were no contracts open after Priority Market Maker A and Priority Market Maker B were filled at that price.

EXAMPLE #3 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Price/Time symbol with contracts trading at improving prices and at the initial NBBO price):

NBBO = .97 – 1.03

BX BBO = .95 – 1.03(60) with Market Maker A and Market Maker B offering 30 contracts each (Market Maker A arrived first)

PRISM Order to buy 90 contracts stopped at 1.03 is received
Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 10 contracts at 1.02, and Market Maker D responds to sell 10 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price; Market Maker A and Market Maker B each trade 10 contracts at 1.02 since they have priority status for up to 30 contracts; Market Maker D then trades 10 contracts at 1.02; PRISM Contra trades 40% or 20 contracts at the stop price of 1.03.

Assuming Market Maker A was at the BX BBO of 1.03 before Market Maker B, Market Maker A would execute 30 contracts at 1.03. Market Maker B would not trade any at 1.03 since the order is

filled before getting to his quote in a price time fashion.

EXAMPLE #4 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Pro-Rata symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 90 contracts stopped at 1.03 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 50 contracts at 1.02 (priority status for 30 contracts each and non-priority status for 20 contracts each), and Market Maker D responds to sell 50 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price; Market Maker A and Market Maker B each trade 30 contracts at 1.02 since they have priority up to their size at the NBBO when the auction started; Market Maker A, Market Maker B, and Market Maker D then pro-rata split the balance of 20 contracts at 1.02 based on their remaining interest size with Market Maker A being allocated 4 contracts (=20/90*20), Market Maker B being allocated 4 (=20/90*20) contracts, and Market Maker D being allocated 11 contracts (=50/90*20) and the residual 1 contract being allocated to one of the 3 MMs (Market Maker A) in time priority.

EXAMPLE #5 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Initiating Order utilizes Auto-Match specifying the No Worse Than (NWT) feature for Pro-Rata or Price/Time):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each

PRISM Order to buy 90 contracts stopped at 1.03 with an NWT of 1.02 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 50 contracts at 1.02 (priority status for 30 contracts each and non-priority status for 20 contracts each), and Market Maker D responds to sell 50 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price; PRISM Contra is allocated 40% or 32 contracts at 1.02 since it will be the final price point, Market Maker A and Market Maker B

⁵⁵ See proposed rule at Chapter VI, Section 6(vii).

each trade 24 contracts at 1.02 since they have priority ahead of Market Maker D up to their size at the NBBO when the auction started.

The outcome in this example is the same regardless of Pro-Rata or Price/Time designation.

EXAMPLE #6 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Pro-Rata Symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO and Initiating Order utilizes NWT feature):

NBBO = .97–1.03

BX BBO = .95–1.03 (60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 150 contracts stopped at 1.03 with an NWT of 1.02 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 50 contracts at 1.02, and Market Maker D responds to sell 50 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price; PRISM Contra is allocated 40% or 56 contracts at 1.02 since it will be the final price point; Market Maker A and Market Maker B each trade 30 contracts at 1.02 since they have priority up to their size at the NBBO when the auction started; Market Maker A, Market Maker B, and Market Maker D then pro-rata split the balance with Market Maker A and Market Maker B each trading 5 additional contracts at 1.02 (20/90*24) and Market Maker D trading 13 contracts at 1.02 (50/90*24). The residual 1 contract will be allocated among the three MM (Market Maker A) in time priority.

EXAMPLE #7 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Price/Time symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO, Initiating Order utilizes NWT feature, and quotes move during Auction):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 150 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond in that time order (A before B) to sell 50 contracts at 1.02 (30 of the 50 contracts are considered as Priority

Market Maker interest), and Market Maker D responds to sell 50 contracts at 1.02.

During auction, Market Maker A moves his quote and BX BBO becomes .95–1.02 for 30 contracts and NBBO becomes .97–1.02. Market Maker A maintains his Priority Market Maker status.

Auction ends, Market Maker C trades 10 at 1.01 and PRISM Contra matches and trades 10 at 1.01 based on his NWT price of 1.01; PRISM Contra is allocated 40% or 52 contracts at 1.02 since it will be the final price point; Market Maker A and Market Maker B each trade 30 contracts at 1.02 since they have priority up to their size at the NBBO when the auction started (since Market Maker A has both a response and quote interest, Market Maker A's 30 contracts are allocated in a time fashion among Market Maker A's interest at 1.02 with each of the responses trading all 30 contracts); the residual 18 contracts are traded in a Price/Time fashion at 1.02 among residual Market Maker interest with Market Maker A response trading all 18 contracts.

EXAMPLE #8 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Pro Rata symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO and Initiating Order utilizes NWT feature):

NBBO = .97–1.03

BX BBO = .95–1.03 with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 150 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond in that order to sell 50 contracts at 1.02 (30 of the 50 contracts will be considered as Priority Market Maker), and Market Maker D responds to sell 50 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 and PRISM Contra matches and trades 10 at 1.01; PRISM Contra is allocated 40% or 52 contracts at 1.02 since it will be the final price point; remaining allocation is in Pro-Rata fashion with priority Market Maker interest trading ahead of non-Priority Market Maker interest, Market Maker A and Market Maker B each trade 30 contracts as Priority Market Maker then Market Maker A, Market Maker B, and Market Maker D Pro Rata split the balance with Market Maker A and Market Maker B each trading 4 contracts at 1.02 (20/90 *18) and Market Maker D trading 10 contracts at 1.02 (50/90*18).

EXAMPLE #9 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Price/Time symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO, Initiating Order utilizes NWT feature, and quotes move during Auction and Public Customer Order received):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 150 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond in that order to sell 50 contracts at 1.02 (30 of the 50 contracts are considered as Priority Market Maker), and Market Maker D responds to sell 50 contracts at 1.02.

During auction, Market Maker A moves his quote (but maintains Priority Market Maker status) and BX BBO becomes .95–1.02 for 30 contracts and NBBO becomes .97–1.02. Then, a Public Customer order is received on the opposite side of the PRISM Order, offering 10 contracts at 1.02 which does not cause an early auction termination.

Auction ends, Market Maker C trades 10 at 1.01 and PRISM Contra matches and trades 10 at 1.01; Public Customer order then trades 10 contracts at 1.02. After Public Customer is satisfied, PRISM Contra is allocated 40% of remaining which equates to 48 contracts; Priority Market Maker interest is then traded with Market Maker A trading 30 contracts at 1.02 (all allocated to response since first in time priority of Market Maker A interest at 1.02) and Market Maker B response trading 30 contracts at 1.02. The residual 12 contracts are allocated among remaining Market Maker interest at 1.02 in a Price/Time fashion, with Market Maker A response trading all 12 contracts.

EXAMPLE #10 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Price/Time symbol with Market Makers receiving both priority status and non-priority status based on their size at initial NBBO, Initiating Order utilizes NWT feature, and Priority Market Maker quote moves during Auction and maintains priority status and Public Customer Order received):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each
PRISM Order to buy 150 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A responds to sell 10 contracts at 1.02 (considered as Priority Market Maker), Market Maker B responds to sell 50 contracts at 1.02 (30 of the 50 contracts are considered as Priority Market Maker), and Market Maker D responds to sell 50 contracts at 1.02.

During auction, Market Maker A moves his quote (maintains Priority Market Maker status) and BX BBO becomes .95–1.02 for 10 contracts and NBBO becomes .97–1.02.

Then, a Public Customer order is received offering 10 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 and PRISM Contra matches and trades 10 at 1.01; Public Customer order then trades 10 contracts at 1.02. After Public Customer is satisfied, PRISM Contra is allocated 40% of remaining which equates to 48 contracts; Priority Market Maker interest is then traded with Market Maker A trading 20 contracts at 1.02 (all of his interest, response and quote, since it is less than the 30 he is entitled to as a priority Market Maker) and Market Maker B response trades 30 contracts at 1.02. The remaining 22 contracts are allocated in price time fashion among remaining Market Maker interest at 1.02 with Market Maker B response trading 20 contracts and Market Maker D response trading 2 contracts.

EXAMPLE #11 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Price/Time symbol with all executions occurring at initial NBBO price):

NBBO = .97–1.03

BX BBO = .95–1.03 (60) with Market Maker A and Market Maker B offering 30 contracts each arriving in that order

PRISM Order to buy 100 contracts stopped at 1.03 is received.

Auction begins.

During auction, Market Maker C responds to sell 20 at 1.03 and Public Customer offers 2 contracts at 1.03.

Auction ends, Public Customer trades 2 contracts at 1.03 and PRISM contra is allocated 40% of residual or 39 contracts at 1.03; remaining allocation is purely Price/Time with Market Maker A trading 30 contracts and Market Maker B trading 29 contracts.

EXAMPLE #12 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Pro-Rata symbol with all executions occurring at initial NBBO price and Public Customer order received):

NBBO = .97–1.03

BX BBO = .95–1.03 (60) with Market Maker A and Market Maker B offering 30 contracts each arriving in that order

PRISM Order to buy 100 contracts stopped at 1.03 is received.

Auction begins.

During auction, Market Maker C responds to sell 20 at 1.03 and Public Customer offers 2 contracts at 1.03.

Auction ends, Public Customer trades 2 contracts at 1.03 and PRISM contra is allocated 40% of residual or 39 contracts at 1.03; remaining allocation is pro-rata among Priority Market Maker interest with Market Maker A trading 29 contracts (30/60*59), Market Maker B trading 29 contracts (30/60*59), and the residual 1 contract being allocated to Market Maker A based on time.

EXAMPLE #13 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Price/Time symbol with Initiating Order specifying Auto-Match with the NWT feature and non-Market Maker interest is present for execution):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each (arriving in that order)

PRISM Order to buy 300 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 5 at 1.01, Market Maker A responds to sell 10 contracts at 1.02, Market Maker B responds to sell 50 contracts at 1.02 (30 of the 50 contracts are considered as Priority Market Maker), and Market Maker D responds to sell 40 contracts at 1.02.

During auction, Market Maker A moves his quote for 10 contracts at 1.02, now alone at that price, (maintains Priority Market Maker status) and BX BBO becomes .95–1.02 for 10 contracts and a Firm order arrives offering 10 contracts at 1.02.

Auction ends, Market Maker C trades 5 at 1.01 and PRISM Contra matches and trades 5 at 1.01; All 1.02 interest is then allocated as follows: Priority Market Maker interest is fully allocated with Market Maker A response trading 10, Market Maker B response trading 30, and Market Maker A quote trading 10 at 1.02. Non-Priority MM is allocated in Price/Time with Market Maker B trading an additional 20 contracts and Market Maker D trading 40 contracts at 1.02. After all Market Maker interest is satisfied, the Firm order is allocated its full size of 10 contracts at 1.02. The PRISM Contra order matches the full volume trading at 1.02 (b/c of NWT price) which is 120 contracts. The remaining 50 contracts are traded at 1.03 with the PRISM Contra trading 40% of remaining or 20 contracts. The other 30 contracts are traded in a Pro-Rata fashion in accordance with the underlying algorithm with Market Maker A and Market Maker B as Priority Market Maker each trading 15 contracts at 1.03.

The other 25 contracts are traded in Price/Time fashion in accordance with the underlying algorithm with Market Maker B trading all 25 contracts at 1.03.

EXAMPLE #14 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Pro-Rata symbol with Initiating Order specifying Auto-Match with the NWT feature, non-Market Maker interest is present for execution, Priority Market Maker has multiple price levels of interest, and executions occurring at initial NBBO price):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each (arriving in that order)

PRISM Order to buy 300 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction, Market Maker C responds to sell 5 at 1.01, Market Maker A responds to sell 10 contracts at 1.02 (considered as Priority Market Maker), Market Maker B responds to sell 50 contracts at 1.02 (30 of the 50 contracts are considered as Priority Market Maker), Market Maker D responds to sell 40 contracts at 1.02, and Market Maker A responds with 30 additional contracts at 1.03 (considered as Priority Market Maker).

During auction, Market Maker A moves his quote (maintain Priority Market Maker status) and BX BBO becomes .95–1.02 for 10 contracts and a Firm order arrives offering 10 contracts at 1.02.

Auction ends, Market Maker C trades 5 at 1.01 and PRISM Contra matches and trades 5 at 1.01; All 1.02 interest is then allocated as follows: Priority Market Maker interest is fully allocated with Market Maker A response trading 10, Market Maker B response trading 30, and Market Maker A quote trading 10 at 1.02. Non-priority Market Maker is allocated with Market Maker B trading an additional 20 contracts and Market Maker D trading 40 contracts at 1.02. After all Market Maker interest is satisfied, the Firm order is allocated its full size of 10 contracts at 1.02. The PRISM Contra order matches the full volume trading at 1.02 (b/c of NWT price) which is 120 contracts. The remaining 50 contracts are traded at 1.03 with the PRISM Contra trading 40% of remaining or 20 contracts. The other 30 contracts are traded in a Pro-Rata fashion in accordance with the underlying algorithm with Market Maker A and Market Maker B as Priority Market Maker each trading 15 contracts at 1.03.

EXAMPLE #15 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(c)(i)) (Price/Time symbol with Market Makers receiving both priority status and non-priority status at multiple price levels based on their size at initial NBBO):

NBBO = .97–1.03

BX BBO = .95–1.03 (20) with Market Maker A and Market Maker B offering 10 contracts each

PRISM Order to buy 200 contracts stopped at 1.03 with an NWT of 1.01 is received.

Auction begins.

During auction (in the following order), Market Maker C responds to sell 10 at 1.01, Market Maker A responds to sell 40 at 1.01 (10 of 40 contracts is considered Priority Market Maker), Market Maker A and Market Maker B each respond to sell 50 contracts at 1.02 (10 of 50 contracts is considered Priority Market Maker), and Market Maker D responds to sell 50 contracts at 1.02.

During auction, Market Maker A moves his quote (maintains Priority Market Maker status) and BX BBO becomes .95–1.02 for 10 contracts and NBBO becomes .97–1.02.

Then, a Public Customer order is received offering 10 contracts at 1.02.

Auction ends, Market Maker A trades 10 contracts at 1.01 as a priority MM, then Market Maker C trades 10 at 1.01 in price/time and Market Maker A trades his additional 30 contracts at 1.01 which outsized his priority status, and PRISM Contra matches and trades a total of 50 at 1.01; Public Customer order of 10 contracts trades at 1.02 then PRISM Contra is allocated 40% of 90 or 36 contracts at 1.02. The remaining 54 contracts are then allocated at 1.02 with Market Maker A and Market Maker B trading 10 contracts each as priority Market Maker and 34 contracts are then allocated in price/time to Market Maker A at 1.02.

EXAMPLE #16 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Price/Time symbol with Initiating Participant utilizing Surrender):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each

PRISM Order to buy 20 contracts stopped at 1.03 marked as ‘Surrender’ is received.

Auction begins.

During auction, Market Maker C responds to sell 5 at 1.01, Market Maker A responds to sell 5 contracts at 1.02, Market Maker B responds to sell 20 contracts at 1.02, and Market Maker D responds to sell 20 contracts at 1.02.

During auction, Market Maker A moves his quote (maintains Priority

Market Maker status) and BX BBO becomes .95–1.02 for 5 contracts and NBBO becomes .97–1.02.

Auction ends, Market Maker C trades 5 at 1.01; Priority Market Maker interest trades the remaining 15 contracts in a Pro-Rata fashion: Market Maker A executes 5 contracts (10/30*15) with all 5 being given to the Market Maker A response since he was first in time order of Market Maker A interest at 1.02 and Market Maker B response executes 10 contracts (20/30*15) at 1.02. The PRISM Contra executes no contracts.

EXAMPLE #17 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Pro-Rata symbol with Initiating Participant utilizing Surrender):

NBBO = .97–1.03

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each

PRISM Order to buy 100 contracts stopped at 1.02 marked as ‘Surrender’ is received.

Auction begins.

During auction, Market Maker C responds to sell 5 at 1.01, Market Maker A responds to sell 5 contracts at 1.02, Market Maker B responds to sell 40 contracts at 1.02, and Market Maker D responds to sell 20 contracts at 1.02.

During auction, Market Maker A moves his quote (maintains Priority Market Maker status) and BX BBO becomes .95–1.02 for 5 contracts and NBBO becomes .97–1.02.

Auction ends, Market Maker C trades 5 at 1.01; Priority Market Maker interest at 1.02 then trades with Market Maker A response executing 5 contracts, Market Maker B response volume with Priority status executes 30 contracts, and Market Maker A quote executes 5 contracts; Non Priority Market Maker interest at 1.02 then executes with Market Maker B trading 10 contracts and Market Maker D trading 20 contracts. The PRISM Contra then executes the remaining 25 contracts at 1.02 since there is no other interest to satisfy the PRISM Order at a price equal to or better than the stop price of 1.02.

EXAMPLE #18 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Price Improving Orders counted as Priority Market Maker interest):

NBBO = .90–1.05 in a non-penny stock (.05 MPV).

BX BBO = .90–1.05(60) with Market Maker A and Market Maker B offering 30 contracts each (Market Maker A arrived first); Market Maker A quote is .90–1.04(30) which is displayed at 1.05 due to this being a non-penny symbol and Market Maker B quote is .90–1.05(30). Both Market Maker A and

Market Maker B have Priority status since quotes are displayed at NBBO price of 1.05.

PRISM Order to buy 90 contracts stopped at 1.05 is received. Auction begins.

During auction, Market Maker C responds to sell 10 at 1.01, Market Maker A and Market Maker B each respond to sell 10 contracts at 1.02, and Market Maker D responds to sell 10 contracts at 1.02.

Auction ends, Market Maker C trades 10 at 1.01 since he was only interest offered at best price; Market Maker A and Market Maker B each trade 10 contracts at 1.02 since they have priority status for up to 30 contracts; Market Maker D then trades 10 contracts at 1.02; Market Maker A then executes his quote of 30 contracts at 1.04. PRISM Contra trades 50% or 10 contracts at the stop price of 1.05 since only one Market Maker at 1.05. Market Maker B then trades the remaining 10 contracts at 1.05.

The outcome of this example is the same in both Pro-Rata or Price/Time allocation models.

EXAMPLE #19 (Related to proposed Chapter VI, Section 9(ii)(A)(1)(a)) (Price/Time symbol with Initiating Participant utilizing Surrender and no responders):

BX BBO = .95–1.03(60) with Market Maker A and Market Maker B offering 30 contracts each.

PRISM Order to buy 20 contracts stopped at 1.02 marked as ‘Surrender’ is received.

Auction begins.

During auction, Market Maker C quotes .95–1.02 for 10 contracts and BX BBO becomes .95–1.02 for 10 contracts and NBBO becomes .97–1.02.

During auction, Market Maker A moves his quote (maintains Priority Market Maker status) and joins the BX BBO at .95–1.02 for 10 contracts and NBBO remains .97–1.02.

Auction ends, Priority MM interest trades first: Market Maker A gets allocated 10 contracts of PRISM Order. Non priority interest trades next: Market Maker C gets allocated 10 contracts. The PRISM contra executes no contracts. Market Maker B receives no allocation in this example.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵⁷ in particular, in that it is designed to prevent fraudulent and manipulative

⁵⁶ 15 U.S.C. 78f(b).

⁵⁷ 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposal will result in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. PRISM should promote and foster competition and provide more options contracts with the opportunity for price improvement. As a result of the increased opportunities for price improvement, the Exchange believes that participants will use PRISM to increase the number of Public Customer orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange believes that the PRISM auction will encourage BX Market Makers to quote at the NBBO with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BX. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM auction, a BX Market Maker will be encouraged to quote outside of the PRISM auction at their best and most aggressive prices with additional size. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX's market quality. Within the PRISM auction, BX believes that the rules that are proposed will encourage BX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process.

Further, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for agency orders. The Exchange believes that its proposal will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for agency orders and assuring that Public Customers on the book are protected. The new solicitation mechanism should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants, investors, and traders. The Exchange has proposed a range between

no less than one hundred milliseconds and no more than one second for the duration of the PRISM Auction; therefore the proposed rule change will provide investors with more timely execution of their options orders than a mechanism that has a one second auction, while ensuring that there is an adequate exposure of orders in BX PRISM. The Exchange preliminary expects to use a default of 100 milliseconds for all symbols. The time will be announced in an Options Trader Alert. The proposed auction response time, no less than one hundred milliseconds and no more than one second, should allow investors the opportunity to receive price improvement through PRISM while reducing market risk. The Exchange believes a briefer time period reduces the market risk for the Initiating Participant, versus an auction with a one second period, as well as for any Participant providing orders in response to a broadcast. As such, BX believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public interest. The Exchange believes the proposed rule change is not unfairly discriminatory because the PRISM duration would be the same for all Participants and symbols. All Participants will have an equal opportunity to respond with their best prices during the PRISM auction.

The Exchange believes using the Price/Time allocation method for interest remaining after proposed Chapter VI, Section 9(ii)(E)(1) through (3) have been satisfied provides consistency with the underlying symbol allocation designation. Since the Exchange considers all interest present in the System, and not solely auction Responses, for execution against the PRISM Order, those participants who are not explicit responders to the auction will expect executions based on their Price/Time priority. In addition, the Exchange believes executing such remaining interest in a Price/Time fashion does not unfairly advantage/disadvantage one participant over another since executions are done with price priority first and time only becoming a factor when considering equally priced interest for execution. Also, other exchanges utilize Price/Time in their auctions today.⁵⁸

⁵⁸ ISE executes Priority Customer interest in a Price/Time fashion within its PIM auction. See ISE Rule 723(d). Complex orders are also executed within its auction in price time priority. See ISE Rule 722. BOX also permits Price/Time priority within PIP and COPIP. See BOX Rules 7150(f)(4) and 7245(f)(3). See also example number 14 below.

With respect to trading halts, as described herein, in the case of a trading halt on the Exchange in the affected series, the stop price, in which case the PRISM Order will be executed solely against the Initiating Order. The Exchange believes that executing the stop price solely against the Initiating Order promotes just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities since the Initiating Member has guaranteed that an execution will occur at the stop price (or better) prior to the trading halt, and PAN responses offer no such guarantee, the stop price is the only valid price at which to execute the PRISM Order, and the Initiating Member is the appropriate contra-side.⁵⁹

With respect to rounding, the Initiating Participant will be rounded up or down to the nearest integer, all other rounding is down to the nearest integer. If rounding results in an allocation of less than one contract, then one contract will be allocated to the Initiating Participant, only if the Initiating Participant did not otherwise receive an allocation. The Exchange believes that rounding differently for the Initiating Participant as compared to all other market participants is not unfairly discriminatory in that the Initiating Participant is not eligible to receive residual contracts as are other market participants, unless no other interest is available to trade. The Exchange is permitting the Initiating Participant to receive the benefit of the rounding in an allocation of less than one contract, only if the Initiating Participant did not otherwise receive an allocation, because the Initiating Participant is not eligible to receive residual contracts.

The Exchange further believes that the proposal is consistent with the requirements of Section 11(a) of the Act⁶⁰ and Rule 11a2-2(T)⁶¹ thereunder. Section 11(a) prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion, unless an exception applies (collectively "Covered Accounts"). Rule 11a2-2(T) under the Act,⁶² known as the effect versus execute" rule, provides exchange members with an exemption from the

⁵⁹ The Exchange notes that trading on the Exchange in any option contract will be halted whenever trading in the underlying security has been paused or halted by the primary listing market. See BX Rules at Chapter V, Section 3.

⁶⁰ 15 U.S.C. 78k(a)(1).

⁶¹ 17 CFR 240.11a2-2(T).

⁶² CFR 240.11a2-2(T).

Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for Covered Accounts by arranging for an unaffiliated member to execute transactions on the exchange.⁶³ To comply with Rule 11a2-2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;⁶⁴ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Exchange believes that Exchange members entering orders into PRISM would satisfy the requirements of Rule 11a2-2(T).

The Exchange does not operate a physical trading floor, rather the Exchange operates an electronic market. The Rule's first condition is that orders for Covered Accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a Covered Account order is transmitted from a remote location directly to an exchange's floor by electronic means.⁶⁵

⁶³ In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors." The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6093 (Jan. 31, 1979). The 1978 and 1979 Releases cite the House Report at 54–57.

⁶⁴ The member may, however, participate in clearing and settling the transaction.

⁶⁵ See, e.g., Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533

BX represents that the System and the proposed PRISM auction receive all orders electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that orders for Covered Accounts from Participants will be transmitted from a remote location directly to the proposed PRISM mechanisms by electronic means.

The second condition of Rule 11a2-2(T) requires that neither a member nor an associated person participate in the execution of its order once the order is transmitted to the floor for execution. The Exchange represents that, upon submission to the PRISM auction, an order will be executed automatically pursuant to the rules set forth for PRISM. In particular, execution of an order sent to the mechanism depends not on the Initiating Participant entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is a Participant able to acquire control or influence over the result or timing of order execution.⁶⁶ Once the PRISM Order has been transmitted, the Exchange Initiating Member that transmitted the order will not participate in the execution of the PRISM Order. Initiating Members submitting PRISM Orders will relinquish control of their PRISM Orders upon transmission to the Exchange's System. Further, no Participant, including the Initiating Participant, will see a PAN response submitted into PRISM and therefore and will not be able to influence or guide the execution of their PRISM Orders. Finally, the Surrender feature will not permit a Participant to have any control over an order. The election to Surrender an order is available prior to the submission of the order and therefore could not be utilized to gain influence or guide the execution of the PRISM Order. The information provided with respect to the Surrender feature by the market participant will not be broadcast

(January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

⁶⁶ The Exchange notes that a Participant may cancel or modify an order, or modify the instructions for executing an order, but that such instructions would be transmitted from off the floor of the Exchange. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

and further, the information may not be modified by the market participant during the auction.

Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the PRISM are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁶⁷ The Exchange represents that the PRISM is designed so that no Participant has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanism.

Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.⁶⁸ The Exchange recognizes that Participants relying on Rule 11a2-2(T) for transactions effected through the PRISM must comply with this condition of the Rule and the Exchange will enforce this requirement

⁶⁷ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

⁶⁸ See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for Covered Accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. See *also* 1978 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

The Exchange believes that the instant proposal is consistent with Rule 11a2-2(T), and that therefore the exception should apply in this case.

The Exchange also believes that the proposed rule changes would further the objectives of the Act to protect investors by promoting the intermarket price protection goals of the Options Intermarket Linkage Plan.⁶⁹ The Exchange believes its proposal would help ensure inter-market competition across all exchanges and facilitate compliance with best execution practices. The Exchange believes that these objectives are consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 11A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The competition among the options exchanges is vigorous and this proposal is intended to afford the BX Options market the opportunity to compete for order flow by offering an auction mechanism on BX similar to that of other exchanges.

With respect to intra-market competition, the auction will be available to all BX Participants. Moreover, as explained above, the proposal should encourage BX Participants to compete amongst each other by responding with their best price and size for a particular auction. With respect to overall market quality, the Exchange believes that the PRISM auction, as proposed herein, will encourage BX Market Makers to quote at the NBBO with additional size and thereby result in tighter and deeper markets, resulting in more liquidity. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM auction, a BX Market Maker will be encouraged to quote outside of the PRISM auction at their best and most aggressive prices. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX's and overall market quality. Within the PRISM auction, BX believes that the rules that are proposed will encourage BX Market Makers to compete vigorously to provide the opportunity

for price improvement in a competitive auction process. The Exchange does not believe that providing BX Market Makers with an opportunity to receive priority allocation will create an undue burden on intra-market competition. BX Market Makers have obligations to the market unlike other market participants.⁷⁰ The allocation seeks to reward BX Market Makers with an opportunity to receive additional allocations.

The Exchange's proposal is a competitive response to similar provisions in the price improvement auction rules of other options exchanges.⁷¹ The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various options exchanges. The Exchange anticipates that this auction proposal will create new opportunities for BX to attract new business and compete on equal footing with those options exchanges with auctions and for this reason the proposal does not create an undue burden on inter-market competition. Rather, the Exchange believes that the proposed rule would bolster inter-market competition by promoting fair competition among individual markets, while at the same time assuring that market participants receive the benefits of markets that are linked together, through facilities and rules, in a unified system, which promotes interaction among the orders of buyers and sellers. The Exchange believes its proposal would help ensure inter-market competition across all exchanges and facilitate compliance with best execution practices. In addition, the Exchange believes that the proposed rule change would help promote fair and orderly markets by helping ensure compliance with Options Order Protection and Locked and Crossed Market Rules.⁷² Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

⁷⁰ See BX Rules at Chapter VII, Section 6.

⁷¹ Today, the following options markets offer auctions: CBOE, ISE, BOX, MIAX and Phlx. See CBOE Rule 6.74A, ISE Rule 723, BOX Rule 7150, MIAX Rule 5.15 and Phlx Rule 1080(n).

⁷² See Chapter XII of BX Rules.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2015-032 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-BX-2015-032. 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

⁶⁹ See BX Rule at Chapter XII, Section 3 regarding Locked and Crossed Markets.

office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2015-032 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷³

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22742 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75832; File No. SR-BATS-2015-69]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Rules 1.5(r), 11.1(a), 11.23, 14.6, 14.11, and 14.12 and Adopt Rule 11.1(a)(1)

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 1, 2015, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and to make related changes to Rules 11.23, 14.6, 14.11, and 14.12. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members³

[sic] indicate a time upon which their order may become eligible for execution.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and to make related changes to Rules 11.23, 14.6, 14.11, and 14.12. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members indicate a time upon which their order may become eligible for execution.

Pre-Opening Session 7:00 a.m. Start

The Exchange trading day is currently divided into two sessions: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; and (ii) the Regular Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time. The Exchange proposes to amend the definition of "Pre-Opening Session" under Rule 1.5(r) to state that the Pre-Opening Session will start at

to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange." See Exchange Rule 1.5(n).

7:00 a.m. rather than 8:00 a.m. Eastern Time.⁴

The Exchange also proposes to amend Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. Other than the proposal to change the start of the Pre-Opening Session from 8:00 a.m. to 7:00 a.m. Eastern Time discussed above, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

As amended, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours,⁵ depending on the Time-in-Force ("TIF")⁶ selected by the User.⁷ Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,⁸ Partial Post Only at Limit Orders,⁹ Intermarket Sweep Orders ("ISOs"),¹⁰ BATS Market Orders¹¹ with a TIF other than Regular Hours Only,¹² Minimum Quantity Orders¹³ that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel ("IOC")¹⁴ or Fill-or-Kill ("FOK").¹⁵ At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,¹⁶ routed,

⁴ The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁵ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(w).

⁶ The Times-In-Force instructions available on the Exchange are set forth under Exchange Rule 11.9(b).

⁷ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(cc).

⁸ See Exchange Rule 11.9(c)(6).

⁹ See Exchange Rule 11.9(c)(7).

¹⁰ See Exchange Rule 11.9(d).

¹¹ See Exchange Rule 11.9(a)(2).

¹² See Exchange Rule 11.9(b)(7).

¹³ See Exchange Rule 11.9(c)(5).

¹⁴ See Exchange Rule 11.9(b)(1).

¹⁵ See Exchange Rule 11.9(b)(6).

¹⁶ See Exchange Rule 1.5(e).

⁷³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member" is defined as "any registered broker or dealer that has been admitted

cancelled, or executed in accordance with the terms of the order.

Operations. From the Members' operational perspective, the Exchange's goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m. The Exchange will minimize Members' preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will "wake up" by loading in price/time priority all open trading interest entered after 6:00 a.m. Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m.

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m. All routing strategies set forth in Exchange Rule 11.11 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution algorithms processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as

it currently does beginning 8:00 a.m. The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.

Fees. The Exchange is not changing any fees in connection with this proposal.

Market Surveillance. The Exchange's commitment to high quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.13 just as it does today beginning at 8:00 a.m.

Related changes to Rules 11.23, 14.6, 14.11, and 14.12. The Exchange proposes to also make the following changes to Rules 11.23, 14.6, 14.11, and 14.12 to reflect the extension of the Pre-Opening Session to 7:00 a.m.:

- Rule 11.23, Auctions. The Exchange proposes to amend Rules 11.23(b)(1)(A) and (c)(1)(A) to reflect that Users may submit orders at start of the Pre-Opening Session at 7:00 a.m., rather than 8:00 a.m.

- Rule 14.6, Obligations of Companies Listed on the Exchange. The Exchange proposes to amend Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a), (c), and .02 to require an Exchange-Listed Company that public releases material information outside of the Exchange market hours to inform the Exchange's Surveillance Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Rule 14.6, Interpretation and Policies .01(b), (c), and .02 to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time. The amended provisions of Rule 14.6, Interpretation and Policies .01(b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours.

- Rule 14.11, Other Securities. The Exchange proposes to amend Rule 14.11(b)(7) and (c)(7) to reflect the

extension of the Pre-Opening Session to 7:00 a.m. Eastern Time.

- Rule 14.12, Failure to Meet Listing Standards. The Exchange proposes to amend Rule 14.12(e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter or Adjudicatory Body Decision that serves as a Public Reprimand outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. Effective Start Time

The Exchange propose to adopt a new defined term, Effective Start Time, under proposed paragraph (a)(1) to Rule 11.1. Effective Start Time would be defined as an instruction a User may attach to an order to buy or sell which indicates the time upon which the order is to become eligible for execution. Like orders placed on the BATS Book at the start of the Pre-Opening Session under Rule 11.1(a), at the Effective Start Time, the order will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order. Once received, orders with an Effective Start Time are placed in a suspended state and not placed on the BATS Book until the Effective Start Time selected by the User. Orders with an Effective Start Time are treated like all other orders once placed on the BATS Book and will receive a time stamp at the time the order becomes eligible for execution. Pursuant to Rule 11.12, orders entered with identical Effective Start Times will retain their priority as compared to each other based upon the time such orders were initially received by the System.

In general, a User may specify a time between 7:00 a.m. and 4:00 p.m. Eastern Time as the order's Effective Start Time, subject to the trading sessions that the particular order type is eligible for execution. A Member would not be able to combine an Effective Start Time with BATS Post Only Orders, BATS Market Orders, Minimum Quantity Orders, ISOs, or orders that include a TIF of IOC or FOK. The Effective Start Time instruction would be available for all other order types that include a TIF other than IOC or FOK. This is also consistent with current Rule 11.1(a), under which the Exchange does not accept the following orders prior to the start of the Pre-Opening Session: BATS Post Only Orders, Partial Post Only at Limit Orders, ISO, BATS Market Orders with a TIF other than Regular Hours Only, Minimum Quantity Orders that also include a TIF of Regular Hours

Only, and all orders with a TIF instruction of IOC or FOK.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Pre-Opening Session 7:00 a.m. Start

The Exchange believes its proposal to amend Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time, Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time, and the related changes to Rules 11.23, 14.6, 14.11, and 14.12 promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that opening its system at 7:00 a.m. will benefit investors, the national market system, Members and the Exchange market. Opening at 7:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. Opening at 7:00 a.m. will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening the Exchange at 7:00 a.m. will also benefit Members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

The proposed rule change promotes just and equitable principles of trade by offering additional trading opportunities to Members that desire them, without imposing burdens on Members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved. The Exchange notes that the proposed trading period has been

available on NYSE Arca and Nasdaq.¹⁹ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not to avail themselves of these benefits.

Effective Start Time

The Exchange believes its proposed Effective Start Time instruction also promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed Effective Start Time instruction will provide Users with greater control over their orders by electing a specific time upon which their order may become eligible for execution. The concept of selecting conditions during which an order is eligible for execution is not novel. The operation of the Effective Start Time instruction is similar to functionality available on the Exchange and elsewhere that permits members to elect when their orders are to become eligible for executions. Specifically, on the Exchange, a User may elect a buy (sell) Stop Order or Stop Limit Order indicating that the order become eligible for execution when the consolidated last sale (purchase) in a security occurs at or above (below) a specified Stop Price.²⁰ In addition, a User may elect the trading session(s) during which their order would be eligible for execution. In such case, the User may enter an order during the Pre-Opening Session and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours. Conversely, Members also maintain the ability to elect when their order should expire or be cancelled. For example, a User may elect a TIF instruction of Day, GTD, or GTX, all which state that the order cancelled if not executed by a certain time.²¹ Lastly, similar functionality is currently available on NYSE Arca.²²

¹⁹ See *supra* note 4.

²⁰ See Exchange Rules 11.9(c)(17) and (c)(18). See also New York Stock Exchange, Inc. ("NYSE") Rule 13(e)(7).

²¹ See Exchange Rules 11.9(b)(2), (4), and (5). See also Nasdaq Rule 4703(a), and NYSE Rule 13(b).

²² NYSE Arca permits the selection of an Effective Time (Tag 168), like the Exchange proposes herein, and Expire Time (Tag 126). See NYSE Arca FIX Specifications, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf (dated June 8, 2015).

The Exchange believes it has appropriately limited the availability of the Effective Start Time instruction to exclude its use with order types and order instructions that it may be deemed inconsistent with. Specifically, the Effective Time instruction is not available for ISOs and the use of such an instruction may be considered inconsistent with a Member's responsibility to comply with the requirements of Regulation NMS relating to ISOs. In addition, the Effective Start Time instruction is not available for BATS Market Orders or orders with a TIF instruction of IOC or FOK as well as orders with BATS Post Only Order or Minimum Quantity Orders. BATS Market Orders and orders with a TIF instruction of IOC and FOK are immediately executable once placed on the BATS Book. Permitting the use of an Effective Start Time with such orders appears inconsistent as a User will not know at the time of order entry what the market for such a security would be at the selected Effective Start Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal to start the Pre-Opening Session at 7:00 a.m. Eastern Time would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. In addition, the proposed Effective Start Time instruction will enable the Exchange to provide similar functionality as NYSE Arca. The fact that the extending the Pre-Opening Session and Effective Start Time are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BATS-2015-69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-69, and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22745 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Form T-2, OMB Control No. 3235-0111, SEC File No. 270-122.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form T-2 (17 CFR 269.2) is a statement of eligibility of an individual trustee under the Trust Indenture Act of 1939. The information is used to determine whether the individual is qualified to serve as a trustee under the indenture. Form T-2 takes approximately 9 hours per response to prepare and is filed by 18 respondents. We estimate that 25% of the 9 burden hours (2 hours per responses) is prepared by the filer for a total reporting burden of 36 hours (2 hours per response × 18 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection

of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 3, 2015.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22751 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75834; File No. SR-EDGX-2015-41]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rules 1.5(s), 11.1(a)(1), 11.6 and 11.8

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2015, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the definition of Pre-Opening Session under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 17 CFR 200.30-3(a)(12).

the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to amend: (i) Rule 11.6 to adopt a new defined term, Effective Start Time, which would be an order instruction enabling Members³ [sic] indicate a time upon which their order may become eligible for execution; (ii) and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Pre-Opening Session under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to amend: (i) Rule 11.6 to adopt a new defined term, Effective Start Time, which would be an order instruction enabling Members indicate a time upon which their order may become eligible for execution; (ii) and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

³ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange." See Exchange Rule 1.5(n).

Pre-Opening Session 7:00 a.m. Start

The Exchange trading day is currently divided into three sessions: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) the Regular Session which runs from the completion of the Opening Process or Continent Open as defined in Rule 11.7 and 4:00 p.m. Eastern Time; and (iii) the Post-Closing Session which starts at 4:00 p.m. and ends at 8:00 p.m. Eastern Time. The Exchange proposes to amend the definition of "Pre-Opening Session" under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time.⁴

The Exchange also proposes to amend Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. Rule 11.1(a)(1) states that all orders are eligible for execution during the Regular Session.⁵ Other than the proposal to change the start of the Pre-Opening Session from 8:00 a.m. to 7:00 a.m. Eastern Time discussed above, the Exchange does not propose to amend the substance or operation of Rule 11.1(a)(1).

As amended, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours,⁶ depending on the Time-in-Force ("TIF")⁷ selected by the User.⁸ Rule 11.1(a)(1) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: Orders with a Post Only⁹ instruction, Intermarket Sweep Orders ("ISOs"),¹⁰

⁴ The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁵ "Regular Session" is defined as "the time between the completion of the Opening Process or Continent Open as defined in Rule 11.7 and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(hh).

⁶ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(y).

⁷ The Times-In-Force instructions available on the Exchange are set forth under Exchange Rule 11.6(q).

⁸ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(ee).

⁹ See Exchange Rule 11.6(n)(4).

¹⁰ See Exchange Rule 11.8(c).

Market Orders¹¹ with a TIF instruction other than Regular Hours Only,¹² orders with a Minimum Execution Quantity¹³ instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel ("IOC")¹⁴ or Fill-or-Kill ("FOK").¹⁵ At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGX Book,¹⁶ routed, cancelled, or executed in accordance with the terms of the order.

Operations. From the Members' operational perspective, the Exchange's goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m. The Exchange will minimize Members' preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will "wake up" by loading in price/time priority all open trading interest entered after 6:00 a.m. Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to

¹¹ See Exchange Rule 11.8(a).

¹² See Exchange Rule 11.6(q)(6).

¹³ See Exchange Rule 11.6(h).

¹⁴ See Exchange Rule 11.6(q)(1).

¹⁵ See Exchange Rule 11.6(q)(3).

¹⁶ See Exchange Rule 1.5(d).

4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m.

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m. All routing strategies set forth in Exchange Rule 11.11 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution algorithms processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m. The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.

Fees. The Exchange is not changing any fees in connection with this proposal.

Market Surveillance. The Exchange's commitment to high quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.13 just as it does today beginning at 8:00 a.m.

Non-Substantive Changes. The Exchange also proposes two non-substantive amendments to Rule 11.1(a)(1). First, the Exchange proposes to capitalize the term "Time-in-Force" in the Rule's third sentence. Second, the Exchange proposes to delete the word "orders" from after Eastern Time in the Rule's fifth sentence. Neither of these changes amend the meaning of Rule 11.1(a)(1).

Effective Start Time

The Exchange propose to amend Rule 11.6 to adopt a new defined term, Effective Start Time, under which Members may indicate a time upon

which their order may become eligible for execution and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

Effective Start Time would be defined under new paragraph (t) to Rule 11.6 as an instruction a User may attach to an order to buy or sell which indicates the time upon which the order is to become eligible for execution. Like orders placed on the EDGX Book at the start of the Pre-Opening Session under Rule 11.1(a)(1), at the Effective Start Time, the order will be placed on the EDGX Book, routed, cancelled, or executed in accordance with the terms of the order. Once received, orders with an Effective Start Time are placed in a suspended state and not placed on the EDGX Book until the Effective Start Time selected by the User. Orders with an Effective Start Time are treated like all other orders once placed on the EDGX Book and will receive a time stamp at the time the order becomes eligible for execution. Pursuant to Rule 11.9, orders entered with identical Effective Start Times will retain their priority as compared to each other based upon the time such orders were initially received by the System.

The Exchange also proposes to amend Rule 11.8 to identify which order types an Effective Start Time may be utilized with. In general, a User may specify a time between 7:00 a.m. and 8:00 p.m. Eastern Time as the order's Effective Start Time, subject to the trading sessions that the particular order type is eligible for execution. The Effective Start Time instruction will not be available for ISOs, Market Orders, or orders with a TIF of IOC or FOK as the Exchange believes the instruction is not consistent with the purposes of these order types and order type instructions. This is also consistent with current Rule 11.1(a)(1), under which the Exchange does not accept the following orders prior to the start of the Pre-Opening Session: Orders with a Post Only instruction, ISOs, Market Orders with a TIF instruction other than Regular Hours Only, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

Effective Start Time will be available for the following order types:

- **Limit Orders.** Under Rule 11.8(b)(6), Effective Start Time would be available for Limit Orders with a TIF instruction other than IOC or FOK. Effective Start Time would not be available for orders with a Post Only instruction or Minimum Execution Quantity. This is consistent with current Rule 11.1(a)(1), under which the Exchange does not

accept the following orders with a Post Only instruction or Minimum Execution Quantity.

- **MidPoint Peg Orders.** Under Rule 11.8(d)(4) and like Limit Orders described above, Effective Start Time would be available for MidPoint Peg Orders with a TIF instruction other than IOC or FOK. Effective Start Time would not be available for orders with a Post Only instruction or Minimum Execution Quantity.

- **Market Maker Peg Orders.** Under Rule 11.8(e)(7), all Market Maker Peg Orders may include an Effective Start Time. The Exchange notes that Market Maker Peg Orders are not permitted to include a TIF instruction of IOC or FOK. They may only include a TIF instruction of Day, RHO or GTD. Market Maker Peg Orders are designed to assist Market Makers¹⁷ in complying with their market making quoting obligations under Exchange Rule 11.20. While Market Makers may select an Effective Start Time after their quoting obligations begin, the Exchange understands that Market Makers may utilize other order types, such as Limit Orders, to satisfy their quoting obligations prior to the Effective Start Time. The Exchange will surveil for the use of an Effective Start Time by Market Makers to ensure they continue to meet their quoting obligations under the Exchange Rule 11.20.

Supplemental Peg Orders. Under Rule 11.8(f)(4), all Supplemental Peg Orders may include an Effective Start Time. The Exchange notes that Supplemental Peg Orders are not permitted to include a TIF instruction of IOC or FOK. They may only include a TIF instruction of Day, RHO, GTD or GTX. A Supplemental Peg Order with a Minimum Execution Quantity may not also contain an Effective Start Time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

¹⁷ "Market Maker" is defined as "a Member that acts as a Market Maker pursuant to Chapter XI." EDGX Rule 1.5(l).

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(5).

Pre-Opening Session 7:00 a.m. Start

The Exchange believes its proposal to amend Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that opening its system at 7:00 a.m. will benefit investors, the national market system, Members and the Exchange market. Opening at 7:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. Opening at 7:00 a.m. will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening the Exchange at 7:00 a.m. will also benefit Members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

The proposed rule change promotes just and equitable principles of trade by offering additional trading opportunities to Members that desire them, without imposing burdens on Members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved. The Exchange notes that the proposed trading period has been available on NYSE Arca and Nasdaq.²⁰ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not avail themselves of these benefits.

Effective Start Time

The Exchange believes its proposed Effective Start Time instruction also promotes just and equitable principles of trade, and removes impediments to

and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed Effective Start Time instruction will provide Users with greater control over their orders by electing a specific time upon which their order may become eligible for execution. The concept of selecting conditions during which an order [sic] to be eligible for execution is not novel. The operation of the Effective Start Time instruction is similar to functionality available on the Exchange and elsewhere that permits members to elect when their orders are to become eligible for executions. Specifically, on the Exchange, a User may elect a Stop Price or Stop Limit Price on a buy (sell) Market Order or Limit Order indicating that the order become eligible for execution when the consolidated last sale (purchase) in a security occurs at or above (below) a specified Stop Price.²¹ In addition, a User may elect the trading session(s) during which their order would be eligible for execution. In such case, the User may enter an order during the Pre-Opening Session and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours. Conversely, Members also maintain the ability to elect when their order should expire or be cancelled. For example, a User may elect a TIF instruction of Day, GTD, or GTX, all which state that the order cancelled if not executed by a certain time.²² Lastly, similar functionality is currently available on NYSE Arca.²³

The Exchange believes it has appropriately limited the availability of the Effective Start Time instruction to exclude its use with order types and order instructions that it may be deemed inconsistent with. Specifically, the Effective Time instruction is not available for ISOs and the use of such an instruction may be considered inconsistent with a Member's responsibility to comply with the requirements of Regulation NMS relating to ISOs. In addition, the Effective Start Time instruction is not available for Market Orders or orders with a TIF instruction of IOC or FOK as well as orders with Post Only instruction or Minimum Execution Quantity. Market Orders and orders

²¹ See Exchange Rules 11.8(a)(1) and (b)(1). See also New York Stock Exchange, Inc. ("NYSE") Rule 13(e)(7).

²² See Exchange Rules 11.6(q)(2), (4), and (5). See also Nasdaq Rule 4703(a), and NYSE Rule 13(b).

²³ NYSE Arca permits the selection of an Effective Time (Tag 168), like the Exchange proposes herein, and Expire Time (Tag 126). See NYSE Arca FIX Specifications, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf (dated June 8, 2015).

with a TIF instruction of IOC and FOK are immediately executable once placed on the EDGX Book. Permitting the use of an Effective Start time with such orders appears inconsistent as a User will not know at the time of order entry what the market for such a security would be at the selected Effective Start Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal to start the Pre-Opening Session at 7:00 a.m. Eastern Time would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. In addition, the proposed Effective Start Time instruction will enable the Exchange to provide similar functionality as NYSE Arca. The fact that the extending the Pre-Opening Session and Effective Start Time are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may

²⁰ See *supra* note 4.

be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-EDGX-2015-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGX-2015-41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGX-2015-41 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22746 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75826; File No. SR-BOX-2015-29]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC Options Facility

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 1, 2015, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2015. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of changes to Facilitation and Solicitation fees and credits within the BOX Fee Schedule.

First, the Exchange proposes to amend Section I (Exchange Fees) to establish a subsection entitled "Facilitation and Solicitation Transactions." The Exchange proposes to move all the fees associated with Facilitation and Solicitation Transactions⁵ from Section I.B. (Auction Transactions) to this new section.

The Exchange then proposes to adjust exchange fees for Facilitation and Solicitation Transactions. For Agency Orders⁶ Professional Customers and Brokers Dealers are currently charged \$0.37 and Market Makers are charged \$0.20. Broker Dealers, Professional Customers, and Market Makers are charged \$0.25 for Facilitation and Solicitation Orders.⁷ The Exchange proposes to remove the Agency Order and Facilitation and Solicitation Order exchange fees for all Participants, as well as the \$25,000 fee cap for these transactions. Additionally, the Exchange proposes to reduce the exchange fees for Responses to the Facilitation and Solicitation mechanisms. For Responses in these mechanisms, Public Customers are currently charged \$0.15, Professional Customer and Broker Dealers are charged \$0.37, and Market Makers are charged \$0.30. The revised fee structure for Facilitation and Solicitation Transactions will be as follows:

agent through the Facilitation Auction or Solicitation Auction mechanism,

⁷ Facilitation and Solicitation Orders are the matching contra orders submitted on the opposite side of the Agency Order.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Transactions executed through the Solicitation Auction mechanism and Facilitation Auction mechanism.

⁶ An Agency Order is the block-size order that an Order Flow Provider "OFF" seeks to facilitate as

	Account type			
	Public customer	Professional customer	Broker dealer	Market maker
Agency Order	\$0.00	\$0.00	\$0.00	\$0.00
Facilitation Order or Solicitation Order	N/A	0.00	0.00	0.00
Responses in the Solicitation or Facilitation Auction Mechanisms	0.15	0.27	0.27	0.20

For example, if a Market Maker submitted an Agency Order through the Facilitation mechanism, the Market Maker would no longer be charged for the Agency Order or matching contra order. To expand on this example, if the Market Maker instead was responding to the Facilitation Order, then the Market Maker would be charged \$0.20.

Consequently, the Exchange proposes to rename Section 1.B. from “Auction Transactions” to “PIP and COPIP Transactions” as this section will now

only reflect the Exchange fees for PIP and COPIP transactions. The Exchange is also proposing to amend the footnotes in the PIP and COPIP transactions subsection to remove any references to the Facilitation and Solicitation auction mechanisms.

The Exchange then proposes to amend Section II.B of the BOX Fee Schedule, liquidity fees and credits for Facilitation and Solicitation transactions. Specifically, the Exchange proposes to establish different liquidity

fees and credits for Facilitation and Solicitation transactions in Penny Pilot Classes than for Facilitation and Solicitation transactions in Non-Penny Pilot Classes. Currently all Facilitation and Solicitation transactions are assessed a \$0.30 fee for adding liquidity and credited \$0.30 for removing liquidity. The Exchange now proposes to adopt the following liquidity fees and credits:

Facilitation and solicitation transactions	Fee for adding liquidity (all account types)	Credit for removing liquidity (all account types)
Non-Penny Pilot Classes	\$0.95	(\$0.95)
Penny Pilot Classes	0.40	(0.40)

The Exchange also proposes to amend the Liquidity Fees and Credits for Facilitation and Solicitation transactions to specify that Agency Orders submitted to the Facilitation and Solicitation mechanisms are assessed the “removal” credit only if the Agency Order does not trade with their contra order. The Exchange also proposes to specify that only Responses to Facilitation and Solicitation Orders executed in these mechanisms shall be charged the “add” fee.

For example, if an OFP submits an Agency Order to buy 200 contracts in the facilitation auction and there are no responders, the Agency Order would execute against the matching Facilitation Order to sell 200 contracts and neither Order would be assessed a liquidity fee or credit. If, instead, the same Agency Order receives a Market Maker Response to sell 150 contracts, at the end of the auction the Agency Order would now execute against the Market Maker Response for 150 contracts and the Facilitation Order for 50 contracts, and liquidity fees and credits would be assessed on the 150 contracts which executed against the Market Maker Response.

The proposed reduction in exchange fees and increase in liquidity fees and credits in Facilitation and Solicitation transactions is designed to provide BOX Participants additional incentives to submit block orders to these auctions

and to remain competitive with other options exchanges that have similar mechanisms for large block orders.⁸

Finally, the Exchange is proposing to make additional non-substantive changes to the Fee Schedule. Specifically, the Exchange is renumbering certain footnotes, headings and internal references to accommodate the above proposed changes to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. Further, the Exchange operates within a highly competitive market in which market participants can readily direct order flow to any other competing exchange if they determine

fees at a particular exchange to be excessive.

The Exchange believes creating a separate subsection for the Facilitation and Solicitation transactions is reasonable, equitable and not unfairly discriminatory as the proposed subsection is meant to provide clarity about the applicable exchange fees for each of BOX’s auction mechanisms. The Exchange also believes that the proposed exchange fees for Facilitation and Solicitation transactions are reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable to remove the fees for Agency, Facilitation and Solicitation Orders, and lower the Facilitation and Solicitation Order Response fees from \$0.37 to \$0.27 for Professional Customers and Broker Dealers, and from \$0.30 to \$0.20 for Market Makers. Further, the Exchange believes that it is reasonable to eliminate the \$25,000 fee cap for Facilitation and Solicitation transactions, as most the exchange fees for these transactions are being removed. The Exchange believes eliminating and reducing these fees will attract order flow to these mechanisms which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

The Exchange believes it is reasonable, equitable and not-unfairly discriminatory to charge higher exchange fees for responders in the

⁸ See International Securities Exchange Rule 716.

⁹ 15 U.S.C. 78f(b)(4) and (5).

Facilitation and Solicitation auctions than for initiators of these orders and the contra orders. The Exchange believes it is reasonable when compared to a similar practice for Facilitation and Solicitation fees at a competing venue.¹⁰ For example, at the ISE the fee for both the initiating order and contra order in a Crossing Order¹¹ is \$0.20 for Market Makers, Broker Dealers and Professional Customers, and \$0.00 for Public Customers. Responses to these orders are charged \$0.47 regardless of Participant type.

The Exchange also believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for Responses in the Facilitation and Solicitation auction mechanisms is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts. The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources, and the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for these orders.

The Exchange believes it is equitable and not unfairly discriminatory to charge Public Customers less than Market Makers, Broker Dealers and Professional Customers for their Responses to the Facilitation and Solicitation Auction mechanisms. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that charging lower fees to Public Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow.

Finally, the Exchange believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower fees than Professional Customers and Broker Dealers for Responses in the Facilitation and Solicitation auction mechanisms because of the significant contributions to overall market quality that Market Makers provide. Market Makers

generally provide higher volumes of liquidity and assessing overall lower fees for these Participants within the BOX Fee Schedule will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX. Additionally, Market Makers are the Participants most likely to use the Facilitation and Solicitation auction mechanisms, and the Exchange believes that assessing lower fees for these Participants will help drive liquidity to these block trade mechanisms.

BOX believes that the changes to Facilitation and Solicitation transaction liquidity fees and credits are equitable and not unfairly-discriminatory in that they apply to all categories of participants and across all account types. The Exchange also believes the fees and credits are reasonable and competitive when compared to similar fees at competing venues.¹² Under the ISE Fee Schedule a Responder to a Facilitation or Solicitation Order will pay \$0.47. While a Responder on BOX will pay \$0.55 to \$0.67 in Penny Pilot Classes (exchange fee of \$0.15 to \$0.27 and an liquidity "add" fee of \$0.40).

However, for the equivalent of Non-Penny Pilot Classes¹³ on ISE the Responder will most likely also be assessed a Payment for Order Flow ("PFOF") Fee of \$0.70. The Exchange notes that while PFOF at the ISE only applies when an Initiator is a Public Customer and a Responder is a Market Maker, this Exchange believes that this type of interaction amounts to a majority of the ISE's Facilitation and Solicitation transactions. Therefore, in Non-Penny Classes the Exchange believes the Responder to a Facilitation or Solicitation auction is paying \$1.17 at the ISE, while BOX proposes to charge Responders between \$1.10 and \$1.22 (exchange fee of \$0.15 to \$0.27 and a liquidity "add" fee of \$0.95). The Exchange notes that while Broker Dealers will be assessed \$1.22 in total; a majority of the Responders to these auctions will be Market Makers and these Participants will be assessed \$1.15 in total.

With the proposed fee changes for Facilitation and Solicitation transactions, Initiators will never pay a fee and will only receive a credit of \$0.40 in Penny Pilot Classes and \$0.95 in Non-Penny Pilot Classes for the portion of the order that interacts with a Responder. In comparison, under the

ISE Fee Schedule all Initiators except Public Customers are charged a \$.20 fee for Penny Pilot Classes and \$0.20 to \$0.25 fee for Non-Penny Pilot Classes.¹⁴ However, the ISE then uses volume based incentives that can greatly reduce the fees these participants are charged. Certain Facilitation and Solicitation fees on ISE are subject to a fee cap of \$75,000,¹⁵ allowing Participants who use these auctions to potentially reduce their per contract fee to a much lower rate. In addition, depending on their overall monthly volume, Initiators can receive a rebate of \$0.05 to \$0.11 per contract for their orders.¹⁶

Finally, if the order executes against a responder within one of these mechanisms the Initiator will receive an additional rebate of \$0.15 for Penny Pilot Classes. For Non-Penny Pilot Classes, the Initiator will typically receive a proportional PFOF credit to their pool which they can allocate as they so choose.¹⁷

In conclusion, the Exchange believes the proposed Facilitation and Solicitation fees and credits are reasonable when compared to fees and credits for similar mechanisms at the ISE. While it is difficult to exactly equate these two fee structures, most Responders on ISE (Market Makers interacting with Customer Orders) will pay \$0.47 (Penny Pilot Classes) and \$1.17 (Non-Penny Pilot Classes) while most Responders on BOX (Market Makers interacting with Customer Orders) will pay \$0.60 (Penny Pilot Classes) and \$1.15 (Non-Penny Pilot Classes). At the ISE, depending on volume, Initiators in this scenario could receive a credit per contract for all Facilitation and Solicitation orders, and an additional \$0.15 break up credit (Penny Pilot Classes) or PFOF credit (Non-Penny Pilot Classes).¹⁸ In comparison, under the BOX proposal, Initiators would only receive a credit for the portion of the order that interacted with a Response, and the credit would

¹⁴ The ISE uses the term "Crossing Order" for orders executed on the Exchange's Facilitation and Solicitation mechanisms.

¹⁵ See Section IV.H of the ISE Fee Schedule. All Firm Proprietary and Non-ISE Market Maker transactions that are part of the originating or contra side of a Crossing Order are capped.

¹⁶ See Section IV.A of the ISE Fee Schedule.

¹⁷ Under Section IV.D of the ISE Fee Schedule the fee for PFOF is \$0.70 and the fee will be rebated proportionally to the members that paid the fee on a monthly basis.

¹⁸ The Exchange notes that the language used in the ISE Fee Schedule states that there will be a proportional credit put into the monthly pool that the Initiator can then allocate. With this discretion the PFOF credit for these orders could be higher than \$0.70.

¹⁰ See ISE Schedules of Fees at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

¹¹ Under the ISE Fee Schedule Crossing Orders are any orders executed in the Exchange's auction mechanisms, including the Facilitation and Solicitation mechanisms.

¹² See *supra*, note 10.

¹³ The ISE Fee Schedule uses the term "Select Symbols" to denote Penny Pilot Classes.

be \$0.40 (Penny Pilot Classes) or \$0.95 (Non-Penny Pilot Classes).

Further, the Exchange believes that the proposed difference between what an Initiator will pay compared to what a Responder will pay is reasonable, equitable and not unfairly discriminatory. As stated above, this difference is in-line with the credits and fees at the ISE. Further, the Exchange believes that this differential is reasonable because Responders are willing to pay a higher fee for liquidity discovery.

Further, the Exchange notes that with the proposed reduction in Responder exchange fees, all Responders except for Public Customers are only paying an overall higher fee for their Responses to Non-Penny Class transactions. For example, a Responder under the current schedule would be assessed an exchange fee of \$0.37 (for Professional Customers and Broker Dealers) and \$0.30 (for Market Makers) along with a fee for "adding" liquidity of \$0.30. In total, Professional Customers and Broker Dealers are currently assessed \$0.67 and Market Makers \$0.60. Under the proposed change to both the Exchange fees and Liquidity Fees and Credits, Professional Customers and Broker Dealers Responders would still be assessed \$0.67 in total for Penny Pilot Classes (\$0.27 exchange fee and \$0.40 liquidity fee) and Market Makers would be assessed \$0.60 (\$0.20 exchange and \$0.40 liquidity fee). While Participants would be assessed overall higher fees for responding to Non-Penny Pilot Issues, as stated above, the Exchange believes that these liquidity fees are reasonable as they are within the range assessed for Facilitation and Solicitation responses at a competing exchange.¹⁹

The Exchange also believes it is reasonable to establish different fees and credits for Facilitation and Solicitation transactions in Penny Pilot Classes compared to transactions in Non-Penny Pilot Classes. The Exchange makes this distinction throughout the BOX Fee Schedule, including the liquidity fees and credits for PIP and COPIP Transactions. The Exchange believes it is reasonable to establish higher fees and credits for Non-Penny Pilot Classes because these Classes are typically less actively traded and have wider spreads. The Exchange believes that offering a higher rebate will incentivize order flow in Non-Penny Pilot issues on the Exchange, ultimately benefitting all Participants trading on BOX.

Further, the Exchange notes that the proposed fees and credits for transactions on BOX offset one another

in any particular transaction. The result is that BOX will collect a fee from Participants that add liquidity on BOX and credit another Participant an equal amount for removing liquidity. Stated otherwise, the collection of these liquidity fees will not directly result in revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract order flow. The Exchange believes it is appropriate to provide incentives to market participants to use the Facilitation and Solicitation auction mechanisms, because doing so may result in greater liquidity on BOX which would benefit all market participants.

The Exchange believes it is reasonable, equitable and not-unfairly discriminatory for responders to Facilitation and Solicitation auctions to be assessed higher fees than initiators. The Agency Order is a block sized order typically composed of Public Customer orders and represented by an OFP who then guarantees the execution by submitting a matching Facilitation or Solicitation Order. Responders in the Facilitation and Solicitation mechanisms are always non-Public Customers and more typically are Market Makers. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to give these Agency Orders a credit when their orders execute against a non-Public Customer and, accordingly, charge non-Public Customers a fee when their orders execute against a Public Customer. The Exchange notes that increasing fees to non-Public Customers in order to provide incentives for Public Customers is similar to the payment for order flow and other pricing models that have been adopted by competing exchanges²⁰ to attract Public Customer order flow. As stated above, the Exchange aims to improve markets by developing features for the benefit of its Public Customers. The Exchange believes that providing incentives for Public Customers is reasonable and will benefit all Participants trading on the Exchange by attracting Public Customer order flow.

Further, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to only assess liquidity fees and credits on Agency Orders that do not trade with their contra order, and the Responses to these Orders. As stated above, liquidity fees and credits are meant to incentivize order flow, and the

Exchange believes incentives are not necessary for internalized orders in these mechanisms that only trade against their contra order. Additionally, other Exchanges also make this distinction in their Facilitation and Solicitation auction mechanisms.²¹

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change modifies the exchange fees and raises the liquidity fees and credits for Facilitation and Solicitation transactions. BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX. The Exchange does not believe that the proposed liquidity fees and credits will burden competition by creating such a disparity between the fees an Initiating Participant in the Facilitation and Solicitation auction pays and the fees a competitive responder pays that would result in certain Participants being unable to compete with initiators. In fact, the Exchange believes that these changes will not impair these Participants from adding liquidity and competing in Facilitation and Solicitation auction transactions and will help promote competition by providing incentives for market participants to submit customer order flow to BOX and thus, create a greater opportunity for customers to receive additional price improvement. Specifically, BOX is removing and lowering the exchange fees for Facilitation and Solicitation transactions to encourage all market participants to participate in these auctions. While the liquidity fees and

²¹ See *supra*, note 10. Under the ISE Fee Schedule in the equivalent of Penny Pilot Classes the initiator receives a "break-up" rebate only for contracts that are submitted to the Facilitation and Solicitation mechanisms that do not trade with their contra order. The responder fee for these Orders is only applied to any contracts for which the rebate is provided.

²⁰ See *supra*, note 10. Under the ISE Fee Schedule, if the initiator is a Public Customer and the responder is a Market Maker in Non-Penny Pilot Classes, the Market Maker is assessed a \$.70 PFOF fee which will be rebated proportionally to the members that paid the fee on a monthly basis.

¹⁹ See *supra*, note 10.

credits for these transactions will be higher, they will only be assessed against the portion of the order that executes against a response in the auctions. The Exchange believes that participants submitting responses in these auctions are willing to pay a higher fee for liquidity discovery in less liquid names. Further, as stated above the fees and credits proposed are in line with the facilitation and solicitation fees and credits on at least one other options exchange.

BOX believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for Facilitation and Solicitation auction order flow.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²² and Rule 19b-4(f)(2) thereunder,²³ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2015-29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2015-29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2015-29, and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22741 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75828; File No. SR-BOX-2015-30]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC Options Facility

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 1, 2015, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2015. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 17 CFR 200.30-3(a)(12).

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to amend how PIP and COPIP Orders⁵ executing on the BOX Book are treated within the BOX Fee Schedule. Specifically, the Exchange proposes to now treat both sides of these transactions as Non-Auction transactions in regards to both Exchange Fees (Section I) and Liquidity Fees and Credits (Section II). While this type of interaction is not common, the Exchange believes that doing so will add greater clarity to the Fee Schedule and reduce Participant confusion about how these executions are treated.

The Exchange first proposes to add subsection 3 to Section I.B. (PIP and COPIP Orders Executed Against Orders on the BOX Book) and state that each PIP or COPIP Order which executes against an Unrelated Order on the BOX Book shall be treated as a Non-Auction transaction and be subject to Section I.A. Exchange Fees (Non-Auction Transactions).⁶ The Exchange then proposes to amend Section II.A. (PIP and COPIP Transactions) to add language which specifies that each PIP Order or COPIP Order that executes against an Unrelated Order on the BOX Book shall be treated as a Non-Auction transaction and deemed exempt from Liquidity Fees and Credits.

The Exchange does not believe that this change will have a noticeable impact on the fees assessed on its Participants.⁷ Almost all PIP and COPIP Orders executing against orders on the BOX Book will be Public Customer orders, which are not assessed an Exchange fee. Similarly, under the Non-Auction fee structure Public Customers are also never assessed a fee. The Exchange notes that the Public Customer in this scenario may actually

receive an additional rebate of up to \$0.70 under Section I.A.1. (Tiered Volume Rebate for Non-Auction Transactions.)

While unlikely that a Participant other than a Public Customer would be interacting with the order on the BOX Book, the Exchange notes that a Market Maker who submits a PIP or COPIP Order that executes against an order on the BOX Book would be charged anywhere from \$0.05 to \$0.55 in Penny Pilot Classes and \$0.10 to \$0.90 in Non-Penny Pilot Classes depending on the Participant type that the Order interacted with. The Market Maker would also be eligible for the Tiered Volume Rebate of up to \$0.10 per contract depending on its monthly average daily volume. Comparatively, the same Market Maker would be assessed a \$0.20 Exchange fee for the PIP and COPIP Order and a credit for removing liquidity of \$0.35 (Penny Pilot Classes) and \$0.75 (Non-Penny Pilot Classes).

A Professional Customer or Broker Dealer who submits a PIP or COPIP Order that executes against an order on the BOX Book could be charged anywhere from \$0.40 to \$0.64 in Penny Pilot Classes and \$0.40 to \$0.99 in Non-Penny Pilot Classes. The same Professional Customer or Broker Dealer would be assessed a \$0.37 Exchange fee for the PIP and COPIP Order and a credit for removing liquidity of \$0.35 (Penny Pilot Classes) and \$0.75 (Non-Penny Pilot Classes).

The Exchange also proposes to remove obsolete language in this subsection that references immediately marketable Unrelated Orders, specifically the language that states that "an Unrelated Order that is not immediately marketable will be charged as an Improvement Order when it executes against a PIP Order or a COPIP Order," as well as "When a non-immediately marketable order executes against a PIP Order or a COPIP Order, therefore becoming an Unrelated Order, it shall be charged as an Improvement Order." Since the introduction of the pro-rata allocation algorithm within the PIP and COPIP,⁸ all Unrelated Orders are systematically treated as immediately marketable. Therefore the Exchange believes this language is no longer necessary and removing it will reduce participant confusion about how these executions are treated within the Fee Schedule. The Exchange also

proposes to remove footnotes which are referenced in the text that is being removed.

The Exchange notes that the fees for immediately marketable Unrelated Orders remain unchanged. These orders continue to be charged as Non-Auction transactions for purposes of the BOX Fee schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. Further, the Exchange operates within a highly competitive market in which market participants can readily direct order flow to any other competing exchange if they determine fees at a particular exchange to be excessive.

The Exchange believes treating PIP and COPIP Orders that execute against an Unrelated Order on the BOX Book as Non-Auction transactions is reasonable, equitable and not unfairly discriminatory. As the Exchange noted above, almost all PIP and COPIP Orders are from the accounts of Public Customers. If this type of interaction does take place the Public Customer will still not be charged a fee and may also receive a credit depending on its ADV for the month.

Additionally, the Exchange believes it is reasonable to potentially assess Market Makers, Broker Dealers, and Professional Customers with higher fees if their PIP or COPIP Orders execute on the BOX Book. While this scenario is rare, the Exchange notes that it has adopted similar methodology for Complex Orders that execute on the BOX Book, and while the result of this structure is that the BOX Participant does not know the fee it will be charged when submitting a PIP or COPIP Order, the Participant must recognize that it could be charged the highest applicable fee on the exchange's schedule. For example, while a Market Maker's PIP Order in a Penny Pilot Class would currently expect to be charged a \$0.20 exchange fee and receive a \$0.35 removal "credit" if the Order executed

⁵ A PIP Order or COPIP Order is a Customer Order (an agency order for the account of either a customer or a broker-dealer) designated for the PIP or COPIP, respectively.

⁶ For the PIP, an Unrelated Order is a non-Improvement Order entered into the BOX market during a PIP. For the COPIP, an Unrelated Order is a non-Improvement Order entered on BOX during a COPIP or BOX Book Interest during a COPIP.

⁷ The Exchange notes that in almost all scenarios the PIP and COPIP Order would be considered a taker of liquidity for purposes of the Non-Auction transaction fee structure.

⁸ See Securities Exchange Act Release No. 72848 (August 14, 2014), 79 FR 49361 (August 20, 2014) (Order Granting Approval of a Proposed Rule Change To Adopt New Trade Allocation Algorithms for Matching Trades at the Conclusion of the PIP and the COPIP).

⁹ 15 U.S.C. 78f(b)(4) and (5).

against a Primary Improvement Order or Improvement Order in the PIP or COPIP, if that Order interacted with an Unrelated Order on the BOX Book the Market Maker could now be charged anywhere from \$0.00 to \$0.51. Therefore, the Participant must recognize that it could be charged the highest applicable fee on the Exchange's schedule, which may, instead, be lowered or changed depending upon how the PIP or COPIP Order interacts. This way, a Participant will never be charged a higher fee than they expected when submitting a PIP or COPIP Order. Further, a majority of PIP and COPIP Orders execute as intended in the PIP and COPIP mechanisms, so the Exchange believes that any increase in fees will be nominal at most.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also does not believe that this change would disincentivize a market participant from sending in a PIP or COPIP Order, as the proposed rule change is meant to provide clarity to the BOX Fee Schedule so that Participants understand the fees they can be charged in this scenario. Under the proposed change PIP and COPIP Orders that execute against an Unrelated Order on the BOX Book will be subject to fees already in place on the Exchange. Further, almost all these transactions the PIP or COPIP Order will be from the account of the Public Customer and there will be no change to the fees assessed on these Participants. In rare cases, Market Makers, Broker Dealers and Professional Customers could be assessed a higher fee but the Exchange believes any fees assessed would be nominal.

Finally, the Exchange does not believe that treating PIP and COPIP Orders that execute against an Unrelated Order on the BOX Book as Non-Auction transactions will impose a burden on competition among various Exchange

Participants because all Participants will be affected to the same extent.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2015-30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2015-30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2015-30, and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22743 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75836; File No. SR-ICC-2015-013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Provide for the Clearance of Additional Western European Sovereign Single Names

September 3, 2015.

On July 6, 2015, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide the basis for ICC to clear additional credit default swap contracts (SR-ICC-2015-013). The proposed rule change was published for comment in the **Federal**

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

Register on July 21, 2015.³ To date, the Commission has not received comments on the proposal.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is September 4, 2015.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. ICC's proposed rule change would provide the basis for ICC to include the Federal Republic of Germany, the French Republic and the United Kingdom of Great Britain and Northern Ireland in the list of specific Eligible Standard Western European Sovereign ("SWES") Reference Entities to be cleared by ICC. Because the proposed rule change is dependent on the approval and implementation of the proposed rule change in SR-ICC-2015-009, which is currently under Commission review, the Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates October 19, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-ICC-2015-013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22748 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75825; File No. SR-OCC-2015-014]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend The Options Clearing Corporation's Schedule of Fees To Allow a Clearing Fee Waiver for Exchange New Products

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on August 31, 2015, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend OCC's Schedule of Fees, effective September 1, 2015, to allow a clearing fee waiver for exchange new products that is longer than the current clearing fee waiver for exchange new products.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend OCC's Schedule of Fees to allow for a longer clearing fee waiver period, for up to twelve (12) months, for clearing members trading exchange new products. OCC's Schedule of Fees sets forth the clearing

fee related to "New Products" listed by an exchange and cleared through OCC. New products are currently subject to a fee waiver, or "fee holiday," in which OCC does not charge a clearing fee from the first day of the listing of the new product through the end of the following calendar month. After that time, the clearing fee reverts to the applicable clearing fee set forth in the Schedule of Fees.³

OCC is proposing to revise its Schedule of Fees to allow the exchange new product fee waiver period to be longer in duration than the current exchange new product fee waiver period in the event that OCC and an exchange would agree to a longer fee waiver. The length of any proposed extended exchange new product fee waiver would be subject to agreement between OCC and the requesting exchange and shall not exceed 12 months. Each exchange clearing new products through OCC would be able to extend the clearing fee waiver for its new products beyond the period in the current Schedule of Fees for up to 12 months, subject to OCC's agreement. Further, consistent with the terms of the Restated Participant Exchange Agreement for options exchanges and OCC's Clearing and Settlement Services Agreements with futures exchanges, OCC may not discriminate among exchanges with respect to the nature or quality of the services it provides to the exchanges for which it provides clearance and settlement services. Accordingly, the service terms provided to one exchange, such as an extended clearing fee waiver for new products, would also need to be made available to all other exchanges.

In addition, the current clearing fee waiver period for exchange new products would not be shortened by this proposed rule change. OCC believes that the proposed flexibility in the waiver period for exchange new products will enhance innovation for the introduced new products.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(D)⁴ of the Act, because the proposed change would equitably allocate reasonable clearing fees among all of its clearing members pursuant to the proposed Schedule of Fees. As described above, the proposed extended clearing fee waiver would apply equally

³ Securities Exchange Act Release No. 34-75456 (July 15, 2015), 80 FR 43146 (July 21, 2015) (SR-ICC-2015-013).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For example, the current Schedule of Fees provides that trades with contracts of 1-500 are charged \$0.05 per trade, trades with contracts of 501-1000 are charged \$0.04 per trade and trades with contracts of 1001-2000 are charged \$0.03 per trade.

⁴ 15 U.S.C. 78q-1(b)(3)(D).

to all clearing members trading applicable exchange new products and there is no concurrent increase in clearing fees for any other clearing members clearing any other products at OCC. The proposed rule change is not inconsistent with the existing rules of the OCC including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose a burden on competition.⁵ Although this proposed rule change affects clearing members, their customers and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because clearing fees apply equally to all users of OCC as set forth in OCC's Schedule of Fees. Additionally, and as described above, OCC cannot discriminate among exchanges with respect to the nature or quality of the services it provides to the exchanges for which it provides clearance and settlement services. For the foregoing reasons, OCC does not believe that the proposed rule change would impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-OCC-2015-014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2015-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_014.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2015-014 and should be submitted on or before October 1, 2015.

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.⁶

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22740 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 10, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session. The duty officer determined no earlier notice of this Meeting was practicable.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 4, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015-22911 Filed 9-8-15; 4:15 pm]

BILLING CODE 8011-1-P

⁵ 15 U.S.C. 78q-1(b)(3)(I).

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Form F-80; OMB Control No. 3235-0404, SEC File No. 270-357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F-80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. Form F-80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual burden of 8 hours. The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 3, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22749 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Form T-6, OMB Control No. 3235-0391, SEC File No. 270-344.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form T-6 (17 CFR 269.9) is an application for eligibility and qualification for a foreign person or corporation under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T-6 provides the basis for determining whether a foreign person or corporation is eligible to serve as a trustee for qualified indenture. Form T-6 takes approximately 17 burden hours per response and is filed by approximately 15 respondents annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 64 hours (4.25 hours per response × 15 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 3, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22752 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Regulation FD, OMB Control No. 3235-0536, SEC File No. 270-475.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation FD (17 CFR 243.100 *et seq.*)—Other Disclosure Materials requires public disclosure of material information from issuers of publicly traded securities so that investors have current information upon which to base investment decisions. The purpose of the regulation is to require that: (1) When an issuer intentionally discloses material information, to do so through public disclosure, not selective disclosure; and (2) to make prompt public disclosure of material information that was unintentionally selectively disclosed. Regulation FD was adopted due to a concern that the practice of selective disclosure leads to

a loss of investor confidence in the integrity of our capital markets. All information is provided to the public for review. The information required is filed on occasion and is mandatory. We estimate that approximately 13,000 issuers make Regulation FD disclosures approximately five times a year for a total of 58,000 submissions annually, not including an estimated 7,000 issuers who file Form 8-K to comply with Regulation FD. We estimate that it takes approximately 5 hours per response (58,000 responses × 5 hours) for a total burden of 290,000 hours annually. In addition, we estimate that 25% of the 5 hours (1.25 hours) is prepared by the filer for an annual reporting burden of 72,500 hours (1.25 hours per response × 58,000 responses).

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

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA-Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22753 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75831; File No. SR-BYX-2015-38]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Rules 1.5(r) and 11.1 and Adopt New Rule 11.1(a)(1)

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 1, 2015, BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members³ [sic] indicate a time upon which their order may become eligible for execution.

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.” See Exchange Rule 1.5(n).

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Pre-Opening Session under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to adopt new Rule 11.1(a)(1) to define Effective Start Time, which would be an order instruction enabling Members indicate a time upon which their order may become eligible for execution.

Pre-Opening Session 7:00 a.m. Start

The Exchange trading day is currently divided into two sessions: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; and (ii) the Regular Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time. The Exchange proposes to amend the definition of “Pre-Opening Session” under Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time.⁴

The Exchange also proposes to amend Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. Other than the proposal to change the start of the Pre-Opening Session from 8:00 a.m. to 7:00 a.m. Eastern Time discussed above, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

As amended, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours,⁵ depending on the Time-in-Force

⁴ The Exchange notes that NYSE Arca, Inc. (“NYSE Arca”) operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC (“Nasdaq”) operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁵ “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

(“TIF”)⁶ selected by the User.⁷ Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,⁸ Partial Post Only at Limit Orders,⁹ Intermarket Sweep Orders (“ISOs”),¹⁰ BATS Market Orders¹¹ with a TIF other than Regular Hours Only,¹² Minimum Quantity Orders¹³ that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)¹⁴ or Fill-or-Kill (“FOK”).¹⁵ At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,¹⁶ routed, cancelled, or executed in accordance with the terms of the order.

Operations. From the Members’ operational perspective, the Exchange’s goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m. The Exchange will minimize Members’ preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will “wake up” by loading in price/time priority all open trading entered after 6:00 a.m. Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not

required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m.

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m. All routing strategies set forth in Exchange Rule 11.11 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution algorithms processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m. The Exchange’s proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the “T” modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.

Fees. The Exchange is not changing any fees in connection with this proposal.

Market Surveillance. The Exchange’s commitment to high quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange’s surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.13 just as it does today beginning at 8:00 a.m.

Effective Start Time

The Exchange propose to adopt a new defined term, Effective Start Time,

under proposed paragraph (a)(1) to Rule 11.1. Effective Start Time would be defined as an instruction a User may attach to an order to buy or sell which indicates the time upon which the order is to become eligible for execution. Like orders placed on the BATS Book at the start of the Pre-Opening Session under Rule 11.1(a), at the Effective Start Time, the order will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order. Once received, orders with an Effective Start Time are placed in a suspended state and not placed on the BATS Book until the Effective Start Time selected by the User. Orders with an Effective Start Time are treated like all other orders once placed on the BATS Book and will receive a time stamp at the time the order becomes eligible for execution. Pursuant to Rule 11.12, orders entered with identical Effective Start Times will retain their priority as compared to each other based upon the time such orders were initially received by the System.

In general, a User may specify a time between 7:00 a.m. and 4:00 p.m. Eastern Time as the order’s Effective Start Time, subject to the trading sessions that the particular order type is eligible for execution. A Member would not be able to combine an Effective Start Time with BATS Post Only Orders, BATS Market Orders, Minimum Quantity Orders, ISOs, or orders that include a TIF of IOC or FOK. The Effective Start Time instruction would be available for all other order types that include a TIF other than IOC or FOK. This is also consistent with current Rule 11.1(a), under which the Exchange does not accept the following orders prior to the start of the Pre-Opening Session: BATS Post Only Orders, Partial Post Only at Limit Orders, ISO, BATS Market Orders with a TIF other than Regular Hours Only, Minimum Quantity Orders that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and

⁶ The Times-In-Force instructions available on the Exchange are set forth under Exchange Rule 11.9(b).

⁷ “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(cc).

⁸ See Exchange Rule 11.9(c)(6).

⁹ See Exchange Rule 11.9(c)(7).

¹⁰ See Exchange Rule 11.9(d).

¹¹ See Exchange Rule 11.9(a)(2).

¹² See Exchange Rule 11.9(b)(7).

¹³ See Exchange Rule 11.9(c)(5).

¹⁴ See Exchange Rule 11.9(b)(1).

¹⁵ See Exchange Rule 11.9(b)(6).

¹⁶ See Exchange Rule 1.5(e).

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

open market and a national market system.

Pre-Opening Session 7:00 a.m. Start

The Exchange believes its proposal to amend Rule 1.5(r) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that opening its system at 7:00 a.m. will benefit investors, the national market system, Members and the Exchange market. Opening at 7:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. Opening at 7:00 a.m. will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening the Exchange at 7:00 a.m. will also benefit Members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

The proposed rule change promotes just and equitable principles of trade by offering additional trading opportunities to Members that desire them, without imposing burdens on Members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved. The Exchange notes that the proposed trading period has been available on NYSE Arca and Nasdaq.¹⁹ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not avail themselves of these benefits.

Effective Start Time

The Exchange believes its proposed Effective Start Time instruction also

promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed Effective Start Time instruction will provide Users with greater control over their orders by electing a specific time upon which their order may become eligible for execution. The concept of selecting conditions during which an order is to be eligible for execution is not novel. The operation of the Effective Start Time instruction is similar to functionality available on the Exchange and elsewhere that permits members to elect when their orders are to become eligible for executions. Specifically, on the Exchange, a User may elect a buy (sell) Stop Order or Stop Limit Order indicating that the order become eligible for execution when the consolidated last sale (purchase) in a security occurs at or above (below) a specified Stop Price.²⁰ In addition, a User may elect the trading session(s) during which their order would be eligible for execution. In such case, the User may enter an order during the Pre-Opening Session and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours. Conversely, Members also maintain the ability to elect when their order should expire or be cancelled. For example, a User may elect a TIF instruction of Day, GTD, or GTX, all which state that the order cancelled if not executed by a certain time.²¹ Lastly, similar functionality is currently available on NYSE Arca.²²

The Exchange believes it has appropriately limited the availability of the Effective Start Time instruction to exclude its use with order types and order instructions that it may be deemed inconsistent with. Specifically, the Effective Time instruction is not available for ISOs and the use of such an instruction may be considered inconsistent with a Member's responsibility to comply with the requirements of Regulation NMS relating to ISOs. In addition, the Effective Start Time instruction is not available for BATS Market Orders or orders with a TIF instruction of IOC or FOK as well as orders with BATS Post Only Order or Minimum Quantity

²⁰ See Exchange Rules 11.9(c)(17) and (c)(18). See also New York Stock Exchange, Inc. ("NYSE") Rule 13(e)(7).

²¹ See Exchange Rules 11.9(b)(2),(4), and (5). See also Nasdaq Rule 4703(a), and NYSE Rule 13(b).

²² NYSE Arca permits the selection of an Effective Time (Tag 168), like the Exchange proposes herein, and Expire Time (Tag 126). See NYSE Arca FIX Specifications, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf (dated June 8, 2015).

Orders. BATS Market Orders and orders with a TIF instruction of IOC and FOK are immediately executable once placed on the BATS Book. Permitting the use of an Effective Start time with such orders appears inconsistent as a User will not know at the time of order entry what the market for such a security would be at the selected Effective Start Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal to start the Pre-Opening Session at 7:00 a.m. Eastern Time would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. In addition, the proposed Effective Start Time instruction will enable the Exchange to provide similar functionality as NYSE Arca. The fact that the extending the Pre-Opening Session and Effective Start Time are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹⁹ See *supra* note 4.

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-BYX-2015-38 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-BYX-2015-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2015-38, and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22755 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Form ADV-E, OMB Control No. 3235-0361, SEC File No. 270-318.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form ADV-E (17 CFR 2799.8) is the cover sheet for certificates of accounting filed pursuant to rule 206(4)-2 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-2). The rule further requires that the public accountant file with the Commission a Form ADV-E and accompanying statement within four business days of the resignation, dismissal, removal or other termination of its engagement. The annual burden is approximately three minutes per respondent.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The information provided on Form ADV-E is mandatory. Responses will not be kept confidential. An agency 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.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549

or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 3, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22754 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Form T-1, OMB Control No. 3235-0110, SEC File No. 270-121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form T-1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T-1 takes approximately 15 hours per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of the 15 hours (4 hours per response) is prepared by the company for a total reporting burden of 20 hours (4 hours per response × 5 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted

²³ 17 CFR 200.30-3(a)(12).

in writing within 60 days of this publication.

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

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 3, 2015.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22750 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75835; File No. SR-EDGA-2015-36]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rules 1.5(s), 11.1(a)(1), 11.6 and 11.8

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2015, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the definition of Pre-Opening Session under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to amend: (i) Rule 11.6 to adopt a new defined term, Effective Start Time, which would be an order instruction enabling Members³ [sic]

indicate a time upon which their order may become eligible for execution; (ii) and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Pre-Opening Session under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. The Exchange also proposes to amend: (i) Rule 11.6 to adopt a new defined term, Effective Start Time, which would be an order instruction enabling Members indicate a time upon which their order may become eligible for execution; (ii) and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

Pre-Opening Session 7:00 a.m. Start

The Exchange trading day is currently divided into three sessions: (i) The Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) the Regular Session which runs from the completion of the Opening Process or Continent Open as defined in Rule 11.7 and 4:00 p.m. Eastern Time; and (iii) the Post-Closing Session which

starts at 4:00 p.m. and ends at 8:00 p.m. Eastern Time. The Exchange proposes to amend the definition of "Pre-Opening Session" under Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m. rather than 8:00 a.m. Eastern Time.⁴

The Exchange also proposes to amend Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time. Rule 11.1(a)(1) states that all orders are eligible for execution during the Regular Session.⁵ Other than the proposal to change the start of the Pre-Opening Session from 8:00 a.m. to 7:00 a.m. Eastern Time discussed above, the Exchange does not propose to amend the substance or operation of Rule 11.1(a)(1).

As amended, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours,⁶ depending on the Time-in-Force ("TIF")⁷ selected by the User.⁸ Rule 11.1(a)(1) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: orders with a Post Only⁹ instruction, Intermarket Sweep Orders ("ISOs"),¹⁰ Market Orders¹¹ with a TIF instruction other than Regular Hours Only,¹² orders with a Minimum Execution Quantity¹³ instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel ("IOC")¹⁴ or Fill-

⁴ The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

⁵ "Regular Session" is defined as "the time between the completion of the Opening Process or Continent Open as defined in Rule 11.7 and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(hh).

⁶ "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(y).

⁷ The Times-In-Force instructions available on the Exchange are set forth under Exchange Rule 11.6(q).

⁸ "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(ee).

⁹ See Exchange Rule 11.6(n)(4).

¹⁰ See Exchange Rule 11.8(c).

¹¹ See Exchange Rule 11.8(a).

¹² See Exchange Rule 11.6(q)(6).

¹³ See Exchange Rule 11.6(h).

¹⁴ See Exchange Rule 11.6(q)(1).

that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange." See Exchange Rule 1.5(n).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as

or-Kill (“FOK”).¹⁵ At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the EDGA Book,¹⁶ routed, cancelled, or executed in accordance with the terms of the order.

Operations. From the Members’ operational perspective, the Exchange’s goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m. The Exchange will minimize Members’ preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

Opening Process. The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will “wake up” by loading in price/time priority all open trading interest entered after 6:00 a.m. Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

Order Types. Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m.

Routing Services. The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m. All routing strategies set forth in Exchange Rule 11.11 will remain

otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.

Order Processing. Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution algorithms processes or rules.

Data Feeds. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m. The Exchange’s proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

Trade Reporting. Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the “T” modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.

Fees. The Exchange is not changing any fees in connection with this proposal.

Market Surveillance. The Exchange’s commitment to high quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange’s surveillance systems, which will launch by the time trading starts at 7:00 a.m.

Clearly Erroneous Trade Processing. The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.13 just as it does today beginning at 8:00 a.m.

Non-Substantive Changes. The Exchange also proposes two non-substantive amendments to Rule 11.1(a)(1). First, the Exchange proposes to capitalize the term “Time-in-Force” in the Rule’s third sentence. Second, the Exchange proposes to delete the word “orders” from after Eastern Time in the Rule’s fifth sentence. Neither of these changes amend the meaning of Rule 11.1(a)(1).

Effective Start Time

The Exchange propose to amend Rule 11.6 to adopt a new defined term, Effective Start Time, under which Members may indicate a time upon which their order may become eligible for execution and Rule 11.8 to identify which order types an Effective Start Time may be utilized with.

Effective Start Time would be defined under new paragraph (t) to Rule 11.6 as an instruction a User may attach to an order to buy or sell which indicates the time upon which the order is to become eligible for execution. Like orders placed on the EDGA Book at the start of

the Pre-Opening Session under Rule 11.1(a)(1), at the Effective Start Time, the order will be placed on the EDGA Book, routed, cancelled, or executed in accordance with the terms of the order. Once received, orders with an Effective Start Time are placed in a suspended state and not placed on the EDGA Book until the Effective Start Time selected by the User. Orders with an Effective Start Time are treated like all other orders once placed on the EDGA Book and will receive a time stamp at the time the order becomes eligible for execution. Pursuant to Rule 11.9, orders entered with identical Effective Start Times will retain their priority as compared to each other based upon the time such orders were initially received by the System.

The Exchange also proposes to amend Rule 11.8 to identify which order types an Effective Start Time may be utilized with. In general, a User may specify a time between 7:00 a.m. and 8:00 p.m. Eastern Time as the order’s Effective Start Time, subject to the trading sessions that the particular order type is eligible for execution. The Effective Start Time instruction will not be available for ISOs, Market Orders, or orders with a TIF of IOC or FOK as the Exchange believes the instruction is not consistent with the purposes of these order types and order type instructions. This is also consistent with current Rule 11.1(a)(1), under which the Exchange does not accept the following orders prior to the start of the Pre-Opening Session: orders with a Post Only instruction, ISOs, Market Orders with a TIF instruction other than Regular Hours Only, orders with a Minimum Execution Quantity instruction that also include a TIF instruction of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK.

Effective Start Time will be available for the following order types:

- Limit Orders. Under Rule 11.8(b)(6), Effective Start Time would be available for Limit Orders with a TIF instruction other than IOC or FOK. Effective Start Time would not be available for orders with a Post Only instruction or Minimum Execution Quantity. This is consistent with current Rule 11.1(a)(1), under which the Exchange does not accept the following orders with a Post Only instruction or Minimum Execution Quantity.

- MidPoint Peg Orders. Under Rule 11.8(d)(4) and like Limit Orders described above, Effective Start Time would be available for MidPoint Peg Orders with a TIF instruction other than IOC or FOK. Effective Start Time would not be available for orders with a Post

¹⁵ See Exchange Rule 11.6(q)(3).

¹⁶ See Exchange Rule 1.5(d).

Only instruction or Minimum Execution Quantity.

- **MidPoint Discretionary Orders** (“MDO”). Under Rule 11.8(e)(3), MDOs may include an Effective Start Time. The Exchange notes that Market MDOs are not permitted to include a TIF instruction of IOC or FOK. They may only include a TIF instruction of Day, RHO, GTX, or GTD.

- **Market Maker Peg Orders.** Under Rule 11.8(f)(7), all Market Maker Peg Orders may include an Effective Start Time. The Exchange notes that Market Maker Peg Orders are not permitted to include a TIF instruction of IOC or FOK. They may only include a TIF instruction of Day, RHO or GTD. Market Maker Peg Orders are designed to assist Market Makers¹⁷ in complying with their market making quoting obligations under Exchange Rule 11.20. While Market Makers may select an Effective Start Time after their quoting obligations begin, the Exchange understands that Market Makers may utilize other order types, such as Limit Orders, to satisfy their quoting obligations prior to the Effective Start Time. The Exchange will surveil for the use of an Effective Start Time by Market Makers to ensure they continue to meet their quoting obligations under the Exchange Rule 11.20.

- **Supplemental Peg Orders.** Under Rule 11.8(g)(4), all Supplemental Peg Orders may include an Effective Start Time. The Exchange notes that Supplemental Peg Orders are not permitted to include a TIF instruction of IOC or FOK. They may only include a TIF instruction of Day, RHO, GTD or GTX. A Supplemental Peg Order with a Minimum Execution Quantity may not also contain an Effective Start Time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Pre-Opening Session 7:00 a.m. Start

The Exchange believes its proposal to amend Rule 1.5(s) to state that the Pre-Opening Session will start at 7:00 a.m.

¹⁷ “Market Maker” is defined as “a Member that acts as a Market Maker pursuant to Chapter XI.” EDGA Rule 1.5(l).

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(5).

rather than 8:00 a.m. Eastern Time and Rule 11.1(a)(1) to account for the Pre-Opening Session starting at 7:00 a.m. Eastern Time promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that opening its system at 7:00 a.m. will benefit investors, the national market system, Members and the Exchange market. Opening at 7:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. Opening at 7:00 a.m. will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening the Exchange at 7:00 a.m. will also benefit Members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

The proposed rule change promotes just and equitable principles of trade by offering additional trading opportunities to Members that desire them, without imposing burdens on Members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved. The Exchange notes that the proposed trading period has been available on NYSE Arca and Nasdaq.²⁰ The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not to avail themselves of these benefits.

Effective Start Time

The Exchange believes its proposed Effective Start Time instruction also promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed Effective Start Time instruction will provide Users with

greater control over their orders by electing a specific time upon which their order may become eligible for execution. The concept of selecting conditions during which an order is to be eligible for execution is not novel. The operation of the Effective Start Time instruction is similar to functionality available on the Exchange and elsewhere that permits members to elect when their orders are to become eligible for executions. Specifically, on the Exchange, a User may elect a Stop Price or Stop Limit Price on a buy (sell) Market Order or Limit Order indicating that the order become eligible for execution when the consolidated last sale (purchase) in a security occurs at or above (below) a specified Stop Price.²¹ In addition, a User may elect the trading session(s) during which their order would be eligible for execution. In such case, the User may enter an order during the Pre-Opening Session and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours. Conversely, Members also maintain the ability to elect when their order should expire or be cancelled. For example, a User may elect a TIF instruction of Day, GTD, or GTX, all which state that the order cancelled if not executed by a certain time.²² Lastly, similar functionality is currently available on NYSE Arca.²³

The Exchange believes it has appropriately limited the availability of the Effective Start Time instruction to exclude its use with order types and order instructions that it may be deemed inconsistent with. Specifically, the Effective Time instruction is not available for ISOs and the use of such an instruction may be considered inconsistent with a Member’s responsibility to comply with the requirements of Regulation NMS relating to ISOs. In addition, the Effective Start Time instruction is not available for Market Orders or orders with a TIF instruction of IOC or FOK as well as orders with Post Only instruction or Minimum Execution Quantity. Market Orders and orders with a TIF instruction of IOC and FOK are immediately executable once placed on the EDGA Book. Permitting the use of an Effective Start time with such orders appears inconsistent as a User

²¹ See Exchange Rules 11.8(a)(1) and (b)(1). See also New York Stock Exchange, Inc. (“NYSE”) Rule 13(e)(7).

²² See Exchange Rules 11.6(q)(2), (4), and (5). See also Nasdaq Rule 4703(a), and NYSE Rule 13(b).

²³ NYSE Arca permits the selection of an Effective Time (Tag 168), like the Exchange proposes herein, and Expire Time (Tag 126). See NYSE Arca FIX Specifications, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/FIX_Specification_and_API.pdf (dated June 8, 2015).

²⁰ See *supra* note 4.

will not know at the time of order entry what the market for such a security would be at the selected Effective Start Time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal to start the Pre-Opening Session at 7:00 a.m. Eastern Time would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. In addition, the proposed Effective Start Time instruction will enable the Exchange to provide similar functionality as NYSE Arca. The fact that the extending the Pre-Opening Session and Effective Start Time are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-EDGA-2015-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGA-2015-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGA-2015-36 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22747 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

²⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75824; File No. SR-EDGX-2015-40]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.21(d), Relating to the Routing of Retail Orders

September 3, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2015, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.21(d) to state that unless otherwise instructed by the Member,⁵ a Retail Order⁶ will be identified as Retail when routed to an away Trading Center, including an exchange that operates a retail liquidity program.

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange." See Exchange Rule 1.5(n).

⁶ The term "Retail Order" "(i) is an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology." See Exchange Rule 11.21(a).

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 11.21 defines a Retail Order and sets forth the attestation requirements⁷ that Members must complete prior to sending Retail Orders to the Exchange. Rule 11.21(d) also provides that Members may designate orders as Retail Orders on an order-by-order basis or a port level basis by designating particular FIX ports as Retail Order Ports.⁸ Going forward, the Exchange proposes to identify Retail Orders as Retail when they are routed to an away Trading Center, including an exchange that operates a retail liquidity program.⁹ As amended, Rule 11.21(d)

⁷ Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See Exchange Rule 11.21(b).

⁸ See Securities Exchange Act Release No. 68554 (December 31, 2012), 78 FR 966 (January 7, 2013) (SR-EDGX-2012-48) (Notice of Filing and Immediate Effectiveness).

⁹ Currently, BATS Y-Exchange, Inc. ("BYX"), the New York Stock Exchange, Inc. ("NYSE"), NYSE MKT LLC ("NYSE MKT"), NYSE Arca, Inc. ("NYSE Arca"), and the Nasdaq Stock Market OMX BX LLC ("Nasdaq OMX BX") operate retail liquidity programs. See BYX Rule 11.24, NYSE Rule 107C, NYSE MKT—Equities Rule 107C, NYSE Arca Equities Rule 7.44, and Nasdaq OMX BX Rule 4780. These exchange's also require their members to submit a signed written attestation, in a form prescribed by that exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as a "Retail Order" as defined by that exchange. *Id.* Each exchange would be required to file a proposed rule change with the Commission to amend its definition of "Retail Order." To the extent the Exchange routes an order identified as Retail to participate in an exchange's retail liquidity program, it will ensure that it does so in compliance with that exchange's rules governing its retail

would state that, unless otherwise instructed by the Member, a Retail Order will be identified as Retail when routed to an away Trading Center. As stated above, Members may designate their orders as Retail in accordance with Rule 11.21(b) for purposes of order handling on the EDGX Book. Under the proposed rule change, Members would be able to instruct the Exchange to remove such Retail designation from their Retail Orders when such orders are routed to an away Trading Center.

Implementation Date

The Exchange proposes to implement the proposed rule change on or about September 10, 2015.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade because enabling Members to identify their Retail Orders as Retail when they are routed to an away Trading Center, including exchanges that operate a retail liquidity program, would allow those orders to receive the best execution quality and potential price improvement. The proposal also promotes transparency by disseminating additional order information. In addition, providing Members the ability to elect that their routed Retail Order not be identified as Retail [sic] provides Member flexibility with regard to the handling of their Retail Orders by permitting them to elect that their Retail Order not be identified as Retail when routed to an away Trading Center.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its 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 the proposal would

liquidity program, including that the order satisfies that exchange's definition of "Retail Order."

¹⁰ The Exchange understands that implementation of the proposed rule change on September 10, 2015 is contingent upon the Commission waiving the 30-day operative delay. 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

enhance competition for retail order flow by enabling Members to identify their Retail Orders as Retail when they are routed to an away Trading Center, including exchanges that operate a retail liquidity program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would permit the Exchange to identify Retail Orders as Retail when routed to an away Trading Center, including exchanges that operate a retail liquidity program, enabling the orders to receive potential price improvement. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

investors and the public interest.¹⁶ The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EDGX-2015-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-EDGX-2015-40. 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.,

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EDGX-2015-40 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-22739 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75830; File No. SR-BX-2015-054]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASDAQ Last Sale Plus

September 3, 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 August 24, 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 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 BX Rule 7039 (BX Last Sale and NASDAQ Last Sale Plus Data Feeds) with language indicating the fees for NASDAQ Last Sale Plus ("NLS Plus"), a comprehensive data feed offered by NASDAQ OMX Information LLC.³

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. ("NASDAQ OMX").

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 purpose of this proposal is to amend BX Rule 7039 with language indicating the fees for NLS Plus. NLS Plus allows data distributors to access the three last sale products offered by each of NASDAQ OMX's three U.S. equity markets.⁴ Thus, in offering NLS Plus, NASDAQ OMX Information LLC is acting as a redistributor of last sale products already offered by NASDAQ, BX, and PSX and volume information provided by the securities information processors for Tape A, B, and C.⁵ This

⁴ The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market ("NASDAQ"), BX, and NASDAQ OMX PSX ("PSX") (together known as the "NASDAQ OMX equity markets"). PSX will shortly file companion proposals regarding data feeds similar to NLS Plus. NASDAQ's last sale product, NASDAQ Last Sale, includes last sale information from the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (SR-FINRA-2014-002). For proposed rule changes submitted with respect to NASDAQ Last Sale, BX Last Sale, and PSX Last Sale, see, e.g., Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178, (June 20, 2008) (SR-NASDAQ-2006-060) (order approving NASDAQ Last Sale data feeds pilot); 61112 (December 4, 2009), 74 FR 65569, (December 10, 2009) (SR-BX-2009-077) (notice of filing and immediate effectiveness regarding BX Last Sale data feeds); and 62876 (September 9, 2010), 75 FR 56624, (September 16, 2010) (SR-Phlx-2010-120) (notice of filing and immediate effectiveness regarding PSX Last Sale data feeds).

⁵ Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's ("SIAC") Consolidated Tape Association Plan/Consolidated Quotation System,

proposal is being filed by the Exchange to indicate the fees for the NLS Plus data feed offering and in light of the recent approval order regarding NLS Plus.⁶

NLS Plus allows data distributors to access last sale products offered by each of NASDAQ OMX's three equity exchanges. NLS Plus includes all transactions from all of NASDAQ OMX's equity markets, as well as FINRA/NASDAQ TRF data that is included in the current NLS product. In addition, NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information ("consolidated volume") from the securities information processors ("SIPs") for Tape A, B, and C securities.⁷ Thus, NLS Plus covers all securities listed on NASDAQ and New York Stock Exchange ("NYSE") (now under the Intercontinental Exchange ("ICE") umbrella), as well as US "regional" exchanges such as NYSE MKT, NYSE Arca, and BATS (also known as BATS/Direct Edge).⁸ As noted in the NLS Plus Approval Order, the Exchange is filing this separate proposal regarding the NLS Plus fee structure, on BX.

NLS Plus is currently codified in NASDAQ Rule 7039(d) and BX Rule 7039(b),⁹ in a manner similar to

or CTA/CQS ("CTA"). Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges ("UTP") Plan.

⁶ See Securities Exchange Act Release Nos. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (SR-NASDAQ-2015-055) (order approving proposed rule change regarding NASDAQ Last Sale Plus in NASDAQ Rule 7039(d)) (the "NLS Plus Approval Order"); 74972 (May 15, 2015), 80 FR 29370 (May 21, 2015) (SR-NASDAQ-2015-055) (notice of filing of proposed rule change regarding NASDAQ Last Sale Plus) (the "NLS Plus notice"); and 75600 (August 4, 2015), 80 FR 57968 (August 10, 2015) (SR-NASDAQ-2015-088) (notice of filing and immediate effectiveness regarding NASDAQ Last Sale Plus fees in NASDAQ Rule 7039(d)) (the "NLS Plus Fees Approval Order") [sic]. See also Securities Exchange Act Release No. 75709 (August 14, 2015), 80 FR 50671 (August 20, 2015) (SR-BX-2015-047) (notice of filing and immediate effectiveness regarding NASDAQ Last Sale Plus in BX Rule 7039(b)) (the "NLS Plus on BX filing").

NLS Plus, which is codified in NASDAQ Rule 7039(d) and BX Rule 7039(b), has been offered since 2010 via NASDAQ OMX Information LLC. NLS Plus is described online at <http://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification.pdf>; and the annual administrative and other fees for NLS Plus are noted at <http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#s>.

⁷ This reflects real-time trading activity for Tape C securities and 15-minute delayed information for Tape A and Tape B securities.

⁸ Registered U.S. exchanges are listed at <http://www.sec.gov/divisions/marketreg/mrexchanges.shtml>.

⁹ See supra note 6.

products of other markets.¹⁰ NLS Plus is offered, as noted, through NASDAQ OMX Information LLC, which is a subsidiary of NASDAQ OMX Group, Inc. that is separate and apart from The NASDAQ Stock Market LLC. NASDAQ OMX Information LLC combines publicly available data from the three filed last sale products of the NASDAQ OMX equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public. In that role, the function of NASDAQ OMX Information LLC is analogous to that of other market data vendors, and it has no competitive advantage over other market data vendors. NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors. For example, NASDAQ OMX Information LLC receives data from the exchange that is available to other market data vendors, with the same information distributed to NASDAQ OMX Information LLC at the same time it is distributed to other vendors (that is, NASDAQ OMX Information LLC has neither a speed nor an information differential). Through this structure, NASDAQ OMX Information LLC performs precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors; and the contents of the NLS Plus data stream are similar in nature to what is distributed by other exchanges.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems. The contents of NLS Plus are set forth in BX Rule 7039(b).¹¹ Specifically, subsection (b) states that NASDAQ Last Sale Plus is a comprehensive data feed produced by NASDAQ OMX

¹⁰ See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR-BATS-2014-055; SR-BYX-2014-030; SR-EDGA-2014-25; SR-EDGX-2014-25) (order approving market data product called BATS One Feed being offered by four affiliated exchanges). See also Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (order granting approval to establish the NYSE Best Quote & Trades ("BQT") Data Feed). These exchanges have likewise instituted fees for their products.

¹¹ BX Rule 7039(b) is similar to NASDAQ Rule 7039(d). The contents of NLS Plus in large part mimic those of NLS, which is set forth in NASDAQ Rule 7039(a)-(c). Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: The first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated [sic] volume for NASDAQ-listed securities; and the second data channel reflects NASDAQ, BX, and PSX trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.

Information LLC that provides last sale data as well as consolidated [sic] volume of NASDAQ OMX equity markets (NASDAQ, BX, and PSX) and the NASDAQ/FINRA Trade Reporting Facility ("TRF"). NASDAQ Last Sale Plus also reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape C securities and 15-minute delayed information for Tape A and Tape B securities. NLS Plus also contains the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID. Additionally, pertinent regulatory information such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary are included.¹² NLS Plus may be received by itself or in combination with NASDAQ Basic. The Exchange now proposes to add into BX Rule 7039(b) the fees associated with NLS Plus.

The Fees

Firms that receive an NLS Plus feed today are liable for annual administration fees for applicable NASDAQ equity exchanges: \$1,000 for NASDAQ, \$1,000 for BX, and \$1,000 for PSX.¹³ In addition, firms that receive NLS Plus are liable for NLS or NASDAQ Basic fees.¹⁴ Finally, firms will pay a

¹² The overwhelming majority of these data elements and messages are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale. Only two data elements (consolidated volume and Bloomberg ID) are sourced from other publicly accessible or obtainable resources. The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intraday when a security has a price drop of 10% or more from the adjusted prior day's NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused, released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities. For additional information, see NLS Plus Approval Order.

¹³ For current fees, see <http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#s>. Annual administrative fees are in BX Rule 7035, NASDAQ Rule 7035, and NASDAQ OMX PSX Fees Chapter VIII.

¹⁴ User fees for NLS and NASDAQ Basic are in NASDAQ Rules 7039 and 7047. User fees for BX

Continued

data consolidation fee of \$350 per month.

Accordingly, proposed BX Rule 7039 states the following at sections (b)(1) through (b)(3):

(1) Firms that receive NLS Plus shall pay the annual administration fees for NLS, BX Last Sale, and PSX Last Sale, and a data consolidation fee of \$350 per month.

(2) Firms that receive NLS Plus would either be liable for NLS fees or NASDAQ Basic fees.

(3) In the event that NASDAQ OMX BX and/or NASDAQ OMX PHLX adopt user fees for BX Last Sale and/or PSX Last Sale, firms that receive NLS Plus would also be liable for such fees.¹⁵

The Exchange notes that the proposed fee structure is designed to ensure that vendors could compete with the Exchange by creating a product similar to NLS Plus.¹⁶ The proposed fee structure reflects the current annual administrative cost as well as the incremental cost of the aggregation and consolidation function (generally known as the “consolidation function”) for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The proposed fee structure for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.¹⁷

The proposed fee structure is reasonable and proper. First, the proposed administration fee is essentially a codification of the current administration fee vis a vis NASDAQ, BX and PSX. Second, NLS Plus recipients would also be liable for fees if the Exchange adopts user fees for BX Last Sale and/or PSX Last Sale. To that end, the Exchange notes that it has filed separate proposals to adopt NLS Plus in the BX Last Sale and PSX Last Sale

Last Sale are in BX Rule 7039 (currently there is no fee liability), and for PSX Last Sale are in NASDAQ OMX PSX Fees Chapter VIII (currently there is no fee liability). As currently described in NASDAQ Rule 7047, NASDAQ Basic provides two sets of data elements: (1) The best bid and offer on the NASDAQ Stock Market for each U.S. equity security; and (2) the last sale information currently provided by NLS.

¹⁵ BX Last Sale and PSX Last Sale currently are not fee liable, as noted in BX Rule 7039 and NASDAQ OMX PSX Fees Chapter VIII, respectively.

¹⁶ For discussion in addition to this proposal, see NLS Plus Approval Order.

¹⁷ See also footnote 24 in the NLS Plus notice, wherein NASDAQ indicated that it expects that the fee structure for NLS Plus will reflect an amount that is no less than the cost to a market data vendor to obtain all the underlying feeds, plus an amount to be determined that would reflect the value of the aggregation and consolidation function.

provisions,¹⁸ and will file separate fee proposals that would, like this filing, be expected to reflect an administrative fee component and a consolidation component. Third, firms receive NLS Plus by itself or in conjunction with NASDAQ Basic.¹⁹ Accordingly, firms would either be liable for NLS fees or NASDAQ Basic fees. Fourth, the Exchange proposes that NLS Plus includes [sic] a specific monthly \$350 data consolidation fee. This fee is designed to recoup the monthly consolidation costs emanating from the aggregation and consolidation of the data and data streams that make up the NLS Plus data feed. Such consolidated costs include, for example, the costs of combining the feeds, adding the Bloomberg ID, and combining the consolidated sale info. The Exchange believes that this consolidation fee, while in addition to the current NLS Plus fee in place, would not be material to firms.

The Exchange believes that the proposed NLS Plus fee is a simple codification of the existing NLS PLS [sic] fee into BX Rule 7039, as discussed, with the addition of a monthly data consolidation fee, and as such meets the requirements of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁰ in general, and with Sections 6(b)(4) and (5) of the Act,²¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange is codifying the fees regarding the NLS Plus data offering and the consolidation fee, as discussed, into sections (b)(1) through (b)(3) of BX Rule 7039.

The Exchange believes that the proposed fees offered to firms that elect to receive NLS Plus are reasonable, equitable and not unfairly discriminatory. These fees are reasonable because they are, as discussed, simply a codification of the existing fee structure, with an addition of the above-discussed consolidation fee, into existing BX Rule 7039. The proposed fee structure would apply equally to all firms that choose to avail

themselves of the NLS Plus data feed, and no firm is required to use NLS Plus. Moreover, the Exchange believes that the consolidation fee, while in addition to the current NLS Plus fee, would not be material to firms. The consolidation fee would, however, enable the Exchange to recoup the monthly consolidation cost emanating from the aggregation and consolidation of the data and data streams that make up the NLS Plus data feed. Such consolidated costs include, for example, the monthly costs of combining the feeds, adding the Bloomberg ID, and creating the consolidated sale info. The proposed fee structure would not be unfairly discriminatory because it would apply equally to all firms that choose to use NLS Plus.

The Exchange believes that the proposed fees are also consistent with the investor protection objectives of Section 6(b)(5) of the Act²² in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the proposed fee structure will codify the fees regarding the NLS Plus data offering into sections (b)(1) through (b)(3) of BX Rule 7039, which helps to assure proper enforcement of the rule and investor protection. The Exchange believes also that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by codifying into a rule the fee liability for an additional means by which investors may access information about securities transactions, namely NLS Plus, thereby providing investors with additional options for accessing information that may help to inform their trading decisions.

The Exchange notes that the Commission has recently approved data products on several exchanges that are similar to NLS Plus, and specifically determined that the fee-liable approved data products were consistent with the Act.²³ NLS Plus simply provides market participants with an additional option for receiving market data that has already been the subject of a proposed rule change and that is available from myriad market data vendors.

In adopting Regulation NMS, the Commission granted SROs and broker-

¹⁸ BX Rule 7039 and NASDAQ OMX PSX Fees Chapter VIII.

¹⁹ As provided in NASDAQ Rule 7047, NASDAQ Basic provides the information contained in NLS, together with NASDAQ's best bid and best offer.

²⁰ 15 U.S.C. 78f.

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² 15 U.S.C. 78f(b)(5).

²³ See supra note 10 regarding BATS One and NYSE BQT.

dealers (“BDs”) increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the NLS Plus market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.²⁴

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (“*NetCoalition I*”), upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’” *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323). The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S.

national market system for trading equity securities.’”²⁵

The Court in *NetCoalition I*, while upholding the Commission’s conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission’s conclusions as to the competitive nature of the market for NYSE Arca’s data product at issue in that case. As explained below in the Exchange’s Statement on Burden on Competition, however, the Exchange believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.²⁶ Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Moreover, fee liable data products such as NLS Plus are a means by which exchanges compete to attract order flow, and this proposal simply codifies the relevant fee structure into an Exchange rule. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while

continuing to offer its data products at competitive rates to firms.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. This rule proposal does not burden competition, which continues to offer alternative data products and, like the Exchange, set fees,²⁷ but rather reflects the competition between data feed vendors and will further enhance such competition. As described, NLS Plus competes directly with existing similar products and potential products of market data vendors. NASDAQ OMX Information LLC was constructed specifically to establish a level playing field with market data vendors and to preserve fair competition between them. Therefore, NASDAQ OMX Information LLC receives NLS, BX Last Sale, and PSX Last Sale from each NASDAQ-operated exchange in the same manner, at the same speed, and reflecting the same fees as for all market data vendors. Therefore, NASDAQ Information LLC has no competitive advantage with respect to these last sale products and NASDAQ commits to maintaining this level playing field in the future. In other words, NASDAQ will continue to disseminate separately the underlying last sale products to avoid creating a latency differential between NASDAQ OMX Information LLC and other market data vendors, and to avoid creating a pricing advantage for NASDAQ OMX Information LLC.

NLS Plus joins the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators,

²⁵ *NetCoalition I*, at 535.

²⁶ It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. See also *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013) (“*NetCoalition II*”) (finding no jurisdiction to review Commission’s non-suspension of immediately effective fee changes).

²⁷ See, e.g., supra note 10.

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).²⁸ It is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not

feasible because if all sales were priced at the margin, an exchange would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,²⁹ and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS Plus that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes

trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as NLS Plus can enhance order flow by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. The Exchange pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

²⁸ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," *Antitrust Law Journal*, Vol. 70, No. 3 (2003).

²⁹ It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATs, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATs or BD can combine with any other ATs, BD, or multiple ATs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs’ production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS Plus, the data provided through that product appears both in (i) real-time core data products

offered by the SIPs for a fee, (ii) free SIP data products with a 15-minute time delay, and (iii) individual exchange data products, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.³⁰

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.³¹ Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other³² and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the

market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. “No one disputes that competition for order flow is ‘fierce.’” *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform’s market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS Plus would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS Plus data revenues, the value of NLS Plus as a tool for attracting order flow, and ultimately, the volume of orders routed and the value of other data products.

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.

³⁰ See <http://www.cinnober.com/boat-trade-reporting>.

³¹ The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

³² It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2015-054 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-2015-054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2015-054 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-22744 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75846; File No. SR-NYSEArca-2015-78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 3 of NYSE Arca Equities Rule 8 To Extend the Effectiveness of the ETP Incentive Program for Additional One-Year Pilot Period, Ending September 4, 2016

September 4, 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 September 3, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program for additional one-year pilot

period, ending September 4, 2016. 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 amend Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program⁴ for an additional one-year pilot period, ending September 4, 2016.⁵

⁴ The Commission approved the ETP Incentive Program on a pilot basis in Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) ("ETP Incentive Program Release"). The Exchange subsequently filed to extend the original pilot program for the ETP Incentive Program until September 4, 2015. See Securities Exchange Act Release No. 72963 (September 3, 2014), 79 FR 53492 (September 9, 2014) (SR-NYSEArca-2014-99) (notice of filing and immediate effectiveness of proposed rule change extending effectiveness of the ETP Incentive Program until September 4, 2015). In addition, the Exchange recently filed a proposed rule change to amend Rules 7.25(c) and 8.800(b) to provide that exchange-traded products ("ETPs") already listed on the Exchange can be admitted to the ETP Incentive Program on a monthly basis rather than at the beginning of each quarter. See Securities Exchange Act Release No. 75282 (June 24, 2015), 80 FR 37340 (June 30, 2015) (SR-NYSEArca-2015-52) (notice of filing and immediate effectiveness of proposed rule change amending NYSE Arca Equities Rules 7.25 and 8.800 to allow an issuer to elect for its ETP to participate in the Crowd Participant Program or the ETP Incentive Program monthly rather than quarterly and to extend the effectiveness of the Crowd Participant Program until June 23, 2016). In SR-NYSEArca-2015-52, the Exchange stated that the Exchange anticipates that expanding the opportunity for issuers to enter the ETP Incentive Program will facilitate the provision of extra liquidity to lower-volume ETPs by incentivizing more Market Makers to take Lead Market Maker ("LMM") assignments in certain lower-volume ETPs.

⁵ The ETP Incentive Program is scheduled to end on September 4, 2015. For purposes of the ETP Incentive Program, ETPs include securities listed on

³⁴ 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.

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

The ETP Incentive Program is a pilot program designed to incentivize quoting and trading in ETPs and to add competition among existing qualified Market Makers.⁶ In addition, the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM⁷ assignments in certain lower-volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing issuers to list them on the Exchange. Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange proposes to extend the current operation of the ETP Incentive Program for an additional year to allow the Commission, the Exchange, LMMs, and issuers to further assess the impact of such program before proposing to make it available to other securities and implementing the programs on a permanent basis.⁸ Issuers began

the Exchange under the following rules: NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depository Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

⁶ A Market Maker is an Equity Trading Permit Holder that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. See NYSE Arca Equities Rule 1.1(v). An Equity Trading Permit Holder is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit. See NYSE Arca Equities Rule 1.1(n).

⁷ The LMM program is designed to incentivize firms to take on the LMM designation and foster liquidity provision and stability in the market. In order to accomplish this, the Exchange currently provides LMMs with an opportunity to receive incrementally higher transaction credits and incur incrementally lower transaction fees ("LMM Rates") compared to standard liquidity maker-taker rates ("Standard Rates"). The Exchange generally employs a maker-taker transactional fee structure, whereby an Equity Trading Permit Holder that removes liquidity is charged a fee ("Take Rate"), and an Equity Trading Permit Holder that provides liquidity receives a credit ("Make Rate"). See Trading Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

⁸ The Exchange notes that any proposed further continuance of the ETP Incentive Program, a proposal to make the ETP Incentive Program permanent, or a proposal to make such program available to other securities would require a rule filing with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

participating in the ETP Incentive Program following the extension of the first pilot period. The Exchange believes that extending the ETP Incentive Program pilot period for an additional year will provide additional time to assess the impact of the program for these issuers and to provide time for additional issuers to participate in the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the program before making it available to other securities or implementing it on a permanent basis.⁹

Prior to the end of the pilot period ending September 4, 2016, the Exchange proposes to post a report relating to the ETP Incentive Program (the "Assessment Report") on its Web site five months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot and, for each, provide (a) a statistical analysis that includes evidence that is sufficient to inform a reader about whether the program has met those objectives during the pilot period, along with (b) a narrative explanation of whether and how the evidence indicates the pilot has met the objective, including both strengths and weaknesses of the evidence in this regard. The Assessment Report also would include a discussion of (a) the procedures used in selecting any samples that are used in constructing tables or statistics for inclusion in the Assessment Report, (b) the definitions of any variables and statistics reported in the tables, including test statistics, (c) the statistical significance levels of any test statistics and (d) other statistical or qualitative information that may enhance the usefulness of the Assessment Report as a basis for evaluating the performance of the program. The Assessment Report would present statistics on product performance relative to the performance of comparable or other suitable benchmark products (including test statistics that permit the reader to evaluate the statistical significance of any differences reported or discussed in the report), along with information on the procedures that were used to identify those comparable or benchmark products, the characteristics of each comparable or benchmark products, the characteristics of each product that is

the focus of the pilot, the procedures used in selecting the time horizon of the sample and the sensitivity of reported statistics to changes in the time horizon of the sample.

This filing is not otherwise intended to address any other issues and the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the monthly selection provision [sic] or the proposed extension of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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.

The Exchange believes that the ETP Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers to take LMM assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The ETP Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange. Moreover, as described in the ETP Incentive Program Release, the Exchange believes that the ETP Incentive Program, which is entirely voluntary, encourages competition among markets for issuers' listings and among Market Makers for LMM assignments.

The Exchange believes that, by providing additional time for issuers to participate in the ETP Incentive Program, through an extension of the pilot period until September 4, 2016, the ETP Incentive Program would continue to provide an opportunity for rewarding competitive liquidity-providing LMMs, with associated requirements for quoting by LMMs at the National Best Bid or National Best Offer. The ETP Incentive Program, therefore, has the potential to enhance competition among liquidity providers and thereby improve execution quality on the Exchange. An extension of such pilot period will permit additional time for the Commission, the Exchange,

⁹ The Exchange has provided to the Commission monthly market quality reports relating to the ETP Incentive Program for the period October 2014 through July 2015, which are posted to the Exchange's Web site at <https://www.nyse.com/products/etp-incentive-program>.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

LMMs, and issuers to assess the impact of the ETP Incentive Program before making it available to other securities. The Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period.

The Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period. Prior to the end of the pilot period ending September 4, 2016, the Exchange proposes to post an Assessment Report on its Web site five months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot as well as additional information described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed extension to the pilot period for the ETP Incentive Program is not designed to address any competitive issues but rather to program [sic] additional time for the Commission, the Exchange, LMMs and issuers to assess the impact of such program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of

investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to allow the ETP Incentive Program to continue without interruption after September 4, 2015. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹² As stated in the proposal, the Exchange seeks to extend the current operation of the ETP Incentive Program for an additional year and does not propose any substantive changes to the program. The Exchange states that issuers began participating in the ETP Incentive Program following the extension of the first pilot period. The Exchange believes that extending the ETP Incentive Program pilot period for an additional year will provide additional time to assess the impact of the program for these issuers and to provide time for additional issuers to participate in the ETP Incentive Program so that the Commission, the Exchange, LMMs, and issuers may assess the impact of the program. The Commission notes that the Exchange will continue to monitor the efficacy of the ETP Incentive Program during the extended pilot period and will post the Assessment Report on its Web site prior to the end of the pilot period. Because the proposed change does not alter the substantive terms of the ETP Incentive Program and does not raise any novel or unique regulatory issues, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-78. 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 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the 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-NYSEArca-2015-78 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

[FR Doc. 2015-22845 Filed 9-9-15; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14434 and #14435]

New York Disaster #NY-00162

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

¹³ 17 CFR 200.30-3(a)(12).

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of NEW YORK dated 08/20/2015.

Incident: Severe Thunderstorms and Flooding.

Incident Period: 07/13/2015 through 07/14/2015.

Effective Date: 08/20/2015.

Physical Loan Application Deadline Date: 10/19/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/20/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chautauqua.
Contiguous Counties:

New York: Cattaraugus, Erie.
Pennsylvania: Erie, Warren.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14434 B and for economic injury is 14435 0.

The States which received an EIDL Declaration # are New York, Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 20, 2015.

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2015-22879 Filed 9-9-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14419 and #14420]

Kentucky Disaster Number KY-00058

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kentucky (FEMA-4239-DR), dated 08/12/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 07/11/2015 through 07/20/2015.

Effective Date: 08/28/2015.

Physical Loan Application Deadline Date: 10/12/2015.

EIDL Loan Application Deadline Date: 05/12/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Kentucky, dated 08/12/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Breathitt, Fleming, Perry.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Clay, Harlan, Knott, Lee, Leslie, Letcher, Mason, Nicholas, Owsley, Robertson, Wolfe.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2015-22884 Filed 9-9-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14436]

Ohio Disaster #OH-00044 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Ohio, dated 08/20/2015.

Incident: Below Average Water Levels of Buckeye Lake.

Incident Period: 04/20/2015 and continuing.

Effective Date: 08/20/2015.

EIDL Loan Application Deadline Date: 05/20/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield, Licking, Perry.

Contiguous Counties:

Ohio: Athens, Coshocton, Delaware, Franklin, Hocking, Knox, Morgan, Muskingum, Pickaway.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 144360

The State which received an EIDL Declaration # is OHIO.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 20, 2015.
Maria Contreras-Sweet,
Administrator.
 [FR Doc. 2015-22870 Filed 9-9-15; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).
ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the September meeting of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings will be held September 10, 2015 at 8:00 a.m. PDT.

ADDRESSES: This meeting is accessible via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

- SBA Update
- Annual Planning
- Board Assignments
- Member Roundtable

FOR FUTURE INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Nixon by fax or email. Her contact information is Monika Nixon, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202-205-7310, Fax 202-481-5624, email, *monika.nixon@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Nixon at the information above.

Miguel L' Heureux,
White House Liaison.
 [FR Doc. 2015-22868 Filed 9-9-15; 8:45 am]
BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14441 and #14442]

ALASKA Disaster #AK-00031

AGENCY: U.S. Small Business Administration.
ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ALASKA dated 08/26/2015.

Incident: Sockeye Fire.
Incident Period: 06/14/2015 through 07/22/2015.
Effective Date: 08/26/2015.
Physical Loan Application Deadline Date: 10/26/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/26/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: MATANUSKA-SUSITNA BOROUGH.

Contiguous Areas:
 ALASKA: CHUGACH REAA, COPPER RIVER, REAA DELTA/GREELY REAA, DENALI BOROUGH, IDITAROD AREA REAA, KENAI PENINSULA BOROUGH, MUNICIPALITY OF ANCHORAGE.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14441 5 and for economic injury is 14442 0.

The State which received an EIDL Declaration # is ALASKA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 26, 2015.
Maria Contreras-Sweet,
Administrator.
 [FR Doc. 2015-22882 Filed 9-9-15; 8:45 am]
BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 9264]

In the Matter of the Designation of Abu 'Ubaydah Yusuf al 'Anabi, aka Yusuf Abu-'Ubaydah al-Anabi, aka Abou Obeida Youssef al-Annabi, aka Abu-Ubaydah Yusuf al-Inabi, aka Mebrak Yazid, aka Youcef Abu Obeida, aka Mibrak Yazid, aka Yousif Abu Obayda Yazid, aka Yazid Mebrak, aka Yazid Mabrak, aka Yusuf Abu Ubaydah, aka Abou Youcef, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Abu 'Ubaydah Yusuf al 'Anabi, also known as Yusuf Abu-'Ubaydah al-Anabi, also known as Abou Obeida Youssef al-Annabi, also known as Abu-Ubaydah Yusuf al-Inabi, also known as Mebrak Yazid, also known as Youcef Abu Obeida, also known as Mibrak Yazid, also known as Yousif Abu Obayda Yazid, also known as Yazid Mebrak, also known as Yazid Mabrak, also known as Yusuf Abu Ubaydah, also known as Abou Youcef, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized

in the Order because of the ability to transfer funds instantaneously,” I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: August 4, 2015.

John F. Kerry,

Secretary of State.

[FR Doc. 2015-22849 Filed 9-9-15; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice 9266]

Industry Advisory Group: Notice of Charter Renewal

The charter for the U.S. Department of State Bureau of Overseas Buildings Operations' (OBO) Industry Advisory Group has been renewed for an additional two-year period. The group's annual meeting is held in the Harry S. Truman Building at the U.S. Department of State, located at 2201 C Street NW., Washington, DC. Each meeting is devoted to an exchange of ideas between OBO's senior management and the group members on issues relating to property management; site acquisition; project planning; design and engineering; construction; facility maintenance; and building operations.

The meetings are generally open to the public and are subject to advance registration and provision of required security information. Procedures for registration are included with each meeting announcement, no later than fifteen business days before each meeting.

OBO's mission is to provide safe, secure and functional facilities that represent the U.S. government to the host nation and support our staff in the achievement of U.S. foreign policy objectives. These facilities represent American values and the best in American architecture, engineering, technology, sustainability, art, culture, and construction execution.

For further information, please contact Christine Foushee at FousheeCT@state.gov or (703) 875-4131.

Dated: August 11, 2015.

Lydia Muniz,

Director, Overseas Buildings Operations, U.S. Department of State.

[FR Doc. 2015-22880 Filed 9-9-15; 8:45 am]

BILLING CODE 4710-51-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2015-0016]

2015 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments from the public identifying Internet and physical markets based outside the United States that should be included in the 2015 Notorious Markets List. In 2010, USTR began publishing the Notorious Markets List separately from the annual Special 301 Report as an “Out-of-Cycle Review.” The Notorious Markets List (List) identifies online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting.

DATES: The deadline for interested parties to submit written comments is 11:59 p.m. (EDT) on October 5, 2015. Interested parties who wish to provide rebuttal or other information to be considered during the review may do so through this docket until 11:59 p.m. (EDT) on October 12, 2015.

ADDRESSES: All written comments should be filed electronically via www.regulations.gov, Docket Number USTR-2015-0016, and be consistent with the requirements set forth below. When filing a submission, please include the phrase “2015 Out-of-Cycle Review of Notorious Markets” in the “Type Comment” field.

FOR FURTHER INFORMATION CONTACT: Christine Peterson, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at Special301@ustr.eop.gov. Information on the Special 301 Review, including the Notorious Markets List, is available at www.ustr.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because they cause significant financial losses for rights holders, legitimate businesses, and governments, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and potentially pose significant risks to consumer health and safety as well as

privacy and security. The List identifies select online and physical marketplaces that reportedly engage in or facilitate substantial copyright piracy and trademark counterfeiting.

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR announced that it would begin publishing the List as an Out-of-Cycle Review, separately from the annual Special 301 Report. USTR published the first such List in February 2011. USTR develops the annual List based upon public comments solicited through the **Federal Register** and in consultation with other Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy and counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with rights holders and enforcement officials to address infringement. We also encourage responsible government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions.

The List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general intellectual property rights (IPR) protection and enforcement climate in the country or countries concerned. For an analysis of the IPR climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

2. Public Comments

a. Written Comments

USTR invites written comments from the public concerning examples of Internet and physical notorious markets, including foreign trade zones that allegedly facilitate substantial trademark counterfeiting and copyright piracy. Commenters are requested to support their nominations with the information listed in Section 2.b.

b. Requirements for Comments

To receive full consideration, written comments should be as detailed as possible. Comments must clearly identify the market and the reason or reasons why the commenter considers that the market should be included in the Notorious Markets List.

Commenters are strongly encouraged to include the following information, as applicable:

- If a physical market, the market's name and location, *e.g.*, common name, street address, neighborhood, shopping district, city, etc., and the identity of the principal owners/operators;

- if an online market, the domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s);

- whether the physical or online market is owned, operated, or otherwise affiliated with a government entity;

- types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available in or at that market;

- volume of transactions in counterfeit or pirated goods or services or other indicia of a market's scope, scale, or reach or relative significance in a given geographic area or with respect to a category of goods or services; if an online market, information on the volume and type of Internet traffic associated with the Web site, including number of visitors, number of page views, average time spent on the site by visitors, estimate of the number of infringing items sold or traded and number of files streamed, shared, seeded, leached, downloaded, uploaded, or otherwise distributed or reproduced, and global or country popularity rating (*e.g.*, Alexa rank);

- if an online market, revenue sources such as sales, subscriptions, donations, upload incentives or advertising and the methods by which that revenue is collected;

- estimates of economic harm to the rights holder resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm;

- whether the goods or services sold, traded, distributed, or made available pose a risk to public health or safety;

- any known contractual, civil, administrative, or criminal enforcement activity against the market and the effectiveness of that enforcement activity;

- additional actions taken by the market owners or operators to remove, limit or discourage the availability of counterfeit or pirated goods or services, including removing or disabling access to such goods or services, issuing and enforcing guidelines prohibiting the posting of such goods or services, or cooperating in enforcement efforts; and
- any additional information relevant to the review.

c. Instructions for Submitting Comments

Comments must be in English. To ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to submit comments electronically, using the www.regulations.gov Web site. To submit comments via www.regulations.gov, enter Docket Number USTR-2015-0016 on the home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find the reference to this notice and click on the link entitled "Comment Now!" For further information on using the www.regulations.gov Web site, please consult the resources provided on the site by clicking on "How to use Regulations.gov" at the bottom of the home page under "Help."

The www.regulations.gov Web site allows users to provide comments by filling in a "Type Comment" field, or by attaching a document using an "Upload File" field. USTR prefers that comments be provided in an attached document. If a document is attached, please type "2015 Out-of-Cycle Review of Notorious Markets" in the "Type Comment" field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the "Type Comment" field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. In the document, confidential business information must clearly be designated as such; the submission must be marked "BUSINESS CONFIDENTIAL" on the cover page and each succeeding page, and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. Additionally, the submitter should type "Business Confidential 2015 Out-of-Cycle Review of Notorious Markets" in the "Type Comment" field. Anyone submitting a comment

containing business confidential information must also submit, as a separate submission, a non-business confidential version of the submission, indicating where the business confidential information has been redacted. The file names of both documents should reflect their status—"BC" for the business confidential version and "P" for the public version. The non-business confidential version will be placed in the docket at www.regulations.gov and be available for public inspection.

As noted, USTR strongly urges commenters to submit comments through www.regulations.gov. Any alternative arrangements must be made in advance of transmitting a comment and in advance of the relevant deadline by contacting USTR at Special301@ustr.eop.gov.

3. Inspection of Comments

Comments received will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except business confidential information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed free of charge by visiting www.regulations.gov and entering Docket Number USTR-2015-0016 in the "Search" field on the home page.

Probir Mehta,

Acting Assistant United States Trade Representative (AUSTR) for Intellectual Property and Innovation, Office of the United States Trade Representative.

[FR Doc. 2015-22761 Filed 9-9-15; 8:45 am]

BILLING CODE 3290-F5-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Memphis-Shelby County Airport Authority for Memphis International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is September 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Phillip J. Braden, Federal Aviation Administration, Memphis Airports District Office, 2600 Thousand Oaks Blvd., Suite 2250, Memphis, Tennessee 38118, 901-322-8181.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Memphis International Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective September 1, 2015. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing noncompatible uses and prevent the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Memphis-Shelby County Airport Authority. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of 14 CFR part 150 includes: " Figure 2.1, Study Area Boundaries And Jurisdictions; Figure 2.2, Land Use In Memphis And Shelby County; Figure 2.3, City of Southaven Existing Land Use; Figure 2.4, City of Southaven Noise Abatement Zone; Figure 2.5, City of Southaven Future Land Use Plan; Figure 2.6, City of Southaven Proposed Land Use For Area 2; Figure 2.7, City of Horn Lake Proposed Land Use Map; Figure 2.8, Desoto County Existing Land Use Map; Figure 2.9, Desoto County Future Land Use Map; Figure 2.10, Noise Sensitive Sites; Figure 2.11, Mitigated Properties; Figure 3.1, Vicinity Map; Figure 3.2, Airport Diagram; Figure 3.3, Memphis Airspace; Figure 3.4, Daytime/Nighttime Distribution By Aircraft Type; Figure 3.5, Overall Runway Utilization; Figure

3.6, North/East Flow Departures; Figure 3.7, North/East Arrivals; Figure 3.8, South/West Flow Departures; Figure 3.9, South/West Flow Arrivals; Figure 3.10, Military Flight Tracks; Figure 3.11, Helicopter Flight Tracks; Figure 3.12, Run-Up Locations; Figure 3.13 Protected Areas and Departure Tracks; Figure 4.1, Noise Monitoring Locations; Figure 4.2, 2013 Existing Contour Noise Exposure Map; Figure 4.3, Existing Condition NEM With Noise-Sensitive Sites; Figure 4.4, 2013 Existing Condition NEM With Mitigated Properties; Figure 4.5, 2013 Existing Condition NEM With Noncompatible Land Uses; Figure 5.1, Run-Up Locations; Figure 5.2, North/East Flow Flight Tracks; Figure 5.3, South/West Flow Flight Tracks; Figure 5.4, 2020 Future Condition Noise Exposure Map; Figure 5.5, Proposed Fedex Run-Up Location Noise Impacts; Figure 5.6, 2020 Future Condition NEM With Noise-Sensitive Sites; Figure 5.7, 2020 Future Condition NEM With Mitigated Properties; Figure 5.8, 2020 Future Condition NEM With Noncompatible Land Uses. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 1, 2015.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours

onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, Tennessee 38118.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, Tennessee, on September 1, 2015.

Phillip J. Braden,

Manager, Memphis Airports District Office.

[FR Doc. 2015-22825 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration**

MAP-21 Comprehensive Truck Size and Weight Limits Study Deadline for Submitting Comments for Consideration in the Report to Congress

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of deadline for submitting comments.

SUMMARY: This notice announces a deadline for submitting comments to the U.S. Department of Transportation (DOT) for consideration as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21) Comprehensive Truck Size and Weight Limits Study Report to Congress. On June 5, 2015, DOT released for public comment and peer review the technical results of a comprehensive study of certain safety, infrastructure, and efficiency issues surrounding the Federal truck size and weight limits and the potential impacts of changing those limits. The DOT is now preparing a Report to Congress to conclude this study.

DATES: Comments must be received on or before October 13, 2015 to receive full consideration by DOT with respect to the MAP-21 Comprehensive Truck Size and Weight Limits Study Report to Congress. The public docket will remain

open for a limited timeframe after this date, however, comments received after October 13, 2015 will not be considered as part of the Report to Congress.

ADDRESSES: Comments on the Comprehensive Truck Size and Weight Limits Study may be submitted and viewed at Docket Number FHWA-2014-0035. The Web address is: <http://www.regulations.gov/> [#!docketDetail;D=FHWA-2014-0035](http://www.regulations.gov/#!docketDetail;D=FHWA-2014-0035).

FOR FURTHER INFORMATION CONTACT:

Email CTSWStudy@dot.gov, or contact; Edward Strocko, (202) 366-2997, ed.strocko@dot.gov; Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The MAP-21 (Pub. L. 112-141) requires DOT to conduct a Comprehensive Truck Size and Weight Limits Study (MAP-21 sec. 32801) addressing differences in safety risks, infrastructure impacts, and the effect on levels of enforcement between trucks operating at or within Federal truck size and weight limits and trucks legally operating in excess of Federal limits; comparing and contrasting the potential safety and infrastructure impacts of alternative configurations (including configurations that exceed current Federal truck size and weight limits) to the current Federal truck size and weight law and regulations; and, estimating the effects of freight diversion due to these alternative configurations. On June 5, 2015, DOT released for public comment and peer review the technical results of this comprehensive study. The DOT is now preparing a Report to Congress. Additional technical finding, presentations, and related documents can be found on FHWA's Truck Size and Weight Web site; at <http://www.ops.fhwa.dot.gov/freight/sw/map21tswstudy/index.htm>.

Public Comment

The DOT invites comments by all those interested in the MAP-21 Comprehensive Truck Size and Weight Limits Study. Comments on the Comprehensive Truck Size and Weight Limits Study may be submitted and viewed at Docket Number FHWA-2014-0035. The Web address is: <http://www.regulations.gov/> [#!docketDetail;D=FHWA-2014-0035](http://www.regulations.gov/#!docketDetail;D=FHWA-2014-0035). Comments must be received on or before October 13, 2015, to receive full consideration by DOT in preparing the MAP-21 Comprehensive Truck Size and

Weight Limits Study Report to Congress. The public docket will remain open for a limited period after this date. After October 13, 2015, comments will continue to be available for viewing by the public.

Issued on: September 2, 2015.

Jeffrey A. Lindley,

Associate Administrator for Operations.

[FR Doc. 2015-22873 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

**Environmental Impact Statement:
Cowlitz County, Washington**

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Cowlitz County, Washington.

FOR FURTHER INFORMATION CONTACT:

Liana Liu, Area Engineer, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501; telephone: (360) 753-9553; email: Liana.Liu@dot.gov. Washington State Department of Transportation (WSDOT) agency contact: Barb Aberle, Southwest Region Environmental Manager, Washington State Department of Transportation; telephone: (360) 905-2186; email: AberleB@wsdot.wa.gov. Cowlitz County agency contact: Claude Sakr, Project Manager, Cowlitz County Public Works, 1600 13th Avenue South, Kelso, WA 98626; email: IndustrialOregonWay@co.cowlitz.wa.us.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with WSDOT and Cowlitz County, will prepare an EIS on the Industrial Way/Oregon Way Intersection Project to provide improvements at the intersection of State Route (SR) 432 and SR 433 to reduce congestion, increase freight mobility, and improve safety. Improvements to the intersection are considered necessary to meet forecasted long term vehicular traffic growth.

Preliminary alternatives under consideration include: (1) Taking no action; (2) raising the intersection to completely separate highway traffic from train traffic; and (3) making at-grade highway improvements; (4) a combination of raising the highway

intersection while retaining some roadway at-grade access.

The FHWA along with WSDOT and Cowlitz County are holding a public scoping meeting on September 17, 2015, from 5:00 p.m. to 7:00 p.m. at the Cowlitz PUD Auditorium in Longview, Washington to solicit public comments regarding scope of issues to be addressed in the EIS. The public were notified of these meetings on September 4, 2015 in a flyer mailed to interested parties and residents in the vicinity of the project as well as published in a legal notice in The Columbian and The Daily News. The meeting will use an open-house format and will begin with a presentation to provide an overview of the project. Exhibits, maps, and other pertinent information about this project will be displayed. Staff will be present to answer questions as appropriate and as time permits.

Agencies, Tribes, and the public are encouraged to submit comments on the purpose and need and preliminary range of alternatives during the scoping period. Comments must be received by October 12, 2015, to be included in the formal scoping record. To ensure that the full range of issues related to this proposed action is addressed, and all the significant issues identified, comments and suggestions are invited from interested parties during the scoping period. Comments concerning this proposal will be accepted at the public meeting or can be sent by mail to: Claude Sakr, Project Manager, Cowlitz County Public Works, 1600 13th Avenue South, Kelso, WA 98626, or by email to: IndustrialOregonWay@co.cowlitz.wa.us.

(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.)

Daniel Mathis,

*Division Administrator, Washington Division,
Federal Highway Administration.*

[FR Doc. 2015-22874 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Notice To Rescind a Notice of Intent for an Environmental Impact Statement for the State Route 95 Realignment Study: Interstate 40 to State Route 68, Mohave County, Arizona**

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice to rescind a Notice of Intent for an Environmental Impact Statement.

SUMMARY: A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the *Federal Register* on June 1, 2007. A revised NOI was published on December 23, 2013 to advise that the review process was being changed to a tiered process in which a Tier 1 EIS would be prepared to evaluate potential corridors for a future project-specific alignment. The FHWA is issuing this notice to advise the public that FHWA and the Arizona Department of Transportation (ADOT) will no longer prepare a Tier 1 EIS for the proposed realignment of State Route (SR) 95 from Interstate 40 (I-40) to SR 68 in Mohave County, Arizona because funding to complete improvements in the foreseeable future is not available.

FOR FURTHER INFORMATION CONTACT:

Alan Hansen, Team Leader, Planning, Environment, Air Quality, and Realty, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012-3500, Telephone: (602) 382-8964, Email: alan.hansen@dot.gov.

Ammon Heier, Area Engineer, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012-3500, Telephone: (602) 382-8983, Email: ammon.heier@dot.gov.

The FHWA Arizona Division Office's normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time).

SUPPLEMENTARY INFORMATION: On June 1, 2007, the FHWA, in cooperation with ADOT, issued an NOI titled: Environmental Impact Statement: Mohave County, AZ" (*Federal Register* Vol. 72, No. 105). The intent of the project was to realign SR 95 beginning approximately two miles south of I-40 and extending north to SR 68 for a distance of approximately 42 miles. The reconstruction of SR 95 was considered necessary to provide for an access-controlled highway to facilitate regional traffic flow and reduce traffic congestion. The project was issued a Federal Aid Number STP-095-D (AMS)

and an ADOT project number 095 MO 200 H6801 03L.

A No-Build Alternative and at least two different alignments for potential relocation and development of the highway as a limited access facility located east of the existing SR 95 highway were under consideration. The No-Build Alternative served as the baseline for the analysis conducted under the National Environmental Policy Act.

On December 23, 2013, FHWA revised the NOI to announce that FHWA and the project sponsor, ADOT, intended to use a tiered process (as provided for in 40 Code of Federal Regulations 1508.28 and in accordance with FHWA guidance) in the completion of the environmental study to facilitate project decision-making. A Tier 1 EIS was initiated to focus on the evaluation of corridors rather than alignments because sufficient funding to implement, operate, and maintain the proposed project had not yet been committed in the fiscally-constrained State Transportation Improvement Program.

The State's limited resources combined with the fact that no improvements can be budgeted in the foreseeable future does not justify continuing to study improvements to a corridor that cannot be implemented when the study is eventually completed. As such, the preparation of the EIS for the realignment of SR 95: I-40 to SR 68 is being terminated. Any future transportation improvements or realignment of SR 95 will be determined and prioritized through ADOT's Long-Range Transportation Plan and 5-Year Transportation Facilities Construction Program, and any future actions will progress under a separate environmental review process, in accordance with all applicable laws and regulations.

(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.)

Issued on: September 2, 2015.

Karla S. Petty,

Arizona Division Administrator, Federal Highway Administration, Phoenix, AZ.

[FR Doc. 2015-22871 Filed 9-9-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2012-0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Daimler Trucks North America (Daimler) has requested an exemption for one commercial motor vehicle (CMV) driver, Michael Seitter, from the Federal requirement to hold a commercial driver's license (CDL) issued by one of the States. This project engineer holds a valid German CDL and wants to test-drive Daimler vehicles on U.S. roads to better understand product requirements for these systems in "real world" environments, and verify results. Daimler believes the requirements for a German CDL ensure that holders of the license will likely achieve a level of safety equal to or greater than that of drivers who hold a U.S. State-issued CDL.

DATES: Comments must be received on or before October 13, 2015.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2012-0032 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or

comments received, go to www.regulations.gov at any time and in the box labeled "SEARCH for" enter FMCSA-2012-0032 and click on the tab labeled "SEARCH."

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlle Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. Email: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for granting or denying the exemption, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the

exemption. The exemption may be renewed (49 CFR 381.300(b)).

Since 2012, FMCSA has granted five Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); August 29, 2014 (79 FR 516910); March 27, 2015 (80 FR 16511)]. Each of these drivers held a valid German commercial license but lacked the U.S. residency required to obtain a CDL. FMCSA has concluded that the process for obtaining a German commercial license is comparable to or as effective as the U.S. CDL requirements and ensures that these drivers will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

Request for Exemption

Daimler has applied for an exemption for one of its engineers from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. This driver, Michael Seitter, holds a valid German CDL but is unable to obtain a CDL in any of the U.S. States due to residency requirements. A copy of the application is in Docket No. FMCSA-2012-0032.

The exemption would allow Mr. Seitter to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to develop improved safety and emission technologies. According to Daimler, Mr. Seitter will typically drive for no more than 6 hours per day for 2 consecutive days, and 10 percent of the test driving will be on two-lane State highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for a total of 400 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled. Daimler requests that the exemption cover a two-year period.

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to the Federal requirements of 49 CFR part 383 and adequately assesses a driver's ability to operate CMVs in the United States.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Daimler's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency will consider all comments received by close of business on October

13, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: September 2, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015-22811 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0083]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated July 7, 2015, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2015-0083.

Applicant: Norfolk Southern Corporation, Mr. B. L. Sykes, Chief Engineer, C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the discontinuance of Control Point (CP) Raitt on the Buchanan Branch, Milepost (MP) D-16.3, at Weller, VA. All existing signals will be removed and the existing power-operated switch will be converted to a hand-operated switch. Current operating rules in the area will not change.

The reason given for the proposed discontinuance is that it is no longer needed for current railroad operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 26, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on September 1, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-22791 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0082]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 27, 2015, the Norfolk Southern Corporation (NS) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain

provisions of the Federal railroad safety regulations contained at 49 CFR part 236, Applicability, minimum requirements, and penalties. FRA assigned the petition Docket Number FRA-2015-0082.

This request is for relief from the mechanical locking requirements of 49 CFR 236.312, *Movable bridge, interlocking of signal appliances with bridge devices*, to the extent that NS not be required to install bridge lockings on either end of the lift bridge, Control Point (CP) 509, located at Milepost 509.9 on the Chicago Line, Chicago, IL.

The design of the CP 509 bridge dates to its commissioning in 1911 and features circuitry and locking mechanisms installed in 1930. The design called for surface detection of the rails and circuit controllers on all four corners of the movable span to detect when the movable span is properly seated. Unlike the test requirements of 49 CFR 236.312, which state that the locking member must be within one inch of proper alignment before a permissive signal governing movements can be lined, NS adjusts the span circuit controllers to three-eighths of an inch before a permissive signal can be lined. The regulation calls for a single point of mechanical locking on each end of the movable span, but the NS design has four points of detection to ensure the entire movable span is properly seated.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 26, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC on September 1, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-22790 Filed 9-9-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 552 (Sub-No. 19)]

Railroad Revenue Adequacy—2014 Determination

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision.

SUMMARY: On September 8, 2015, the Board served a decision announcing the 2014 revenue adequacy determinations for the Nation's Class I railroads. Four carriers, BNSF Railway Company, Grand Trunk Corporation, Norfolk Southern Combined Railroad Subsidiaries, and Union Pacific Railroad Company, were found to be revenue adequate.

DATES: *Effective Date:* This decision is effective on September 8, 2015.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245-0333.

Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2014, determined to be 10.65% in *Railroad Cost of Capital—2014*, EP 558 (Sub-No. 18) (STB served

August 7, 2015). This revenue adequacy standard was applied to each Class I railroad. Four carriers, BNSF Railway Company, Grand Trunk Corporation, Norfolk Southern Combined Railroad Subsidiaries, and Union Pacific Railroad Company, were found to be revenue adequate for 2014.

The decision in this proceeding is posted on the Board's Web site at www.stb.dot.gov. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the

hearing impaired is available through FIRS at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: September 3, 2015.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2015-22770 Filed 9-9-15; 8:45 am]

BILLING CODE 4915-01-P



FEDERAL REGISTER

Vol. 80

Thursday,

No. 175

September 10, 2015

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

Scrapie in Sheep and Goats; Proposed Rule

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Parts 54 and 79**

[Docket No. APHIS–2007–0127]

RIN 0579–AC92

Scrapie in Sheep and Goats**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

SUMMARY: We are proposing to amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks, increasing the use of genetic testing as a means of assigning risk levels to animals, reducing movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplifying, reducing, or removing certain recordkeeping requirements. We also propose to provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. We propose to change the definition of high-risk animal, which will change the types of animals eligible for indemnity, and to pay higher indemnity for certain pregnant ewes and early maturing ewes. The proposed changes would also make the identification and recordkeeping requirements for goat owners consistent with those for sheep owners. These changes would affect sheep and goat producers, persons who handle sheep and goats in interstate commerce, and State governments.

DATES: We will consider all comments that we receive on or before November 9, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov#!docketDetail;D=APHIS-2007-0127>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2007–0127, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov#!docketDetail;D=APHIS-2007-0127> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room

hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, National Scrapie Program Coordinator, Sheep, Goat, Cervid & Equine Health Center, Surveillance, Preparedness and Response Services, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1235; (301) 851–3509.

SUPPLEMENTARY INFORMATION:**Background**

Scrapie is a member of a class of diseases called transmissible spongiform encephalopathies (TSEs). Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. To control the spread of scrapie within the United States, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers regulations at 9 CFR parts 54 and 79 (referred to below as the scrapie regulations), which respectively describe program procedures and restrict the interstate movement of certain sheep and goats. APHIS also administers the voluntary Scrapie Flock Certification Program (the SFCP),¹ described in regulations at 9 CFR part 54, and produces program standards documents titled “Scrapie Program Standards Volume 2: Scrapie Free Flock Certification Program (SFCP)” and “Scrapie Eradication Uniform Methods and Rules” (UM&R). Copies of the SFCP Standards and the UM&R are available on the APHIS Web site at http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/sfcp.pdf and http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/umr_scrapie.pdf, respectively, or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. The UM&R has been updated to be consistent with these proposed changes and has been renamed the Scrapie Program Standards Volume 1: National Scrapie Eradication Program. A draft of this document is available on the APHIS Web site at http://www.aphis.usda.gov/animal_health/scrapie. Comments on this document are being accepted concurrently with this proposed rule.

The last major revision of the scrapie regulations occurred on August 21, 2001, when we published in the **Federal Register** (66 FR 43964, Docket No. 97–

093–5) a final rule amending part 79 by imposing additional restrictions on the interstate movement of sheep and goats. We also added new requirements with regard to the identification, recordkeeping, and health status of sheep and goats in order to provide a more effective national program for surveillance of scrapie and for the tracing of animals affected with scrapie. In our August 2001 final rule, we also amended part 54 by reinstating a scrapie indemnification program for sheep and goats. Those changes to parts 54 and 79 were designed, in part, to provide a national standard for the control and eradication of scrapie, and to reflect our commitment to eliminating scrapie from the United States.

The changes we are proposing in this document are based on our evaluation of input that we have received from the regulated industry and the States since the implementation of the August 2001 final rule. A number of regulatory changes have been suggested, including changes to the risk groups and categories established for individual animals and flocks, increased use of genetic testing as a means of assigning risk levels to flocks and animals, reduced movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplification and reduction of recordkeeping requirements. States have also requested that we provide designated scrapie epidemiologists (DSEs) with more alternatives and flexibility in determining how many and which animals in a flock must be tested in order to determine the flock’s status under the regulations. We are also proposing changes to the procedures for paying indemnity for animals, based on input from industry on how to equitably decide which animals should qualify and how payment amounts should be set. This proposed rule addresses all of these areas.

The scrapie regulations are quite complex, and understanding them is easier when a few overarching principles are kept in mind. One of these principles is *trace back*, which in this case means that whenever a sheep or goat is positively diagnosed with scrapie, APHIS or a State will investigate the past movements of the animal to identify other animals and flocks that may have been exposed to the scrapie-positive animal. A second principle is *trace forward*, which means that whenever an exposed sheep or goat is identified as having left an infected or source flock, APHIS or a State will investigate the movements of the animal to locate the animal for genetic and/or scrapie testing and to identify other

¹ Formerly the Scrapie Flock Certification Program; this proposal would add the word “Free” to the program’s name.

animals and flocks that may have been exposed to scrapie through the lambing of or contact with the lambing area of the potentially infected animal. This is done so that genetic and/or scrapie testing can be done to determine if any of the animals are or could be infected.

This proposal would improve the ability of APHIS and States to trace animals. It would do this by changing requirements for records needed to trace animals, and by adding provisions to link official individual animal identification applied by persons other than the flock owner to the flock of origin in the National Scrapie Database rather than just the person who applied the official identification. The current regulations address trace forward primarily in § 54.8(f) regarding the responsibility of flock owners to disclose records to APHIS representatives or State representatives for the purpose of tracing animals, in § 79.2(b) regarding the responsibility of persons applying ear tags to maintain appropriate records that permit traceback of animals, and in § 79.6(a)(5) regarding State responsibilities to do epidemiologic investigations of source and infected flocks that include tracing animals. The proposed rule would ensure that better records are available for tracing animals, by adding requirements in new § 54.8(b), *Records for flocks under a flock plan or PEMMP*, § 79.2(f), *Records required of persons who purchase, acquire, sell, or dispose of animals* and § 79.2(g), *Records required of persons who apply official identification to animals*.

In addition to improving the utility of records for tracing animals, the proposed rule would reduce some recordkeeping, primarily by eliminating the requirement in many cases to read and record individual identification that was applied before a new owner or shipper receives the animal. Further, by making the regulations easier to understand we hope to eliminate cases where owners and markets unnecessarily keep records or apply unneeded identification or fail to do so when required through lack of understanding. Also, in cases where genetic testing allows us to determine that all exposed animals in a flock are genetically resistant, use of genetic testing would allow some flocks to avoid being placed under a flock plan or post-exposure management and monitoring plan (PEMMP), thus avoiding the substantial recordkeeping requirements for such flocks imposed by § 54.8.

The proposal to enhance use of the National Scrapie Database would also aid trace back and trace forward.

Proposed § 54.11 would ensure official test results are recorded in the database and proposed § 79.2(b) addresses linking animal identification numbers for sheep and goats in interstate commerce to flock of origin in the database.

A third guiding principle in both the current and proposed regulations is *flock risk level*, which considers whether a flock has ever included an animal that is eventually diagnosed with scrapie or that was exposed to scrapie. If so, there is a risk that other animals from that flock may have scrapie. The flock risk level varies according to many factors. For example, the flock risk level would be very high if an animal that was born in the flock and spent its life in the flock until it was sold was diagnosed with scrapie shortly after being sold. In contrast, a flock's risk level would be lower if only one purchased exposed animal lambed in the flock, spent only a short time in the flock, and then was sent to slaughter without testing. A final guiding principle is that *testing has limits to its practical utility*. Scrapie is a long incubation disease, which makes it impossible to detect early infection with currently available tests. While there are now tests to diagnose scrapie using samples from both live and dead animals, it is almost never practical or cost effective for APHIS to simply test every animal in a sizeable flock in order to determine whether the flock contains infected animals. The current live animal test for scrapie requires a biopsy of the lymphoid tissue from the animal's third eyelid, rectum, tonsil, or a lymph node. Difficulties in sample collection and processing and the relatively small amount of third eyelid or rectal lymphoid tissue in some animals can result in significant numbers of "no tests" (*i.e.*, tests that are not successfully completed because of insufficient follicles in the sample or other reasons), and the test is very labor intensive and expensive. Also, a single rectal biopsy or third eyelid test using biopsies from both third lids appears to have a diagnostic sensitivity of approximately 87 percent compared to postmortem immunohistochemistry testing on obex and lymph node when used in sheep over 14 months of age, which means the rectal biopsy or third eyelid test will not identify at least 13 percent of infected animals. Also, since scrapie is a long incubation disease, it typically takes 14 months or more after the animal becomes infected before these tests can detect the infection. This means that both the inherent diagnostic sensitivity of the tests and the number of animals

tested that became infected less than 14 months ago affect testing accuracy, and as a result the percentage of infected animals not identified by the tests will be significantly higher than 13 percent.

Those principles are all important factors in the design of the current scrapie regulations. Many of the changes we are proposing in this document incorporate an additional guiding principle, *genetic resistance and susceptibility*, discussed in detail below.

Current Understanding of Genetic Resistance and Susceptibility to Scrapie

The Scrapie Ovine Slaughter Surveillance study² conducted by APHIS (referred to below as the SOSS study) provides useful baseline information on the prevalence of scrapie in the United States and the relationship of different sheep genotypes to scrapie susceptibility. Some of the findings of that study are summarized below. Please refer to the study for complete details, including methodology and standard error rates.

Beginning April 1, 2002, and continuing through March 31, 2003, the SOSS study collected samples from 12,508 mature sheep at 22 slaughter plants and 1 large livestock market. Samples from 33 animals tested positive for scrapie. The overall weighted national prevalence of scrapie in mature cull sheep was estimated to be 0.20 percent.

To evaluate the potential relationship between scrapie susceptibility and certain genotypes, approximately one-fourth of the negative samples (*i.e.*, those in which the scrapie prion protein [PrPsc] was not detected) and all 33 of the scrapie-positive samples were submitted for genetic testing.

Susceptibility to scrapie has been linked to certain codons in the sheep genotype. A codon is a set of three nucleotides that encode for a specific amino acid. Codons that encode for amino acids at positions 136 and 171 in the prion protein (PrP) have been associated with scrapie susceptibility in sheep in the United States. However, codon 171 is thought to be the major determinant of scrapie susceptibility in the United States.

Codon values are stated as the diploid PrP genotype for the encoded amino acids. The relevant amino acid single-letter abbreviations are Q (glutamine) and R (arginine) for codon 171, and A (alanine) and V (valine) for codon 136. So, for example, a sheep genotype that

² The SOSS study and related information is available from the person identified under **FOR FURTHER INFORMATION CONTACT** or at http://www.aphis.usda.gov/animal_health/naahms/sheep/index.shtml.

codes for glutamine in both of its alleles at codon 171 would be described as QQ. A very small number of sheep code for histidine (H) or lysine (K) at codon 171 and for threonine (T) at codon 136. The presence of histidine at 171 is presently thought to be similar to Q for scrapie resistance. Lysine at 171 has recently been found in a few Barbados sheep and T at 136 has been found in one sheep breed outside the United States, but the effects of these variations on scrapie resistance has not been fully studied. For this reason H or K at codon 171 is treated the same as Q and T at codon 136 is treated the same as V.

The following is a simplified summary of the current knowledge of how genotype affects susceptibility to scrapie. Two codons of the sheep genotype, codons 136 and 171, are especially important to scrapie susceptibility or resistance. In general, a glutamine (Q) at codon 171 of the PrP allele is associated with susceptibility to scrapie. Sheep with two alleles with Q

at codon 171 (QQ) are markedly susceptible; sheep with only one (QR) are rarely susceptible. Sheep that have two alleles with arginine at codon 171 (RR) appear to be very resistant. No cases of classical scrapie have been reported in 171 (RR) sheep in the United States and are rare in other countries.

Codon 136 also has significant effects on scrapie susceptibility or resistance. There are at least two field strains of classical scrapie in the United States. When the strain to which a flock was exposed can be inferred, and the genotypes of sheep in the flock are known, this information can be used to depopulate only those exposed animals susceptible to the strain involved. The more prevalent strain, valine-independent scrapie, accounts for at least 93 percent of scrapie cases and affects sheep with either valine (V) or alanine (A) at codon 136, but only very rarely affects sheep that also have at least one allele with arginine (R) at codon 171.

The less common strain of classical scrapie in the United States, valine-associated scrapie, has only been reported in sheep with at least one allele with V at codon 136, and it is significantly more likely than the other strain to affect sheep with a single allele with R at codon 171, since it affects sheep that are AV at codon 136 and QR at codon 171.

An important observation about the genetic results of the SOSS study is that 100 percent of the scrapie-positive sheep were coded QQ for codon 171. Other scientific studies and subsequent data collected by USDA confirm that U.S. sheep that test positive for scrapie coded QQ or QH for codon 171 in more than 99 percent of the cases. As illustrated by the following tables adapted from the SOSS study, approximately 40 percent of sheep in the United States were coded QQ for codon 171.

GENOTYPE DISTRIBUTION IN THE GENERAL SHEEP POPULATION

Codon 136	Codon 171	Percent
	QQ	40.
	QR	44.
	RR	16.
	.....	Total: 100.
AA .....	.....	90.
AV .....	.....	9.
VV .....	.....	1.
.....	.....	Total: 100.

GENOTYPE DISTRIBUTION IN THE SCRAPIE-POSITIVE SHEEP

Codon 136	Codon 171	Percent
	QQ	100.
	Total: 100.
AA	91.
AV	6.
No test*	3.
.....	Total: 100.

* Samples could not be genotyped because of insufficient DNA or other reasons.

The genotype of a sheep with respect to codons 136 and 171 can be represented by two pairs of letters; for example AA RR would indicate a sheep where both 136 codons are coded for alanine and both 171 codons are coded for arginine. This representation is used to discuss the scrapie susceptibility implications of different sheep genotypes.

QQ sheep (AA QQ, AV QQ, and VV QQ) are susceptible to the more common U.S. scrapie strain and, if infected, can transmit the disease to susceptible flock mates. AA QQ sheep appear to be resistant to the less common valine-associated strain which

affects AV QQ, VV QQ, and AV QR sheep. All genotypes of sheep and goats appear to be susceptible to non-classical scrapie. The United States has had 14 cases of non-classical scrapie in sheep.

In contrast, AA RR sheep are nearly completely resistant to, and are unlikely to carry or transmit classical scrapie. Only two sheep with classical scrapie that were AA RR have been reported worldwide.

AA QR sheep are rarely susceptible to classical scrapie. In rare cases, AA QR sheep in Europe have become infected, and there have been two unconfirmed and three confirmed reports in AA QR U.S. sheep. It is unknown whether

infected AA QR sheep can transmit the disease. The risk from exposed AA QR sheep is probably minor, since infected AA QR sheep are rare and it is less common for the scrapie prion protein to be found outside the brain of these sheep. However, AA QR sheep are susceptible to non-classical scrapie.

AV QR sheep are somewhat susceptible to the valine associated scrapie strain. As of June 30, 2015, 11 confirmed positive AV QR sheep have been identified in the United States. The risk from exposed AV QR sheep is probably small, since infected AV QR sheep are uncommon, making up less than 1 percent of the scrapie-positive

U.S. sheep that have been genotyped, and it is less common for the scrapie prion protein to be found outside the brains of these sheep. AV QR sheep are significantly less susceptible to the scrapie strains that affect them than are the QQ sheep that are affected by these strains.

Implications of Genetic Resistance and Susceptibility for Scrapie Program Design

The observations discussed above, in conjunction with APHIS and State experience in conducting scrapie control pilot projects,³ suggest ways to improve the scrapie regulations' effectiveness and to reduce their costs by creating new risk categories for sheep and goats based on their scrapie resistance or susceptibility, and taking these risk categories into account when imposing regulatory restrictions on animals. In general, the animals that could have their status affected by genotype test results are exposed or potentially exposed animals. Most of the changes in this area would flow from the establishment of four new categories of exposed animals. Ordered by lowest to highest risk, these categories are: Genetically resistant exposed sheep, genetically less susceptible exposed sheep, low-risk exposed animal, and genetically susceptible exposed animals. As defined in the regulations, the terms *exposed sheep* and *exposed animal* both include embryos.

We would define genetically resistant sheep to include most sheep and sheep embryos with the RR genotype. The exception would be if a sheep with the RR genotype is ever epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type that affects RR sheep. A genetically resistant sheep that was exposed to scrapie would be a genetically resistant exposed sheep. Genetically less susceptible sheep would include most sheep (or sheep embryos) with the AA QR or AV QR genotype. A low-risk exposed animal would be a sheep or goat deemed to present significantly lower risks than a typical exposed animal due to the nature of either the exposure or the animal. The exact definitions for these categories are discussed in more detail below. Flexibility has been written into these definitions to allow the Administrator to adjust the classification of animals based on the

strain involved and the genotype of the animal as additional research becomes available.

Genetically susceptible animals would include all goats, any sheep with a genotype other than QR or RR (such as QQ, HH, QH, QK, KK or KH), and any sheep with an unknown or undetermined genotype (*i.e.*, sheep that have not been officially genotyped or sheep that have been tested with inconclusive results). At present, all goats would be considered genetically susceptible because there is insufficient understanding of genetically based scrapie resistance in goats to reliably assign goat risk categories based on genetics. If ongoing and future research provides new information about the genetic resistance of sheep or goats to scrapie that would allow other useful distinctions in risk between different genotypes of sheep or goats, APHIS will take such research results into account in the design of the Scrapie Eradication Program. The Scrapie Eradication Program is the cooperative State-Federal-Industry program administered by APHIS and States to control and eradicate scrapie, encompassing the SFCP, Federal and State regulations regarding the identification and movement of sheep and goats and the control of scrapie, and other associated efforts.

In order to assign individual sheep to one of these genetic susceptibility categories, APHIS has established procedures to ensure that genotype tests conducted as part of the Scrapie Eradication Program are reliable. We propose to amend the definition of *official genotype test* to read "A test to determine the genotype of a live or dead animal conducted at either the National Veterinary Services Laboratories or at an approved laboratory. The test subject must be an animal that is officially identified and the test accurately recorded on an official form supplied or approved by APHIS, with the samples collected and shipped to the laboratory using a shipping method specified by the laboratory by:

- (1) An accredited veterinarian;
- (2) A State or APHIS representative;

or

- (3) The animal's owner or owner's agent, using a tamper-resistant sampling kit approved by APHIS for this purpose."

The primary change from the previous definition is that new paragraph (3) would allow owners to collect samples for official genotype tests and to clarify that when a sample is submitted it must be accompanied by a properly completed official form. We believe this would make it more convenient and less

expensive for owners to obtain genotype testing; however, it is also critical that the sample is from an animal that is officially identified and that the sample maintains its identity and its association with the correct animal throughout the process of collection and submission. We propose to stress that the form must be properly completed due to the significant percentage of forms submitted to approved laboratories that are incomplete or undecipherable. To protect against error and tampering, we propose to allow owners or owner agents⁴ to collect samples for official genotype testing only by using an APHIS-approved tamper-resistant sampling kit. This kit would be an official identification device that, when it is attached to the animal, collects and ejects a tissue sample in a sealed container. Both the tissue sample container and the official identification device that remains attached to the animal would bear the same identification number, reliably associating the tissue with the correct animal. We propose to add a new term to part 54, *tamper-resistant sampling kit*, defined as "A device or method for collecting DNA samples from sheep or goats that is approved by the Administrator and that identifies both the sample and the animal at the time the sample is collected. These devices or methods must ensure that the sample, its corresponding label, and the official ID device or method applied to the animal meets the requirements of § 79.2(k) and that the sample is from the same animal to which the official ID device or method was applied. The kit must include an APHIS-approved official form or another form, device, or method acceptable to APHIS for transmitting the information required to APHIS and the approved laboratory." This definition is intended to allow the market to develop innovative approaches to the task by allowing the Administrator to approve a wide variety of potential kits. APHIS also employs this approach of encouraging market innovation and approving successful methods in our proposed changes to § 54.10, "Program approval of tests for scrapie," and § 54.11, "Approval of laboratories to run official scrapie tests and official genotype tests," which are discussed later in this document.

Note that in addition to approving tamper-resistant sampling kits, test methodologies, and laboratories that may perform tests, APHIS reserves the right to require confirmatory genotype

³ Pilot projects have tested, among other things, live animal scrapie tests, alternatives for improving field data collection for animals and flocks, innovative animal ID devices, use of genotype to classify the risk of exposed sheep and new devices and procedures for collecting tissue samples for DNA testing.

⁴ APHIS or State representatives or accredited veterinarians would not have to use tamper-resistant sampling kits when collecting samples.

testing. This is an additional safeguard that may be used to ensure result validity when evaluating official genotype test results, e.g., when the result of the genotype test is inconclusive for codon 136 or 171 or as part of a standard quality assurance procedure.

We propose to amend the regulations in several ways to provide for the use of the genotype information, and, with the resulting capability to classify exposed animals as genetically susceptible, genetically less susceptible, or genetically resistant, would be able to more precisely classify the risk that an individual exposed animal may spread scrapie. We would incorporate genetic susceptibility into the definitions of *exposed animal* and *high-risk animal*, reducing the percentage of animals subject to the most severe regulatory restrictions, including euthanasia and destruction. We would also modify § 79.3 to consider genetic susceptibility in its restrictions on exposed animal movement, so that the animals most resistant to scrapie face fewer restrictions than other exposed animals. Laboratories that perform official genotype tests already enter the results in the National Scrapie Database to maximize the availability and usefulness of genotype information, and we propose to include this data entry requirement in § 54.11, the section concerning approval of laboratories to perform the test. We also propose to add a requirement to § 79.5(a)(3) that Interstate Certificates of Veterinary Inspections (ICVIs) or permits used for interstate movement of breeding animals record the animals' genetic susceptibility category if known. We would take genetic susceptibility into account when writing flock plans and PEMMPs. Finally, to make the most effective use of limited indemnity funds, when paying indemnity for exposed animals we would generally only pay indemnity for exposed sheep that are officially genotyped and designated genetically susceptible exposed sheep. We would only pay indemnity for non-genotyped sheep in circumstances such as when the Administrator determines that waiting for genotype test results could result in the exposure of more animals, or when the cost of testing the sheep and indemnifying only those that are genetically susceptible would approach or exceed the cost of indemnity for all the exposed sheep involved. We would not require that goats be genotyped to be eligible for indemnity because, as discussed above, present understanding of genetically based scrapie resistance in

goats does not allow us to reliably assign goat risk categories based on genetics.

Under the regulations, animals for which indemnity is paid must be destroyed. The current definition of *destroyed* includes euthanasia and disposal of the carcass by means authorized by the Administrator, or movement to a quarantined research facility when so ordered by the Administrator. Currently the definition also states that if the animal to be destroyed is an exposed or high-risk animal that is not known to be infected, it may be either euthanized or disposed of by slaughter. The World Organization for Animal Health guidelines for scrapie control recommend that the carcasses of scrapie affected animals be completely destroyed to reduce potential scrapie exposure through consumption of feed containing animal proteins. Also, in recent years the Food and Drug Administration (FDA) and USDA have increased their efforts to reduce potential animal or human exposure to TSEs through consumption of feed or food containing animal proteins. Changes in this area have included⁵ additional restrictions to prevent inclusion of certain tissues from cattle (specified risk materials) that present a particular risk of containing BSE from being used in animal or human food. In support of this effort, we propose to no longer allow the carcasses of any sheep or goats indemnified and destroyed under the regulations to be used for feed or food.

APHIS indemnified and destroyed 235 sheep and goats during the first 6 months of 2014 under the regulations, of which 133 were destroyed by slaughter. This change would therefore divert on average approximately 266 sheep and goats per year from slaughter channels; however, it is expected that as the program progresses the number of animals indemnified will decrease and thus the number of animals diverted will decrease. Postmortem testing of mature scrapie exposed sheep and goats in FY 2013 and FY 2014 resulted in 5.6 and 2.7 percent of the animals testing positive for scrapie, respectively. In FY 2014, a large scrapie source flock with a very low prevalence accounted for about half of the animals depopulated in FY 2014. If this flock is excluded, the percent of exposed animals that tested positive is approximately 4.8 percent.

⁵ See, e.g., the FSIS rule "Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle" (72 FR 38700; July 13, 2007) and the FDA rule "Substances Prohibited From Use in Animal Food or Feed" (73 FR 22719, April 25, 2008).

Therefore, this change would likely keep approximately 12 to 15 scrapie-positive animals from food or feed uses each year.

To accomplish this change, we propose to revise the definition of *destroyed* to read as follows: "Euthanized and the carcass disposed of by means authorized by the Administrator that will prevent its use as feed or food, or moved to a quarantined research facility if the movement has been approved by the Administrator." This proposed change would work in concert with the proposed movement restriction in § 79.3(c), that indemnified high-risk animals or indemnified sexually intact genetically susceptible exposed animals, which pose the most risk, may only be moved for destruction. These changes would ensure that the riskiest animals are kept from slaughter, without precluding movement under permit to slaughter of less risky genetically susceptible exposed animals that are not indemnified. This would allow animals from flocks under investigation that are not yet known to be infected and lambs that are likely too young to have developed significant scrapie agent presence to continue to move to slaughter.

In the following sections, we discuss in detail how genotype information would affect the regulations' definitions, movement restrictions, indemnity provisions, and other requirements.

Changes to Flock and Animal Designation Categories

We propose to make several changes to the definition of the term *exposed flock* and to define two new terms, *flock under investigation* and *classification or reclassification investigation*. As currently defined, the term *exposed flock* is rather broad and encompasses notably different risk levels. For example, a flock could be designated exposed because an animal that may be scrapie-positive lambled in the flock, which is probably the event that has the single highest probability of transmitting scrapie to other animals. However, a flock could also be designated as exposed if a single animal in the flock was once briefly in a different flock that contained a scrapie-positive animal.

The current definition of *exposed flock* was written before effective live-animal tests for scrapie were available and before genetic testing was widely accepted for evaluating risk. Now that such tests are available and accepted, sometimes flocks that would be designated exposed under the current definition could avoid such a

designation under the revisions we propose. For example, an investigator may know that a flock has a risk factor, and that we should pay attention to the flock, but cannot determine the actual risk without testing the animal that caused the potential exposure or, in its absence, other animals in the flock. Live animal tests are now available to aid in this determination.

To address these problems, we are developing a new category, *flock under investigation*. A flock under investigation is a flock that may have become scrapie infected by exposure to a scrapie-positive, high-risk, or scrapie-suspect animal, however, further investigation of animal records and/or testing of animals in the flock may be necessary to make the final determination. A flock under investigation may be cleared by demonstrating that it was not in fact exposed, or by taking steps to ensure that, whether or not the flock was exposed, there is no significant possibility that animals in the flock were infected as a result of the exposure. Such steps could include genotyping some or all of the animals in the flock, then removing and destroying and/or testing the genetically susceptible animals and/or having the flock comply with a PEMMP.

Creating the category of flock under investigation would leave the category of exposed flock to apply to only those flocks where there has been exposure or potential exposure that could not be adequately assessed, and/or the risks of exposure have not been sufficiently mitigated, so there is some significant continuing risk that a scrapie-positive animal might be detected in the flock. An exposed flock could be a flock under investigation whose owner declined to complete the genotyping or scrapie testing needed to complete the investigation, or declined to remove one or more genetically susceptible exposed animals or suspect animals identified during the investigation. Thus, the category of exposed flock would generally apply to flocks where the owner has decided to accept some level of continuing scrapie risk, rather than undertake the actions that would resolve the remaining risk.

Specifically, we propose to define these two categories as follows. A *flock under investigation* would be any flock in which an APHIS or State representative has determined that a scrapie suspect, positive, or high-risk animal resides or may have resided. (Note that mere removal of any suspect or high-risk animals is not sufficient grounds to end investigation of the flock.) A flock would no longer be a

flock under investigation if it is redesignated in accordance with § 79.4. A flock may be redesignated for various reasons, including a determination that it is an infected flock, source flock, or exposed flock, or that tissues from the suspect and high-risk animals were submitted for official testing and no evidence of scrapie is found, or because the flock completed any genotyping and live-animal or post-mortem scrapie testing required by the DSE and is in compliance with a PEMMP if one is required by the DSE.

An *exposed flock* would be any flock that was designated an infected or source flock that has completed a flock plan and that retained a female genetically susceptible exposed animal. The definition would also include any flock under investigation that retains a female genetically susceptible exposed animal or a suspect animal, or whose owner declines to complete genotyping and live-animal and/or post-mortem scrapie testing required by the investigator, and any noncompliant flock or any flock for which a PEMMP is required that is not in compliance with the conditions of the PEMMP. A flock will no longer be considered an exposed flock if it is redesignated in accordance with § 79.4.

We also propose to change the definition for *noncompliant flock* to recognize the role of the new category *flock under investigation*. The current definition refers to source, infected, or exposed flocks that are not in compliance with the regulations; we propose to also include flocks under investigation that are not in compliance.

We would also add a new defined term, *classification or reclassification investigation*, to consolidate descriptions of epidemiological investigation activities that were formerly located in several places in the regulations. This defined term would not impose new requirements, but would instead help the reader understand what epidemiological considerations a DSE would employ when determining the designation of an animal or flock under the Scrapie Eradication Program. The new term would be defined as follows: “An epidemiological investigation conducted or directed by a DSE for the purpose of designating or redesignating the status of a flock or animal. In conducting such an investigation, the DSE will evaluate the available records for flocks and individual animals and conduct or direct any testing needed to assess the status of a flock or animal. The status of an animal or flock will be determined based on the applicable definitions in this section and, when

needed to make a designation under § 79.4, official genotype test results, exposure risk, scrapie type involved, and/or results of official scrapie testing on live or dead animals.”

We also propose to revise the definition of *exposed animal* so that it employs the concepts of genetic resistance or susceptibility discussed above. It also includes a standard for estimating a probable date of infection for a flock, which is relevant to identifying which animals were exposed. Where epidemiologic investigation is inconclusive, we use a probable date of infection 2 years before the birth of the oldest scrapie-positive animal in the flock. The 2-year range is used because the oldest positive animal was likely infected at or near birth by another positive animal that died and that positive animal likely exposed up to two previous lamb crops before she died since most positive animals die 3-to-4 years after infection. The revised definition we propose for *exposed animal* would read “Any animal or embryo that: (1) Has been in a flock or in an enclosure off the premises of the flock with a scrapie-positive female animal, (2) resides in a noncompliant flock, or (3) has resided on the premises of a flock before or while it was designated an infected or source flock and before a flock plan was completed. An animal shall not be designated an exposed animal if it only resided on the premises before the date that infection was most likely introduced to the premises as determined by a Federal or State representative. If the probable date of infection cannot be determined based on the epidemiologic investigation, a date 2 years before the birth of the oldest scrapie-positive animal(s) will be used. If the actual birth date is unknown, the date of birth will be estimated based on examination of the teeth and any available records. If an age estimate cannot be made, the animal will be assumed to have been 48 months of age on the date samples were collected for scrapie diagnosis. Exposed animals will be further designated as genetically resistant exposed sheep, genetically less susceptible exposed sheep, genetically susceptible exposed animals, or low-risk exposed animals. An animal will no longer be an exposed animal if it is redesignated in accordance with § 79.4.”

We also propose to add definitions of several terms related to genetic susceptibility and resistance that appear in the defined term *exposed animal*. These new terms reflect the fact, as discussed above, that the genetic resistance or susceptibility of an exposed animal affects the risk level of

that exposed animal. Therefore, we propose to add the following definitions.

We would define *genetically less susceptible exposed sheep* as “Any sheep or sheep embryo that is:

- An exposed sheep or sheep embryo of genotype AA QR, unless it is epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are not less susceptible where Q represents any genotype other than R at codon 171; or

- An exposed sheep or sheep embryo of genotype AV QR, unless it is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie (based on an evaluation of the genotypes of the scrapie-positive animals linked to the flock), or to another scrapie type to which AV QR sheep are not less susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or

- An exposed sheep or sheep embryo of a genotype that has been exposed to a scrapie type to which the Administrator has determined that genotype is less susceptible but not resistant.”

We would define *genetically resistant exposed sheep* as “Any exposed sheep or sheep embryo of genotype RR unless it is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are not resistant.”

We would define *genetically susceptible animal* as “Any goat or goat embryo, sheep or sheep embryo of a genotype other than RR or QR, or sheep or sheep embryo of undetermined genotype where Q represents any genotype other than R at codon 171.”

We would define *genetically susceptible exposed animal* as “Excluding low-risk exposed animals, any exposed animal or embryo that is also:

- A genetically susceptible animal; or
- A sheep or sheep embryo of genotype AV QR that is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie (based on an evaluation of the genotypes of the scrapie-positive animals linked to the flock), or to a scrapie type to which AV QR sheep are susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or
- A sheep or sheep embryo of genotype AA QR that is

epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are susceptible where Q represents any genotype other than R at codon 171; or

- A sheep or sheep embryo of genotype RR that is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are susceptible.”

We also propose to add the following definition of *low-risk exposed animal*, identifying exposed animals that are of very low-risk of transmitting scrapie so that the program can avoid ordering the destruction of such animals. For example current science indicates that sheep and goats exposed to Nor98-like scrapie are unlikely to transmit the disease to other animals. Barring the publication of new data to the contrary, the Administrator intends to determine that animals exposed to Nor98-like scrapie are low-risk exposed animals.

We would define *low-risk exposed animal* as “Any exposed animal to which the DSE has determined one or more of the following applies:

- The positive animal that was the source of exposure was not born in the flock and did not lamb in the flock or in an enclosure where the exposed animal resided;

- The Administrator and State Veterinarian concur that the animal is unlikely to be infected due to factors such as, but not limited to, where the animal resided or the time period the animal resided in the flock;

- The exposed animal is male and was not born in an infected or source flock;

- The exposed animal is a castrated male;

- The exposed animal is an embryo of a genetically resistant exposed sheep or a genetically less susceptible exposed sheep unless placed in a recipient that was a genetically susceptible exposed animal; or

- The animal was exposed to a scrapie type and/or is of a genotype that the Administrator has determined poses low risk of transmission.”

We also propose to amend the definition of the term *high-risk animal*. The current definition includes most exposed male sheep, excluding only male sheep that have been genotyped and found to be genetically resistant (RR at codon 171). Both the current and the proposed definition include all female progeny of a scrapie-positive dam, and all exposed genetically susceptible female sheep. The current definition also automatically included all female sheep that were born into a flock during the same lambing season that a scrapie-positive female lambed in the flock or

a scrapie-positive female was born into the flock. We now believe that, while many of the female sheep born in such a lambing season should be considered high risk, some of them should not, based primarily on the genetic susceptibility of the animals involved. The proposed new definition generally excludes male sheep (except suspect animals that need to be investigated, and occasional special cases identified by the Administrator) because accumulated epidemiological evidence shows little chance that a male sheep could present a high risk of transmitting scrapie.

The epidemiology and scrapie prevalence of the flock would also be considered in determining the risk level of genetically less susceptible sheep. We propose to amend the definition of *high-risk animal* to give the Administrator, and persons authorized to act for the Administrator (e.g., DSEs) some discretion in whether or not to classify genetically less susceptible sheep as high-risk. Specifically, we would revise the definition of *high-risk animal* to read “The female offspring or embryo of a scrapie-positive female animal, or any suspect animal, or a female genetically susceptible exposed animal, or any exposed animal that the Administrator determines to be a potential risk based on the scrapie type, the epidemiology of the flock or flocks with which it is epidemiologically linked, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, and other animal or flock characteristics. An animal will no longer be a high-risk animal if it is redesignated in accordance with § 79.4.”

We also propose to amend the definition of *suspect animal* in parts 54 and 79. The new definition could apply only to an animal that is a “mature sheep or goat as evidenced by eruption of the first incisor.” This change reflects the reality that clinical signs of scrapie do not appear in very young animals. The revised definition also notes that a suspect animal might be one that was determined to be suspicious for scrapie by an accredited veterinarian or a State or APHIS representative, as the current definition states, or it might be an animal “condemned by FSIS or a State inspection authority for central nervous system signs.” This change reflects the reality that the condemnation process sometimes leads to identification of suspect animals.

Updating Other Definitions in Parts 54 and 79

To support and clarify some of the changes discussed above, we propose to

make several changes to the definitions of some of the terms already in use in parts 54 and 79. In addition to the new and revised definitions discussed above, we would also add or amend the following definitions:

Low-risk commercial sheep and *low-risk goat*. These defined terms are used only in part 79. We propose to replace the current definition of *low-risk commercial sheep* and *low-risk goat* with a definition of *low-risk commercial flock*. The current definition of *low-risk commercial sheep* excludes goats, and the regulations use the defined term to allow certain movements of sheep that present a low risk. We believe that it would be sensible to use definitions that apply to both sheep and goats from low-risk flocks, because such sheep and goats are both documented to present minimal risk of spreading scrapie. The proposed definition of *low-risk commercial flock* incorporates the standards in the current definition of *low-risk commercial sheep* but applies them to goats as well as sheep. This change does not significantly affect the treatment of low-risk commercial sheep under the regulations and gives equal consideration to goat owners. Note that animals that have been in contact with any female animals that do not qualify as low-risk commercial animals, or that are of unknown origin, would not be considered low-risk commercial animals. These changes, coupled with corresponding changes in § 79.3, require the official identification of many goats that were previously defined as low-risk commercial goats and exempted.

The proposed definition of *low-risk exposed animal* also acknowledges the concept that some animals may meet the definition of an exposed animal but present little risk of scrapie transmission; by designating these animals as low-risk exposed animals, they are not required to be destroyed and are instead identified to increase traceability.

Premises identification number (PIN). This defined term is used only in part 79. The PIN appears on premises records in the National Scrapie Database and has been used on official identification devices and recorded on ICVIs and other documents related to the Scrapie Eradication Program. It is a unique number assigned by a State or Federal animal health authority that is associated with a physical address and/or legal land description. The current definition of *premises identification number* states that the form of the number must be either (1) the State's two-letter postal abbreviation followed by the premises' assigned number or (2) a seven-character alphanumeric code,

with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

We propose to amend this definition to provide uniformity between animal disease programs. The clarification is that all premises will have either a premises identification number created under the current definition's option (2) or a number issued by a State that is a nationally unique location identifier, which will identify that premises in the National Scrapie Database and related records. USDA and the States may also maintain secondary numbers created under option (1) to link historical premises numbers to the standardized program premises identification number in records and databases. Federal or State officials will generate a standardized program premises identification number both for existing premises in the National Scrapie Database and for any new premises.

Flock identification (ID) number and group/lot identification number. We propose adding a definition of *flock identification number* to part 79 to refer to a number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. This identifier is needed because a flock may move between multiple premises without changing ownership. The flock ID number would be nationally unique, would begin with the State postal abbreviation, would have no more than nine alphanumeric characters, and could not contain the characters "I", "O", or "Q" other than as part of the State postal abbreviation. The flock ID number will be linked to the standardized program premises identification number(s) for the premises on which the flock resides and may serve as part of the number on an official eartag when used in conjunction with an animal number that is unique within the flock. We also propose to define a similar *group/lot identification number* to establish unique identification for groups of animals that are temporarily assembled from flocks for management purposes and that may or may not be under single ownership.

Slaughter channels. The first sentence of this definition currently reads "Animals in slaughter channels include any animal that is sold, transferred, or moved either directly to a slaughter facility, to an individual for custom slaughter, or for feeding for the express purpose of improving the animals' condition for movement to slaughter." We propose to change this to read ". . . moved either directly to or through a

restricted animal sale or restricted livestock facility to a slaughter establishment that is under continuous inspection by the Food Safety and Inspection Service (FSIS) or under State inspection that FSIS has recognized as at least equal to Federal inspection or to a custom exempt slaughter establishment as defined by FSIS for immediate slaughter or to an individual for immediate slaughter for personal use or to a terminal feedlot. Any animal sold at an unrestricted sale is not in slaughter channels. Animals in slaughter channels must be accompanied by an owner/hauler statement completed in accordance with § 79.3(g) of this chapter." This change would make the definition more consistent with definitions in other APHIS regulations that address slaughter. It would also clarify that animals are in slaughter channels whether they are moved to such a destination directly or through intermediaries, and may not be removed from slaughter channels, a requirement stated in several sections of the regulations, including current § 79.3(a) and proposed § 79.3(g). We are also proposing to add a definition for *restricted animal sale or restricted livestock facility* to parts 54 and 79 to further clarify slaughter channels.

We also propose to add a new provision to the definition of *terminal feedlot* in part 79, and to add this definition to part 54 as well. The current definition authorizes two types of facilities as terminal feedlots. In one, either pregnant or non-pregnant animals may be maintained on a dry lot where all animals are separated by either 30 feet of distance or a solid wall. The second type of facility is limited to only non-pregnant animals (males, or ewes that have not been exposed to a ram) and is a pasture where no fence-to-fence contact is possible between animals in one flock and animals in another. The definition reflects the risk-based need for a higher level of security and less opportunity for contact where pregnant animals are involved. However, the definition does not address situations where only non-pregnant animals are kept at a dry lot, so the dry lot does not need to maintain the additional safeguards used when pregnant animals are present. We propose to add a paragraph that allows non-pregnant animals to be maintained at a dry lot under conditions similar to those used with non-pregnant animals in a pasture. Specifically, we would add language stating that one type of terminal feedlot is a dry lot ". . . where only animals that either are not pregnant based on the animal being male, an owner

certification that any female animals have not been exposed to a male in the preceding 6 months, an ICVI issued by an accredited veterinarian stating the animals are open, or the animals are under 6 months of age at time of receipt, where only castrated males are maintained with female animals, and all animals in the terminal feedlot are separated from all other animals such that physical contact cannot occur and from which animals are moved only to another terminal feedlot or directly to slaughter.”

Changes to the Investigation of Flocks and the Designation of a Flock- and Animal's Risk for Scrapie

We propose to make several changes to the descriptions in § 79.4 regarding the investigation procedures followed by officials who are authorized to designate or redesignate exposed animals, suspect animals, high-risk animals, exposed flocks, infected flocks, and source flocks. These proposed changes are to improve the clarity and practicality of the regulations.

We also propose to remove some repetitive language concerning investigation and testing from paragraph (a) of § 79.4. This language is no longer needed due to the new proposed definition for *classification or reclassification investigation*.

In paragraph (b) of § 79.4, we propose to remove the detailed descriptions of the reclassification process and instead state that reclassification investigations will be conducted in accordance with procedures approved by the Administrator when evidence indicates that a previous designation can be changed.

We would provide the detailed reclassification processes to the public on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. This will allow us to update the reclassification processes easily when necessary while providing the public with notice regarding our policies. For major changes to the reclassification processes, we would publish a notice in the **Federal Register** describing the proposed change and solicit public comments on the change. We would then issue a second notice discussing the comments and informing the public of our decision regarding the change. For minor changes, updates, or clarifications, we would post notice of the change prominently on the scrapie Web site. Examples of major changes might be a whole new class of live animal test that is cheap, reliable, and effective enough to make testing all animals practical, or other changes that might result in reclassification of the

majority of classified flocks or animals. We would also provide email notification to State cooperators and other stakeholders through the APHIS Stakeholder Registry. Individuals or organizations may be added to this list through GovDelivery, a free email subscription service. To subscribe to this free service go to <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new> and select “Animal Health—Sheep and Goats” and “Federal Register Publications—Notices Regarding Animal Health.”

As part of this change, we propose to reformat the reclassification processes described in current paragraph (b) as a chart instead of text, to make it easier to understand. We would also remove some repetitive language concerning investigation and testing from the current text in paragraph (b). The proposed chart of reclassification procedures, along with other materials this rule proposes to make available through the scrapie Web site rather than in the regulations, is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, on the Regulations.gov Web site, or on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. We invite public comment on both the current drafts of these materials and on the concept of making the materials available on the scrapie Web site rather than in the Code of Federal Regulations.

Changes to Recordkeeping and Identification Requirements

We propose to consolidate and simplify the recordkeeping requirements in the regulations. Currently, the description of these requirements is dispersed in several locations in the regulations, including the definition of *terminal feedlot*, in paragraphs (c) and (f) through (h) of § 54.8, *Requirements for flock plans and post-exposure management and monitoring plans*, and in paragraphs (b) through (d) of § 79.2, *Identification of sheep and goats in interstate commerce*. Some readers also found the current descriptions of recordkeeping requirements confusing in terms of what types of people or businesses were required to keep what types of records.

To aid clarity, we propose to consolidate and replace the existing recordkeeping language with two new paragraphs addressing recordkeeping requirements in § 79.2. We also propose to add three new paragraphs dealing with removal, loss, and replacement of official identification devices, and situations where use of more than one official eartag may be allowed. This language would be added to be

consistent with APHIS official identification requirements in 9 CFR part 86. We would also change the heading of § 79.2 to read *Identification and records requirements for sheep and goats in interstate commerce*. The two new paragraphs (f) and (g) would be titled “Records required of persons who purchase, acquire, sell, or dispose of animals” and “Records required of persons who apply official identification to animals.”

The new paragraph (f) that addresses recordkeeping requirements for people who acquire or dispose of sheep and goats would continue to require, as current § 79.2(d) does, that these persons—whether or not the animals are required to be officially identified—maintain business records documenting the acquisition or disposal (such as yarding receipts, sale tickets, invoices, and waybills) for 5 years. We also propose to expand on the current § 79.2(d) requirement that such persons must keep “records relating to the transfer of ownership, shipment, or handling of the sheep or goats” by specifically stating that the records must include the following information:

- The number of animals purchased or sold including animals acquired or transferred without sale;
- The date of purchase, sale, or other transfer;
- The name and address of the person from whom the animals were purchased or otherwise acquired or to whom they were sold or otherwise transferred;
- The species, breed, and class of animal, such as replacement ewe lambs, slaughter lambs or kids, cull ewes, club lambs, bred ewes, etc. If breed is unknown, for sheep the face color or in the case of goats the type (milk, fiber, or meat) must be recorded instead;
- A copy of the brand inspection certificate for animals officially identified with brands or ear notches;
- A copy of any certificate or owner/hauler statement required for movement of the animals purchased, sold, or otherwise transferred; and
- If the flock of origin or the receiving flock is under a flock plan or PEMMP, any additional records required by the plan.

New paragraph (g) that addresses recordkeeping requirements for persons who apply official identification to animals would require such persons to maintain the following records:

- The flock identification number, the name and address of the person who currently owns the animals, and the name and address of the owner of the flock of origin if different;
- The name and address of the owner of the flock of birth, if known, for

animals born after January 1, 2002, in another flock and not already identified to flock of birth;

- The date the animals were officially identified;
- The number of sheep and the number of goats identified;
- The breed and class of animals such as replacement ewe lambs, slaughter lambs or kids, cull ewes, club lambs, bred ewes, etc. If breed is unknown, for sheep the face color or in the case of goats the type (milk, fiber, or meat) must be recorded instead;
- The official identification numbers applied to animals by species or the GIN applied in the case of a group lot;
- Whether the animals were identified with "Slaughter Only" or "Meat" identification devices; and
- Any GIN with which the animal was previously identified.

Each person required to keep records under either of these paragraphs would have to maintain the records for at least 5 years, or longer if the Administrator requests it by written notice to the person, for purposes of any investigation or action involving the sheep or goats identified in the records. As in the current requirements, the person would have to make the records available for inspection and copying by any authorized USDA or State representative upon that representative's request and presentation of his or her official credentials.

New paragraph (h) in § 79.2 addresses removal or loss of official identification. The proposed requirements are consistent with parallel requirements in 9 CFR 86.4(d). Official identification is removed at slaughter, and this paragraph describes the responsibilities of slaughter plants to keep official identification correlated with carcasses through final inspection and procedures between APHIS and FSIS regarding collection of identification at the slaughter plants. This paragraph also describes procedures in the event of loss or destruction of official identification prior to slaughter.

New paragraph (i) addresses replacement of official identification devices for reasons other than loss, such as damage to the device or injury or infection of the animal that affects the device. The proposed requirements are consistent with parallel requirements in 9 CFR 86.4(e).

New paragraph (j) addresses use of more than one official eartag on a sheep or goat. The proposed requirements are consistent with parallel requirements in 9 CFR 86.4(c). We propose to prohibit the application of additional official eartags to a single animal unless

warranted by a specific situation. This is because the use of multiple official eartags with multiple official identification numbers for a single animal can cause confusion and impede efforts to track the movements of that animal. However, we do propose to allow multiple eartags in situations where they would provide herd management advantages or where allowing only a single tag is impractical. We propose to allow multiple official eartags in the following situations:

- When the additional eartag bears the same official identification number as an existing one.
- In specific cases when the need to maintain the identity of an animal is intensified (*e.g.*, such as for export shipments, quarantined herds, field trials, experiments, or disease surveys), a State or Tribal animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved may approve the application of a second official eartag. The person applying the second official eartag must record the following information about the event and maintain the record for 5 years: The date the second official eartag is added; the reason for the additional official eartag device; and the official identification numbers of both official eartags.

- An eartag with an animal identification number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to an animal that is already officially identified with another eartag. The person applying the AIN eartag must record the date the AIN tag is added and the official identification numbers of all official eartags on the animal and must maintain those records for 5 years.

- An official eartag that utilizes a flock identification number may be applied to a sheep or goat that is already officially identified with an official eartag if the animal has resided in the flock to which the flock identification number is assigned.

We also propose to make certain changes to the system for official animal identification in two sections, § 54.8 (retitled *Requirements for flocks under investigation and flocks subject to flock plans and post-exposure management and monitoring plans*) and § 79.2 (*Identification and records requirements for sheep and goats in interstate commerce*). Some of these changes clarify who is responsible for ensuring animal identification is applied (the owner and anyone who has control or possession of the animals) and when it must be applied. Identification must be

applied no later than whenever one of the following situations applies to an animal:

- Prior to the point of first commingling with sheep or goats from any other flock of origin;
- Upon transfer of ownership of the sheep or goats;
- Upon unloading at a livestock facility or other premises that engages in interstate commerce of animals; or
- Prior to moving a sheep or goat from the premises on which it resides for any other type of movement.

We would provide an exemption from the requirement to officially identify animals before they leave their premises if they move, as part of a group lot, to a livestock facility approved in accordance with our regulations in 9 CFR 71.20 to handle the species and class of animal moved, provided that the facility has agreed to act as an agent for the owner to apply official identification. We would also exempt animals that are moved as part of a group lot to a slaughter plant listed in accordance with 9 CFR 71.21 or for managerial purposes between premises owned or leased by the same flock owner. We also propose to remove a provision in § 79.2(a) that expired on June 1, 2003, that allowed movement of certain animals that are not identified to their flock of birth.

Paragraph (a)(2) of § 79.2 lists approved identification methods. We are proposing to remove this list from the regulations and instead state in the regulations that sheep or goats must be identified and remain identified using a method approved by the Administrator. We would provide a list of approved identification methods on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. For major changes to the list of approved identification methods, we would publish a notice in the **Federal Register** describing the proposed change and solicit public comments on the change. We would then issue a second notice discussing the comments and informing the public of our decision regarding the change. For minor changes, updates, or clarifications, we would post notice of the change prominently on the scrapie Web site. We would also provide email notification to State cooperators and other stakeholders through the APHIS Stakeholder Registry.

We are proposing this change because identification technologies are continually updated to take advantage of newly available technology and to meet industry needs. Maintaining a list of approved identification methods in the regulations requires rulemaking to update that list. Updating the list of

approved identification methods without completing rulemaking will allow for more frequent and timely updates to the list, while continuing to ensure that all animal identification methods are approved by the Administrator.

As part of this rulemaking, we are also soliciting comments on changes to the current list of approved identification methods in § 79.2. Copies of the list as we would establish it on the scrapie Web site are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, on the Regulations.gov Web site, or on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. Some of the changes to the current approved identification methods would ensure that identification devices, in addition to providing official identification numbers, also provide information about the status of the animal when appropriate, *i.e.*, whether the animal is scrapie-positive, permanently restricted (confined to its premises by a State or APHIS representative until it dies or is redesignated by a State or APHIS representative), or for slaughter only.

Finally, we are proposing to move the current description of the process for approving new methods of identification in § 79.2(g) into paragraph (a)(2) and amend the current text of paragraph (g) and move it to a new paragraph (k) to reflect these changes. This paragraph indicates that written requests for approval of sheep or goat identification methods not listed in paragraph (a)(2) of § 79.2 should be sent to the National Scrapie Program Coordinator, Sheep, Goat, Cervid & Equine Health Center, Surveillance, Preparedness and Response Services, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235. If the Administrator determines that the identification method will provide a means of tracing sheep and goats in interstate commerce, notice will be published in the **Federal Register** adding the devices and markings to the list of approved means of sheep and goat identification.

To be consistent with the other proposed changes we have discussed, we would replace the reference to paragraph (a)(2) in current paragraph (g) with a reference to the scrapie Web site, where the approved identification methods would be listed. We would also replace the reference to publishing a notice in the **Federal Register** with a reference to providing public notice that the devices and markings have been added to the list of approved identification methods, to allow us

flexibility to add methods without necessarily publishing a notice in the **Federal Register**.

With respect to responsibility for identifying animals, in § 79.2(a)(3) we propose to more clearly restate the current requirement that when an animal that is required to be identified is moved to a place where it will be put in the same enclosure with animals from a different flock of origin, the person who owns the animal, the person who transports or delivers that animal, and the person who accepts delivery of the animal are all responsible for ensuring that the animal is officially identified prior to commingling.

We are particularly seeking comment regarding the provisions in the regulations that allow some animals to be officially identified upon arrival at certain livestock facilities, rather than before leaving their premises, and that allow the identification to be applied by the livestock facility rather than the animals' owner. These provisions are found in § 79.2(a)(1)(ii) and § 79.2(a)(3) of the current regulations and appear in the regulatory text at the end of this proposed rule as § 79.2(a)(1)(ii) and § 79.3(a)(5). In both cases the livestock facility may apply the official identification if it has agreed to act as an agent for the owner to apply official identification, and has the necessary information and keeps the necessary records about the animals to correctly apply the identification, and does so before the animals are commingled with any other, unidentified animals at the facility. We seek comments on whether this provision is effective as written, or whether it should be eliminated (thereby making it a violation of the regulations to unload unidentified animals at an approved market) or amended, *e.g.*, to require the owner of the animals to maintain the records and provide the livestock facility with the required identification tags for the market personnel to apply.

In addition to the proposed changes affecting animal identification in § 54.8, we propose to make minor changes to paragraph § 54.8(e), which requires the owner of a flock under a flock plan or PEMMP to meet requirements, including but not limited to those listed in that paragraph, to monitor for scrapie and to prevent the recurrence or spread of scrapie in the flock. We propose to add that owners must report animals found dead and collect and submit test samples from them if an APHIS or State representative requests it. The regulations already assume owners will do this, and the requirement has appeared in the text of flock plans and PEMMPs, but we wish to add it to the

regulations to ensure all owners are aware of it. We also propose to add that the owner of a flock under a flock plan or PEMMP must use genetically resistant rams if the DSE determines it is necessary to reduce the risk of the occurrence of scrapie in the flock. The use of such rams has become more common due to increased knowledge of sheep genetics, so we think it is worthwhile to add it to this paragraph as something that may be required in a flock.

We also propose to add a new paragraph (h) to § 54.8 discussing the types of animals that may be retained in a flock under a flock plan or PEMMP. This new paragraph would build on the changes discussed above that resulted from increased understanding of the genetics of scrapie resistance and the use of genetic testing as a means of assigning risk levels to animals. The result of this change would be that certain animals that previous flock plans would have removed from a flock may be allowed to remain in the flock. Proposed new paragraph (h) would read "The Administrator may allow high-risk animals that are not suspect animals to be permanently retained under restriction in the flock if they are not genetically susceptible animals or if they have tested 'PrPsc not detected' on a live animal scrapie test approved for this purpose by the Administrator and are maintained in a manner that the Administrator determines minimizes the risk of scrapie transmission, *e.g.*, bred only to genetically resistant sheep, segregated for lambing, and cleaning and disinfection of the lambing area. All such animals must be tested for scrapie when they are euthanized or die or if they are later determined to be suspect animals. These requirements will be documented in the PEMMP."

We also propose to add a statement to § 54.8(j), which describes the requirements for flock plans. As discussed above, we added a new definition for *low-risk exposed animal* that applies to sheep or goats deemed to present significantly lower risks due to the nature of either the exposure or the animal. To adjust the flock plan requirement accordingly, we propose that in individual cases or for a class of cases the Administrator may waive the requirement for a flock plan or waive any of the requirements in a flock plan after determining that the flock contains only low-risk exposed animals and poses a low risk of scrapie transmission. Barring the publication of new data to the contrary, the Administrator intends to waive the requirements of a flock plan and to modify the PEMMP for flocks affected by Nor98-like scrapie.

Changes to Indemnity Provisions in Part 54

The changes discussed above that would provide for the classification of animals based on their genetic susceptibility or resistance to scrapie would likely result in fewer animals being designated as high-risk animals. Most of the animals eligible for indemnity in accordance with § 54.3 are high-risk animals.⁶ We believe it is appropriate to deny indemnity for exposed animals that have been genetically tested and found to be genetically resistant or less susceptible to scrapie. Such animals can generally be moved interstate with only minor restrictions, and sold on the open market for prices similar to those obtained for sheep that have never been exposed to scrapie. It is not appropriate to pay indemnity for animals when their owners have these options.

We also believe it is necessary to clarify what is meant by a statement in current § 54.3(b), “No indemnity will be paid to an owner if the owner assembled or increased his flock for the purpose of collecting or increasing indemnity.” Therefore, we propose several changes to § 54.3. First, we propose to clearly state that no indemnity will be paid for any animal, or the progeny of any animal, that has been moved or handled by the owner in violation of the requirements of 9 CFR chapter I. In line with this, we would also specifically state that no indemnity will be paid for an animal added to the premises while it is an infected or source flock other than for animals that are natural additions. We also propose that no indemnity will be paid for natural additions born more than 60 days after indemnity is offered in writing unless the Administrator makes a determination that the animals could not be removed within the allowed time as a result of conditions outside the control of the owner.

One current requirement of § 54.3 is that no indemnity shall be paid until the premises, including all structures, holding facilities, conveyances, and materials contaminated because of occupation or use by the depopulated animals, has been properly cleaned and disinfected. In enforcing this provision we have become aware that sometimes circumstances beyond an owner's control delay the cleaning and disinfection, despite the owner's best

intentions. To alleviate financial hardship in such cases, we propose to amend § 54.3 to state that partial indemnity may be paid when the Administrator determines that weather or other factors outside the control of the owner make immediate disinfection impractical.

In § 54.6, paragraphs (a) and (b) set out procedures for determining what indemnity will be paid for sheep and goats that are eligible for indemnity under § 54.3. Paragraph (a) contains detailed information regarding price reports published by the Agricultural Marketing Service (AMS) that are used to calculate indemnity for sheep. Paragraph (b) sets out the process by which these price reports are used to determine indemnity for various classes of animals, with premiums paid for certain types of animals, such as registered animals and flock sires.

We are proposing to remove this detailed information from the regulations. The price reports we use as a basis for our indemnity calculations change frequently, as do the terms used in those price reports to refer to various types of sheep and goats. The price reports listed in paragraphs (a)(1) through (a)(6) in § 54.6 are currently out of date, and it would require frequent updates of the regulations to keep them consistent with the AMS data. In addition, the process in paragraph (b) sets out numerous specific weight thresholds and sets out dollar amounts for premiums. If the sheep and goat industries change, making these weight thresholds obsolete or the premiums inadequate to provide a fair indemnity, we must update the regulations.

Rather than use scrapie program resources to continually update § 54.6(a) and (b), we propose to retain only the general statement that indemnity paid for sheep and goats in accordance with § 54.3 will be the fair market value for the animals, based on available price report data that most accurately reflect the type of animal being indemnified and the time at which the animal was indemnified. Paragraph (a) of § 54.6 would also specify that premiums would be paid for certain animals and that APHIS will use AMS price report data or other available price information and any other data necessary to establish the value of different types of sheep and goats in its calculations. We would provide a detailed description of how we calculate indemnity on the scrapie Web site.

This approach would be consistent with some other parts in 9 CFR subchapter B, which provide that indemnity will be provided based on appraisals but do not specify the details

of how an appraisal is conducted. For example, 9 CFR part 56, which provides for the payment of indemnity for poultry affected by low pathogenic avian influenza, states that indemnity will be paid based on appraisals; however, those regulations do not include the details of how appraisals are conducted, and they are typically conducted by use of spreadsheets showing data on inputs and expected prices. Similarly, the scrapie regulations provide for calculation of indemnity based on broad market data, with a few modifications; we believe it is appropriate to state in the regulations that indemnity will be based on those broad market data and provide the details on the scrapie Web site. We invite public comment on this approach.

We would also reorganize and renumber the paragraphs in § 54.6 and make other minor changes to the section to improve its comprehensibility.

As part of this change, we also propose to create a new indemnity classification for certain pregnant animals and early maturing ewes. At sales, animals in late pregnancy bring higher prices than animals that are not pregnant because of the additional value of the offspring they carry. We believe that indemnity prices should reflect this increase in value since indemnity is related to the fair market value of animals. We would also categorize early maturing ewe lambs as yearlings, which typically qualify for a higher indemnity value, because early maturing ewes can be bred at about 7 months and lamb at 12–14 months, increasing their value. Descriptions of these classifications as we would establish them are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, on the Regulations.gov Web site, or on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. We invite public comment on these classifications.

Sections 54.3 and 54.5 already require that to obtain indemnity owners must make available to APHIS all bills of sale, pedigree registration certificates, and other records associated with ownership or movement of the animals. We propose to amend § 54.3 to also state that owners applying for indemnity must, within 30 days of request, make the animals in the flock available for inventory, evaluation, and testing. We propose this change because it is sometimes necessary to have physical access to the animals to confirm their eligibility for indemnity.

Current § 54.6(e) states that indemnity will be paid to an owner only for animals actually in a flock at the time

⁶ Section 54.3(a)(2) also allows indemnity to be paid for other types of animals when the Administrator determines that the destruction of these animals will contribute to the eradication of scrapie.

indemnity is first offered. We propose to add that indemnity would be paid for offspring born to animals in that flock within 60 days after the time indemnity is first offered in writing. This change is proposed in response to indemnity situations that have occurred where owners with ewes nearly ready to give birth become eligible for indemnity. We also propose to add several other provisions intended to encourage the prompt removal of animals identified for indemnity, to minimize the risks that might result if these animals remained in a flock for long periods. We propose that if an owner declines to remove an animal within 60 days of when indemnity is first offered in writing the indemnity amount would be reevaluated using current AMS price reports. The owner would then receive the lower value of the indemnities calculated from price reports when indemnity was first offered and when the animal was actually removed. We also propose that APHIS may withdraw an indemnity offer if an owner does not make animals available for inventory, gestational assessment, and testing within 30 days or does not remove an animal within 60 days of the indemnity offer or by the date specified in a flock plan or PEMMP.

We also propose to revise the definition of *flock sire* in part 54 to ensure that only the appropriate animals receive the indemnity premium applied to flock sires. The current definition reads “a sexually intact male animal that has ever been used for breeding in a flock.” However, this allows a premium to be paid for animals that are too old to breed, or that were once tried as sires but were found to produce inferior progeny. Such animals no longer have an economic value that justifies an indemnity premium. Therefore, we propose to change the definition of *flock sire* to read “A sexually intact male animal that has produced offspring in the preceding 12 months or that was used for breeding during the current breeding cycle.”

We believe the changes to parts 54 and 79 discussed above would improve the effectiveness of the scrapie program, reduce the risks associated with moving sheep and goats interstate, reduce some identification and recordkeeping requirements while changing others, and make the scrapie indemnity program more equitable.

Changes Concerning Tests for Scrapie and Laboratories Approved To Perform Tests

We are proposing certain changes to § 54.10, “Tests for scrapie,” and § 54.11, “Approval of laboratories to run official

scrapie tests and official genotype tests.” The proposed changes are intended to provide more information about APHIS procedures in these matters and to make the testing and laboratory approval processes more reliable, flexible, and market-oriented.

We propose to change the section title of § 54.10 to read “Program approval of tests for scrapie” to clarify that the section concerns how tests are approved, and is not merely a list of tests. We propose to change a sentence that states that specific guidance on the use of approved tests “will be added to this part as tests are approved and will also be contained in the Scrapie Eradication UM&R and the Scrapie Flock Certification Program standards.” We would change this to read “will be made available on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>.” This change would allow APHIS to respond more quickly to advances in science and in scrapie testing specifically. For major changes to how tests are used within the scrapie program, we would publish a notice in the **Federal Register** describing the proposed change and solicit public comments on the change. We would then issue a second notice discussing the comments and informing the public of our decision regarding the change. For the addition of guidance for a new test used for purposes similar to an existing test, or for minor changes, updates, or clarifications, we would post notice of the change prominently on the scrapie Web site. We would also provide email notification to State cooperators and other stakeholders through GovDelivery, a free email subscription service. To subscribe to this free service go to <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new> and select “Animal Health—Sheep and Goats” and “**Federal Register** Publications—Notices Regarding Animal Health.” Proposed procedures for using tests are in the draft National Scrapie Eradication Program Standards. Copies are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, on the Regulations.gov Web site, or on the Web site at <http://www.aphis.usda.gov/animal-health/scrapie>.

We also propose to add to both § 54.10 and § 54.11 a standard paragraph stating that the Administrator may withdraw or suspend approval of an official test, or approval of a laboratory to perform tests. In both § 54.10, regarding approved tests, and § 54.11, regarding approved laboratories, there would be an opportunity for an appeal to the Administrator to resolve any questions of material fact regarding the

withdrawal or suspension. The Administrator’s decision would constitute final agency action.

We propose to add ELISA testing to the definition of *scrapie-positive animal* as one of the test methods that may be used by NVSL when making an official diagnosis of scrapie. The current definition specifically mentions “proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting.” APHIS is continually evaluating scrapie test methods for sensitivity, specificity and reliability, and ELISA tests are currently one of the methods used by NVSL.

Changes Affecting Consistent State Requirements and State Surveillance Programs

Surveillance is an important component of the National Scrapie Eradication Program because it identifies infected animals, and successful traceback of these animals to their flocks of origin allows us to identify previously unrecognized infected flocks for cleanup. As the United States progresses toward eradication of scrapie, surveillance is also necessary to measure the effectiveness of control measures and to document when regions achieve freedom from disease as defined by international standards affecting trade in animals and products from the regions.

To support traceback and eradication efforts, we propose to add a requirement that States must implement effective scrapie surveillance in order to qualify as a Consistent State. This requirement would include three components: Facilitating surveillance at slaughter establishments that do not engage in interstate commerce; reporting submission information and test results electronically to the National Scrapie Database administered by APHIS; and testing an appropriate number of targeted animals annually.

The first of these three new requirements would affect surveillance at slaughter establishments. Slaughter surveillance is a major component of the ongoing scrapie surveillance conducted by APHIS. The regulations in 9 CFR 71.21 describe the collection of tissues for surveillance purposes at slaughter establishments that receive livestock in interstate commerce. To achieve the eradication of scrapie, it is important to conduct surveillance in all slaughter establishments that receive targeted animals—including State-inspected and custom establishments that do not participate in interstate commerce. Surveillance at these concentration

points, along with traceability of animals, is key to program effectiveness. Therefore, we propose to provide for scrapie surveillance in slaughter establishments that do not participate in interstate commerce (*i.e.*, State-inspected and custom establishments). We propose to add language in § 79.6(a)(10)(i) requiring States that are Consistent States to collect and submit surveillance samples from targeted animals slaughtered in State-inspected establishments and from slaughter establishments within the State that are not covered under § 71.21. Typically, when sample collection by State personnel is necessary it could be accomplished by State personnel already assigned to such establishments. Alternatively, in places where APHIS has Federal employees or contractors available to collect samples from such plants, the State could instead elect to allow and facilitate the collection of such samples by USDA personnel or contractors. The intent of this proposed requirement is to ensure that surveillance for scrapie consistently occurs in all slaughter establishments that receive targeted animals.

The second new requirement would affect the reporting of surveillance data by States. In order to insure the integrity of surveillance data and to verify that a State is conducting adequate surveillance for scrapie, we propose to add language to § 79.6(a)(10)(ii) requiring that submission data and epidemiological information for all samples be electronically transmitted by accessing and updating a system provided by APHIS. Submission data will be electronically transmitted to an approved laboratory and the epidemiologic and testing data will be stored in the National Scrapie Database, allowing complete reports concerning scrapie surveillance to be generated for each State as well as for the entire United States. This system is currently used to submit information for over 99 percent of the scrapie samples collected for testing.

In the third new surveillance requirement, we propose to determine the appropriate sample size for surveillance within a State using one of two approaches. A State could meet annual State-level surveillance minimums established by APHIS. These minimums will be made publicly available at <http://www.aphis.usda.gov/animal-health/scrapie>. APHIS may update the surveillance minimums once a year and will provide them to the States at least 6 months before the start of the collection period. These surveillance minimums call for a certain level of activity, including the

coordination of sampling and testing of mature sheep at slaughter that have a higher than average probability of being infected with scrapie and surveillance in targeted animals from other sources such as veterinary diagnostic laboratories, public health laboratories, renderers, dead stock haulers, markets, feedlots, and farms. The State-level minimums will be based on the number of targeted animals residing in a State, the occurrence of scrapie in sheep and goats in the State, and other relevant factors such as the percentage of flocks surveyed. States may contact the Administrator within 60 days of publication of their State's surveillance minimum to appeal the surveillance minimum if they believe there was any error in the facts used to establish the minimum. Alternatively, a State could design and implement its own surveillance plan as long as the State demonstrates that the surveillance is sufficient to detect scrapie if it is present at a prevalence of 0.1 percent in the population of targeted animals originating from within the State, with a 95 percent confidence level, each year. This is the level of surveillance currently specified by Article 14.9.2 of the World Animal Health Organization (the OIE) Terrestrial Animal Health Code to determine a scrapie free country or zone. These surveillance requirements for States would be added to § 79.6(a)(10)(iii) and (iv). APHIS intends to continue to provide support to the States in meeting surveillance minimums and to set minimums in line with funds available for surveillance activities. APHIS currently supports surveillance by providing testing for scrapie samples through contracts with State veterinary diagnostic laboratories, sampling contracts, cooperative agreements to support collection activities by States, and collection of samples by APHIS personnel.

Definition of Consistent State

The definition of *Consistent State* in § 79.1 currently includes criteria for listing a State as a Consistent State and a list of States that meet these criteria. As the definition itself indicates when a State will be listed as a Consistent State, providing the list of Consistent States in the regulations is not necessary. We are proposing to remove the list of Consistent States from this definition and instead indicate that a list of Consistent States can be found on the scrapie Web site. (Currently, all 50 States are listed as Consistent States; we are not proposing to change the list.)

We are also proposing to provide in the regulations a process for updating the list of Consistent States. When we

determine that a State should be added to or removed from the list of Consistent States, we would publish a notice in the **Federal Register** advising the public of our determination and providing the reasons for that determination. The notice would solicit public comments. After considering any comments we receive, we would publish a second notice either advising the public that we are adding or removing the State from the list of Consistent States or notifying the public that we are not making any changes to the list of Consistent States, depending on the information presented in the comments.

Other Changes to Parts 54 and 79

We propose to change § 54.21, "Participation," which currently states that APHIS makes available a list of flocks participating in the SFCP and another list of flocks that are not in compliance with these regulations. We propose to make available a third list, of flocks that sold exposed animals that could not be traced, which would be of potential risk management use to persons who purchased animals from these flocks.

We propose to add several definitions to part 79 to ensure that readers understand terms used in those regulations. These include *owner/hauler statement*, *person*, *restricted animal sale or restricted livestock facility*, and *test eligible*. The only one of these terms that may not already be familiar to those affected by the regulations is *owner/hauler statement*. We propose to define this term, which would replace the current term *owner statement*, as "A signed written statement by the owner or hauler that includes:

- (1) The name, address, and phone number of the owner and, if different, the hauler;
- (2) The date the animals were moved;
- (3) The flock identification number or PIN assigned to the flock or premises of the animals;
- (4) If moving individually unidentified animals, the group/lot identification number and any information required to officially identify the animals;
- (5) The number of animals;
- (6) The species, breed, and class of animals. If breed is unknown, for sheep the face color and for goats the type (milk, fiber, or meat) must be recorded instead; and
- (7) The name and address of point of origin, if different from the owner's address, and the destination."

The changes discussed above, particularly the use of genetic information and testing to improve our ability to categorize animals by risk

categories, would allow us to greatly simplify and shorten § 79.3, which describes the basic restrictions on the movement and commingling of regulated sheep and goats. We propose to replace the chart in § 79.3 with a simpler, less repetitive format that preserves the movement restrictions but describes them using the improved animal category definitions and terms proposed in this document.

We are also proposing to revise § 79.5 (retitled *Issuance of Interstate Certificates of Veterinary Inspection (ICVI)*) to replace the term “certificates” with reference to ICVIs for consistency with other areas of the regulations. Section 79.5 would also revise the information that must be contained in a certificate now termed an ICVI. In addition, we are revising the section to make the requirements and terms in it match those proposed elsewhere in this document and, to the degree appropriate, those in 9 CFR part 86 (Animal Disease Traceability) *e.g.*, by changing “premises identification” to “flock identification number.” In support of this proposal’s goal of using available genetic information to better characterize risks, we would also add a statement in paragraph (a) that, if any animals covered by a ICVI are intended for breeding and have undergone an official genotype test, the name of the testing laboratory and the date and result of the test must be included.

Miscellaneous Changes

We are also proposing to make miscellaneous changes, particularly in the definitions sections of parts 54 and 79, and in the description of cleaning and disinfection of premises in § 54.7, to make terminology and citations consistent throughout the regulations. We are changing the definitions of several terms to make them consistent with the definitions in new animal disease traceability regulations in 9 CFR part 86. In § 54.7, we propose to expand the brief description of cleaning and disinfection procedures to include more information about burial and composting options for organic and/or inorganic materials. We also propose minor changes throughout the regulations to consistently use the term “identification devices” instead of referring to “devices” in some sections and “tags” in others, to correct outdated Internet addresses, and to otherwise improve accuracy and readability.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and,

therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

APHIS is proposing to amend the scrapie regulations to relieve certain restrictions associated with the interstate movement of sheep and goats, reduce the number of exposed sheep and goats that are destroyed, and improve overall program effectiveness. More specifically, genetic testing would be used to identify genetically resistant or less susceptible sheep for exemption from destruction and as qualifying for interstate movement; designated scrapie epidemiologists would be given greater flexibility in determining the testing needs of flocks; the indemnity regulations would be changed to apply only to those animals that are found to be genetically susceptible to scrapie; official identification of goats produced for meat or fiber would be required; submission of tagging records by individuals who tag sheep or goats that do not originate on their premises

would be required; and certain recordkeeping requirements would be reduced, changed or removed.

The primary benefits of this proposed rule for producers and the public would be more rapid progress toward scrapie eradication and the related boost to the Nation’s animal health status, decreased losses for owners of exposed herds, and increased export opportunities for sheep and goats and their products. All segments and marketing channels of the sheep and goat industries would benefit from being able to operate under fewer restrictions while still complying with the scrapie eradication program. By enhancing traceability, the proposed rule would shorten the time and reduce the cost of eradication.

Costs associated with the proposed rule would be borne by APHIS and the regulated industry. APHIS would incur the costs of genotyping exposed sheep and testing genetically susceptible animals for scrapie. The total laboratory cost to APHIS for testing an average-sized exposed flock is estimated to be around \$610. This Federal cost may be largely offset by a reduction in indemnity payments; genotyping is expected to result in the destruction of fewer animals.

Producers of goats for meat or fiber would incur costs of official identification as a result of the proposed rule. However, close to one-half of the goat farms reported in the 2012 Census of Agriculture are already in compliance with the proposed identification requirements.

The proposed rule would affect sheep and goat producers, as well as marketers and dealers. Most of these entities are small. However, in that costs of genotyping, testing, and provision of eartags would be borne by the Federal Government, we do not believe this rule would pose a significant cost burden for producers.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings

will not be required before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

As part of this review, APHIS sent letters to Tribal leaders describing the proposed rule, asking the leaders to consider and inform us of any potential impacts or possible outcomes for their tribes, and offering further discussion or consultation if desired. No Tribe identified issues of concern or requested further consultation. We believe that the issue in this proposed rule that is of most potential concern to Tribes is animal identification and traceability. That issue has been addressed in a previous proposed rule concerning traceability for livestock moving interstate (Docket No. APHIS–2009–0091, 76 FR 50082, published August 11, 2011). The Tribal summary impact statement for that proposed rule is available at <http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0091-0474>.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0127. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0127, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Implementing the requirements of the proposed rule would change information collection and recordkeeping burden for persons such as animal market operators, dealers, accredited veterinarians, tag manufacturers, flock owners, haulers,

State officials, terminal feedlot owners, laboratories, test kit manufacturers, slaughter plant/establishment owners, and other persons who apply official identification to sheep and goats. These changes will primarily affect persons who own or handle goats in interstate commerce. Some of this information would be entered in the Scrapie National Database, and persons who apply official identification for animal owners such as livestock markets would have the option of entering the information through a Web site into the Scrapie National Database or completing and submitting a form. These changes would also eliminate requirements to record individual identification numbers for certain classes of sheep and goats.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.24 hours per response.

Respondents: Market operators, dealers, accredited veterinarians, tag manufacturers, flock owners, haulers, State officials, terminal feedlot owners, laboratories, test kit manufacturers, slaughter plant/establishment owners, and other persons who apply official identification to sheep and goats.

Estimated Annual Number of Respondents: 157,053.

Estimated Annual Number of Responses per Respondent: 2.89.

Estimated Annual Number of Responses: 454,061.

Estimated Total Annual Burden on Respondents: 108,981 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

Accordingly, we are proposing to amend 9 CFR parts 54 and 79 as follows:

PART 54—CONTROL OF SCRAPIE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 54.1 is amended as follows:

■ a. Revise the heading of the definition for *approved test* to read *program approved test* and place in alphabetical order.

■ b. In the definition for *breed association and registries*, by removing the words “listed in § 151.9 of this chapter”.

■ c. Removing the definition for *certificate*.

■ d. Adding a definition for *classification or reclassification investigation*.

■ e. In the heading of the definition for *designated scrapie epidemiologist*, add the acronym “DSE” immediately after “epidemiologist”.

■ f. Revising the definitions for *destroyed*, *exposed animal*, and *exposed flock*.

■ g. In the definition for *flock*, paragraph (2)(v), by adding the word “Free” between the words “Scrapie” and “Flock”.

■ h. In the definition for *flock plan*, last sentence, by removing “(f)” and by adding “(j)” in its place.

- i. Revising the definition for *flock sire*.
- j. Adding definitions for *flock under investigation, genetically less susceptible exposed sheep, genetically resistant exposed sheep, genetically susceptible animal, and genetically susceptible exposed animal*.
- k. Revising the definition for *high-risk animal*.
- l. Adding a definition for *interstate certificate of veterinary inspection (ICVI)*.
- m. In the definition for *limited contacts*, last sentence, by adding the word “Free” between the words “Scrapie” and “Flock”.
- n. Adding a definition for *low-risk exposed animal*.
- o. In the definition for *National Scrapie Database*, by adding the word “Free” between the words “Scrapie” and “Flock”.
- p. The definition for *noncompliant flock* is amended as follows:
 - i. In paragraph (1), by removing the words “source or infected flock” and adding the words “source, infected, or exposed flock or flock under investigation”;
 - ii. In paragraph (2), by adding the words “or flock under investigation” immediately after the words “exposed flock”; and
 - iii. In paragraph (3), by removing the words “owner statement” and adding the words “owner/hauler statement” in their place.
- q. Revising the definition for *official genotype test*.
- r. Adding a definition for *restricted animal sale or restricted livestock facility*.
- s. In the heading of the definition for *Scrapie Flock Certification Program (SFCP)*, by adding the word “Free” immediately after the word “Scrapie”.
- t. In the heading of the definition for *Scrapie Flock Certification Program standards*, by adding the word “Free” immediately after the word “Scrapie” and, in footnote 2, by removing the Internet address “<http://www.aphis.usda.gov/vs/scrapie>” and adding the Internet address “www.aphis.usda.gov/animal-health/scrapie” in its place.
- u. In the definition for *scrapie-positive animal*, in paragraph (2), by adding the words “, and/or ELISA,” immediately after the word “immunohistochemistry” and, in paragraph (5), by removing the words “test method” and adding the words “method or combination of methods” in their place.
- v. By removing the definitions for *separate contemporary lambing group*.
- w. Revising the definition for *slaughter channels* and paragraph (1) in the definition of *suspect animal*.

- x. Adding definitions for *tamper-resistant sampling kit* and *terminal feedlot*.

The additions and revisions read as follows:

§ 54.1 Definitions.

* * * * *

Classification or reclassification investigation. An epidemiological investigation conducted or directed by a DSE for the purpose of designating or redesignating the status of a flock or animal. In conducting such an investigation, the DSE will evaluate the available records for flocks and individual animals and conduct or direct any testing needed to assess the status of a flock or animal. The status of an animal or flock will be determined based on the applicable definitions in this section and, when needed to make a designation under § 79.4 of this chapter, official genotype test results, exposure risk, scrapie type involved, and/or results of official scrapie testing on live or dead animals

* * * * *

Destroyed. Euthanized and the carcass disposed of by means authorized by the Administrator that will prevent its use as feed or food, or moved to a quarantined research facility if the movement has been approved by the Administrator.

* * * * *

Exposed animal. Any animal or embryo that has been in a flock or in an enclosure off the premises of the flock with a scrapie-positive female animal; resides in a noncompliant flock; or has resided on the premises of a flock before or while it was designated an infected or source flock and before a flock plan was completed. An animal shall not be designated an exposed animal if it only resided on the premises before the date that infection was most likely introduced to the premises as determined by a Federal or State representative. If the probable date of infection cannot be determined based on the epidemiologic investigation, a date 2 years before the birth of the oldest scrapie-positive animal(s) will be used. If the actual birth date is unknown, the date of birth will be estimated based on examination of the teeth and any available records. If an age estimate cannot be made, the animal will be assumed to have been 48 months of age on the date samples were collected for scrapie diagnosis. Exposed animals will be further designated as genetically resistant exposed sheep, genetically less susceptible exposed sheep, genetically susceptible exposed animals, or low-risk exposed animals.

An animal will no longer be an exposed animal if it is redesignated in accordance with § 79.4 of this chapter.

Exposed flock. (1) Any flock that was designated an infected or source flock that has completed a flock plan and that retained a female genetically susceptible exposed animal;

(2) Any flock under investigation that retains a female genetically susceptible exposed animal or a suspect animal, or whose owner declines to complete genotyping and live-animal and/or post-mortem scrapie testing required by the APHIS or State representative investigating the flock; or

(3) Any noncompliant flock or any flock for which a PEMMP is required that is not in compliance with the conditions of the PEMMP. A flock will no longer be an exposed flock if it is redesignated in accordance with § 79.4 of this chapter.

* * * * *

Flock sire. A sexually intact male animal that has produced offspring in the preceding 12 months or that was used for breeding during the current breeding cycle.

Flock under investigation. Any flock in which an APHIS or State representative has determined that a scrapie-suspect animal, high-risk animal, or scrapie-positive animal resides or may have resided. A flock will no longer be a flock under investigation if it is redesignated in accordance with § 79.4 of this chapter.

Genetically less susceptible exposed sheep. Any sheep or sheep embryo that is:

(1) An exposed sheep or sheep embryo of genotype AA QR, unless it is epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are not less susceptible where Q represents any genotype other than R at codon 171; or

(2) An exposed sheep or sheep embryo of genotype AV QR, unless it is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie (based on an evaluation of the genotypes of the scrapie-positive animals linked to the flock), or to another scrapie type to which AV QR sheep are not less susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or

(3) An exposed sheep or sheep embryo of a genotype that has been exposed to a scrapie type to which the Administrator has determined that genotype is less susceptible.

Genetically resistant exposed sheep. Any exposed sheep or sheep embryo of genotype RR unless it is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are not resistant.

Genetically resistant sheep. Any sheep or sheep embryo of genotype RR unless it is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type that affects RR sheep.

Genetically susceptible animal. Any goat or goat embryo, sheep or sheep embryo of a genotype other than RR or QR, or sheep or sheep embryo of undetermined genotype where Q represents any genotype other than R at codon 171.

Genetically susceptible exposed animal. Excluding low-risk exposed animals, any exposed animal or embryo that is also:

(1) A genetically susceptible animal; or

(2) A sheep or sheep embryo of genotype AV QR that is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie (based on an evaluation of the genotypes of the scrapie-positive animals linked to the flock), or to a scrapie type to which AV QR sheep are susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or

(3) A sheep or sheep embryo of genotype AA QR that is epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are susceptible where Q represents any genotype other than R at codon 171; or

(4) A sheep or sheep embryo of genotype RR that is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are susceptible.

High-risk animal. The female offspring or embryo of a scrapie-positive female animal, or any suspect animal, or a female genetically susceptible exposed animal, or any exposed animal that the Administrator determines to be a potential risk based on the scrapie type, the epidemiology of the flock or flocks with which it is epidemiologically linked, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, and other flock characteristics. An animal will no longer be a high-risk animal if it is redesignated in accordance with § 79.4 of this chapter.

* * * * *

Interstate certificate of veterinary inspection (ICVI). An official document

issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement or other uses as described in this part and in accordance with § 79.5 of this chapter.

* * * * *

Low-risk exposed animal. Any exposed animal to which the DSE has determined one or more of the following applies:

(1) The positive animal that was the source of exposure was not born in the flock and did not lamb in the flock or in an enclosure where the exposed animal resided;

(2) The Administrator and State representative concur that the animal is unlikely to be infected due to factors such as, but not limited to, where the animal resided or the time period the animal resided in the flock;

(3) The exposed animal is male and was not born in an infected or source flock;

(4) The exposed animal is a castrated male;

(5) The exposed animal is an embryo of a genetically resistant exposed sheep or a genetically less susceptible exposed sheep unless placed in a recipient that was a genetically susceptible exposed animal; or

(6) The animal was exposed to a scrapie type and/or is of a genotype that the Administrator has determined poses low risk of scrapie transmission.

* * * * *

Official genotype test. A test to determine the genotype of a live or dead animal conducted at either the National Veterinary Services Laboratories or at an approved laboratory. The test subject must be an animal that is officially identified and the test accurately recorded on an official form supplied or approved by APHIS, with the samples collected and shipped to the laboratory using a shipping method specified by the laboratory by:

(1) An accredited veterinarian;

(2) A State or APHIS representative; or

(3) The animal's owner or owner's agent, using a tamper-resistant sampling kit approved by APHIS for this purpose.

* * * * *

Restricted animal sale or restricted livestock facility. A sale where any animals in slaughter channels are maintained separate from other animals not in slaughter channels and are sold in lots that consist entirely of animals sold for slaughter only or a livestock facility at which all animals are in slaughter channels and where the sale or facility manager maintains a copy of, or maintains a record of, the information

from, the owner/hauler statement for all animals entering and leaving the sale or facility. A restricted animal sale may be held at a livestock facility that is not restricted.

* * * * *

Slaughter channels. Animals in slaughter channels include any animal that is sold, transferred, or moved either directly to or through a restricted animal sale or restricted livestock facility to a slaughter establishment that is under continuous inspection by the Food Safety and Inspection Service (FSIS) or under State inspection that FSIS has recognized as at least equal to Federal inspection or to a custom exempt slaughter establishment as defined by FSIS for immediate slaughter or to an individual for immediate slaughter for personal use or to a terminal feedlot. Any animal sold at an unrestricted sale is not in slaughter channels. Animals in slaughter channels must be accompanied by an owner/hauler statement completed in accordance with § 79.3(g) of this chapter. Animals in slaughter channels may not be held in the same enclosure with sexually intact animals from another flock of origin that are not in slaughter channels. When selling animals that do not meet the requirements to move as breeding animals, owners must note on the bill of sale that the animals are sold only for slaughter.

* * * * *

Suspect animal. * * *

(1) A mature sheep or goat as evidenced by eruption of the first incisor that has been condemned by FSIS or a State inspection authority for central nervous system (CNS) signs, or that exhibits any of the following clinical signs of scrapie and has been determined to be suspicious for scrapie by an accredited veterinarian or a State or USDA representative, based on one or more of the following signs and the severity of the signs: Weakness of any kind including, but not limited to, stumbling, falling down, or having difficulty rising, not including those with visible traumatic injuries and no other signs of scrapie; behavioral abnormalities; significant weight loss despite retention of appetite or in an animal with adequate dentition; increased sensitivity to noise and sudden movement; tremors; star gazing; head pressing; bilateral gait abnormalities such as but not limited to incoordination, ataxia, high stepping gait of forelimbs, bunny-hop movement of rear legs, or swaying of back end, but not including abnormalities involving only one leg or one front and one back leg; repeated intense rubbing with bare

areas or damaged wool in similar locations on both sides of the animal's body or, if on the head, both sides of the poll; abraded, rough, thickened, or hyperpigmented areas of skin in areas of wool/hair loss in similar locations on both sides of the animal's body or, if on the head, both sides of the poll; or other signs of CNS disease. An animal will no longer be a suspect animal if it is redesignated in accordance with § 79.4 of this chapter.

* * * * *

Tamper-resistant sampling kit. A device or method for collecting DNA samples from sheep or goats that is approved by the Administrator and that identifies both the sample and the animal at the time the sample is collected. These devices or methods must ensure that the sample, its corresponding label, and the official ID device or method applied to the animal meets the requirements of § 79.2(k) of this chapter and that the sample is from the same animal to which the official ID device or method was applied. The kit must include an APHIS-approved official form or another form, device, or method acceptable to APHIS for transmitting the information required to APHIS and the approved laboratory.

Terminal feedlot. (1) A dry lot approved by a State or APHIS representative or an accredited veterinarian who is authorized to perform this function where animals in the terminal feedlot are separated from all other animals by at least 30 feet at all times or are separated by a solid wall through, over, or under which fluids cannot pass and contact cannot occur and must be cleaned of all organic material prior to being used to contain sheep or goats that are not in slaughter channels, where only castrated males are maintained with female animals and from which animals are moved only to another terminal feedlot or directly to slaughter; or

(2) A dry lot approved by a State or APHIS representative or an accredited veterinarian authorized to perform this function where only animals that either are not pregnant based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, an ICVI issued by an accredited veterinarian stating the animals are open, or the animals are under 6 months of age at time of receipt, where only castrated males are maintained with female animals, and all animals in the terminal feedlot are separated from all other animals such that physical contact cannot occur and from which animals

are moved only to another terminal feedlot or directly to slaughter; or

(3) A pasture when approved by and maintained under the supervision of the State and in which only nonpregnant animals are permitted based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, or an ICVI issued by an accredited veterinarian stating the animals are open, or the animals are under 6 months of age at time of receipt, where only castrated males are maintained with female animals, where there is no direct fence-to-fence contact with another flock, and from which animals are moved only to another terminal feedlot or directly to slaughter.

(4) Records of all animals entering and leaving a terminal feedlot must be maintained for 5 years after the animal leaves the feedlot and must meet the requirements of § 79.2 of this chapter, including either a copy of the required owner/hauler statements for animals entering and leaving the facility or the information required to be on the statements. Records must be made available for inspection and copying by an APHIS or State representative upon request.

* * * * *

§ 54.2 [Amended]

■ 3. Section 54.2 is amended by adding the word "Free" between the words "Scrapie" and "Flock" each time they appear.

■ 4. In § 54.3, paragraph (b) is revised to read as follows:

§ 54.3 Animals eligible for indemnity payments.

* * * * *

(b) USDA may withdraw an offer of indemnity if the owner of the animal fails to, within 30 days of request, make the animals in the flock available for inventory, evaluation, and testing or to provide APHIS animal registration certificates, sale and movement records, or other records requested in accordance with § 54.5. No indemnity will be paid for any animal, or the progeny of any animal, that has been moved or handled by the owner in violation of the requirements of the Animal Health Protection Act or the regulations promulgated thereunder. No indemnity will be paid for an animal added to the premises while a flock is under investigation or while it is an infected or source flock other than natural additions. No indemnity will be paid for natural additions born more than 60 days after the owner is notified they are eligible for indemnity unless the Administrator makes a determination

that the dam could not be removed within the allowed time as a result of conditions outside the control of the owner. No indemnity will be paid unless the owner has signed and is in compliance with the requirements of a flock plan or post-exposure management and monitoring plan (PEMMP) as described in § 54.8. No indemnity will be paid until the premises, including all structures, holding facilities, conveyances, and materials contaminated because of occupation or use by the depopulated animals, have been properly cleaned and disinfected in accordance with § 54.7(e); *Except that*, partial indemnity may be paid when the Administrator determines that weather or other factors outside the control of the owner make immediate disinfection impractical. Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist determines, based on epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No indemnity will be paid to an owner if the owner established or increased his flock for the purpose of collecting or increasing indemnity.

■ 5. In § 54.4, paragraph (a)(5) is revised to read as follows:

§ 54.4 Application by owners for indemnity payments.

(a) * * *

(5) A copy of the registration papers issued in the name of the owner for any registered animals in the flock (registration papers are not required for the payment of indemnity for animals that are not registered); and

* * * * *

§ 54.5 [Amended]

■ 6. In § 54.5, paragraph (d) is amended by removing the word "slaughtered,".

■ 7. Section 54.6 is revised to read as follows:

§ 54.6 Amount of indemnity payments.

(a) *Indemnity.* Indemnity paid for sheep and goats in accordance with § 54.3 will be the fair market value of the animals. APHIS' determination of fair market value will be based on available price report data that most accurately reflect the type of animal being indemnified and the time at which the animal was indemnified.

Premiums will be paid for certain types of sheep and goats, including, but not limited to: Registered animals, flock sires, pregnant animals and early-maturing ewes; *Except that*, no premium will be added for animals of any age that were in slaughter channels when indemnity was offered. To calculate indemnity, APHIS will use price information provided by the Agricultural Marketing Service (AMS) or other available price information and any other data necessary to establish the value of different types of sheep and goats. A detailed description of the methods APHIS uses to calculate indemnity for sheep and goats is available at <http://www.aphis.usda.gov/animal-health/scrapie>.

(b) *Age and number of animals.* If records and identification are inadequate to determine the actual age of animals, an APHIS or State representative will count all sexually intact animals that are apparently under 1 year of age, and those that are apparently at least 1 and under 2 years of age, based on examination of their teeth, and the indemnity for these animals will be calculated. The total number of these animals will be subtracted from the total number of sexually intact animals in the group to be indemnified, and indemnity for the remainder will be calculated based on the assumption that the remainder of the flock is 80 percent aged 2 to 6 years and 20 percent aged 6 to 8 years.

(c) *Animal weights.* If the owner disagrees with the average weight estimate, he may have the animals weighed at a public scale at his own expense, provided that the animals may not come in contact with other sheep or goats during movement to the public scales, and will be paid based on the actual weight times the price per pound for the class of animal as reported in the appropriate price report or other available price information.

(d) *Eligibility for indemnity.* Indemnity will be paid to an owner only for animals actually in a flock at the time indemnity is first offered in writing, and for offspring born to animals in that flock within 60 days after the time indemnity is first offered in writing. Animals removed from the flock as part of an investigation or a post-exposure management and monitoring plan (PEMMP) will be paid indemnity based on the calculated prices at the time an APHIS representative designates, in writing, the animals for removal. If an owner declines to remove an animal within 60 days of when indemnity is first offered the owner will receive the lower value of when indemnity was first offered in

writing or when the animal was actually removed. APHIS may withdraw an indemnity offer if an owner does not make animals available for inventory, gestational assessment, and testing within 30 days or does not remove an animal within 60 days of the written indemnity offer or by the date specified in a flock plan or PEMMP.

■ 8. Section 54.7 is amended as follows:

■ a. By revising paragraphs (a) and (d).

■ b. In paragraph (e) introductory text, by removing the words “Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules” and adding in their place “Scrapie Program Standards Volume 1: National Scrapie Eradication Program and Scrapie Program Standards Volume 2: Scrapie Free Flock Certification Program (SFCP)”.

■ c. In paragraph (e)(1), by removing the words “animals or wildlife” and adding in their place the words “or wild ruminants”.

■ d. By revising paragraph (e)(2) introductory text.

■ e. By removing paragraph (e)(2)(i), redesignating paragraphs (e)(2)(ii) and (iii) as paragraphs (e)(2)(i) and (ii), respectively, and by adding new paragraphs (e)(2)(iii) and (iv).

The additions and revisions read as follows:

§ 54.7 Procedures for destruction of animals.

(a) Animals for which indemnification is sought must be destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved or moved to an approved research facility, unless the APHIS representative involved approves in advance of destruction moving the animals to another location for destruction.

(d) APHIS may pay the reasonable costs of disposal for animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. For reimbursement to be made, the owner of the animals must present the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner must not be greater than the normal fee for similar services provided by a commercial hauler or disposal facility.

(e) * * *

(2) *Cement, wood, metal and other non-earth surfaces, tools, equipment, instruments, feed, hay, bedding, and*

other materials. Organic and/or inorganic materials may be disposed of by incineration or burial. Inorganic material and wood structures may be cleaned and disinfected. To disinfect, remove all organic material and incinerate, bury, till under, or compost the removed organic material in areas not accessed by domestic or wild ruminants until it can be incinerated, buried, or tilled under. Clean and wash all surfaces, tools, equipment, and instruments using hot water and detergent. Allow all surfaces, tools, equipment, and instruments to dry completely before disinfecting and sanitizing using one of the following methods:

* * * * *

(iii) Use a product registered by the U.S. Environmental Protection Agency (EPA) specifically for reduction of prion infectivity at these sites in accordance with the label.

(iv) Use a product in accordance with an emergency exemption issued by the EPA for reduction of prion infectivity at these sites.

■ 9. Section 54.8 is revised to read as follows:

§ 54.8 Requirements for flocks under investigation and flocks subject to flock plans and post-exposure management and monitoring plans.

(a) *Identification of animals in a flock under investigation, flock plan, or post-exposure management and monitoring plan (PEMMP).* The official identification must provide a unique identification number that is applied by the owner of the flock or his or her agent and must be linked to that flock in the National Scrapie Database. APHIS may specify the type of official identification that may be used in order to maximize retention of the means of identification, identify restricted or test positive animals or to facilitate the testing or inventory of the animals. The owner of the flock or his or her agent must officially identify and maintain the identity of:

(1) All animals in the flock while it is subject to a flock plan or PEMMP;

(2) Any high-risk or genetically susceptible exposed animals in the flock and any other restricted animals;

(3) Any animals designated for testing by an APHIS representative or State representative until testing is completed, results reported, and animals classified, and

(4) All sexually intact animals, all exposed animals, and animals 18 months of age and older (as evidenced by the eruption of the second incisor) prior to a change in ownership and

before they are moved off the premises of the flock.

(b) *Records for flocks under a flock plan or PEMMP.* The flock owner must maintain the following records for 5 years or until the flock plan and/or PEMMP is completed, whichever is longer.

(1) For acquired animals, the date of acquisition, name and address of the person from whom the animal was acquired, any identifying marks, or identification devices present on the animal including but not limited to the animal's individual official identification number(s) from its electronic implant, flank tattoo, ear tattoo, tamper-resistant eartag, or, in the case of goats, tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain and the records required by § 79.2 of this chapter.

(2) For animals leaving the premises of the flock, the disposition of the animal, including, any identifying marks or identification devices present on the animal, including but not limited to the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper-resistant eartag, or, in the case of goats, a tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain, the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred and the records required by § 79.2 of this chapter.

(c) Upon request by a State or APHIS representative or as required in a PEMMP, the owner of the flock or his or her agent must have an accredited veterinarian collect tissues from animals for scrapie diagnostic purposes and submit them to a laboratory designated by a State or APHIS representative or collect and submit samples by another method acceptable to APHIS.

(d) Upon request by a State or APHIS representative, the owner of the flock or his or her agent must make animals in the flock available for inspection and/or testing and the records required to be kept as a part of these plans available for inspection and copying.

(e) The owner of the flock or his or her agent must meet requirements found necessary by a DSE to monitor for scrapie and to prevent the recurrence of scrapie in the flock and to prevent the spread of scrapie from the flock. These other requirements may include, but are not limited to: Utilization of a live-animal screening test; reporting animals found dead and collecting and submitting test samples from them;

restrictions on the animals that may be moved from the flock; use of genetically resistant rams; segregated lambing; cleaning and disinfection of lambing facilities; and/or education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and to control the spread of scrapie.

(f) The owner of the flock or his or her agent must immediately report the following animals to a State representative, APHIS representative, or an accredited veterinarian; ensure that samples are properly collected for testing if the animal dies; allow the animals to be tested, and not remove them from a flock without written permission of a State or APHIS representative:

(1) Any sheep or goat exhibiting weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; wool loss; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor; star gazing; head pressing; recumbency; rubbing, or other signs of neurological disease or chronic wasting illness; and

(2) Any sheep or goat in the flock that has tested positive for scrapie or for the proteinase resistant protein associated with scrapie on a live-animal screening test or any other test.

(g) An epidemiologic investigation must be conducted to identify high-risk and exposed animals that currently reside in the flock or that previously resided in the flock, and all high-risk animals, scrapie-positive animals, and suspect animals must be removed from the flock except as provided in paragraph (h) of this section. The animals must be removed either by movement to an approved research facility or by euthanasia and disposal of the carcasses by burial, incineration, or other methods approved by the Administrator and in accordance with local, State, and Federal laws, or upon request in individual cases by another means determined by the Administrator to be sufficient to prevent the spread of scrapie;

(h) The Administrator may allow high-risk animals that are not suspect animals to be retained under restriction if they are not genetically susceptible animals or if they have tested "PrPsc not detected" on a live animal scrapie test approved for this purpose by the Administrator and are maintained in a manner that the Administrator determines minimizes the risk of scrapie transmission, e.g., bred only to

genetically resistant sheep, segregated for lambing, and cleaning and disinfection of the lambing area. All such animals must be tested for scrapie when they are euthanized or die or if they are later determined to be suspect animals. These requirements will be documented in the PEMMP.

(i) The owner of the flock, or his or her agent, must request breed associations and registries, livestock facilities, and packers to disclose records to APHIS representatives or State representatives, to be used to identify source flocks and trace exposed animals, including high-risk animals;

(j) *Requirement for flock plans only.* The flock plan will include a description of the types of animals that must be removed from a flock, the timeframes in which they must be removed and any other actions that must be accomplished in order for the flock plan to be completed. Flock plans shall require an owner to agree to:

(1) Clean and disinfect the premises in accordance with § 54.7(e). Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist determines, based on an epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No confined area where a scrapie-positive animal was born, lambed or aborted may be exempted;

(2) Agree to conduct a post-exposure management and monitoring plan (PEMMP); and

(3) Comply with any other conditions in the flock plan; *Provided that*, the Administrator may waive the requirement for a flock plan or PEMMP or waive any of the requirements in a flock plan or PEMMP after determining that the flock poses a low risk of scrapie transmission.

(k) *Post-exposure management and monitoring plans for exposed flocks and flocks under investigation that were not source or infected flocks.* A PEMMP will be required for exposed flocks and may be required for flocks under investigation. A PEMMP may also be required for flocks that formerly were exposed flocks or flocks under investigation as a condition for being redesignated. A designated scrapie epidemiologist shall determine when to require a PEMMP and the monitoring requirements for these flocks based on

the findings of the classification or reclassification investigation.

■ 10. Section 54.10 is revised to read as follows:

§ 54.10 Program approval of tests for scrapie.

(a) The Administrator may approve new tests or test methods for the diagnosis of scrapie conducted on live or dead animals for use in the Scrapie Eradication Program and/or the Scrapie Free Flock Certification Program. The Administrator will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, materials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support repeatability, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support reproducibility, that is, data to show that similar results can be produced when the test is run at other laboratories;

(4) Data to support the diagnostic and in the case of assays the analytical sensitivity and specificity of the test; and

(5) Any other data or information requested by the Administrator to determine the suitability of the test for program use. This may include but is not limited to past performance, cost of test materials and equipment, ease of test performance, generation of waste, and potential use of existing equipment.

(b) To be approved for program use, a scrapie test must be able to be readily and successfully performed at the National Veterinary Services Laboratories.

(c) The test must have a reliable, timely, and cost effective method of proficiency testing.

(d) The Administrator may decline to evaluate any test kit for program approval that has not been licensed for the intended use and may decline to evaluate any test or test method for program use unless the requester can demonstrate that the new method offers a significant advantage over currently approved methods.

(e) A test or combination of tests may be approved for the identification of suspect animals, or scrapie-positive animals, or for other purposes such as flock certification. For a test to be approved for the identification of scrapie-positive animals, the test must demonstrate a diagnostic specificity comparable to that of current program-approved tests, and the sensitivity of the

test will also be considered in determining the approved uses of the test within the program. For a test to be approved for the removal of high-risk, exposed, or suspect animal designations the test must have a diagnostic sensitivity at least comparable to that of current program-approved tests used for this purpose. Since the purpose of a screening test is usually to identify a subset of animals for further testing, for a test to be approved as a screening test for the identification of suspect animals, the test must be usually reliable but need not be definitive for diagnosing scrapie.

(f) Specific guidelines for use of program-approved tests within the Scrapie Eradication Program or Scrapie Free Flock Certification Program will be made available on the scrapie Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. Guidelines will be based on the characteristics of the test, including specificity, sensitivity, and predictive value in defined groups of animals.

(g) If an owner elects to have an unofficial test conducted on an animal for scrapie, or for the proteinase resistant protein associated with scrapie, and that animal tests positive to such a test, the animal will be designated a suspect animal, unless the test is conducted as part of a research protocol and the protocol includes appropriate measures to prevent the spread of scrapie.

(h) The Administrator may withdraw or suspend approval of any test or test method if the test or method does not perform at an acceptable level following approval or if a more effective test or test method is subsequently approved. The Administrator shall give written notice of the suspension or proposed withdrawal to the director of the laboratories using the test or method or in the case of test kits to the manufacturer and shall give the director or manufacturer an opportunity to respond. Such action shall become effective upon oral or written notification, whichever is earlier, to the laboratory or manufacturer. If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing may be requested in accordance with the procedure in § 79.4(c)(3) of this chapter. The action under appeal shall continue in effect pending the final determination of the Administrator, unless otherwise ordered by the Administrator. The Administrator's decision constitutes final agency action.

■ 11. Section 54.11 is revised to read as follows:

§ 54.11 Approval of laboratories to run official scrapie tests and official genotype tests.

(a) State, Federal, and university laboratories, or in the case of genotype tests, private laboratories will be approved by the Administrator when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise and conduct the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by the National Veterinary Services Laboratories (NVSL) or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols that are approved or provided by NVSL;

(4) Meets check test proficiency requirements and consistently produces accurate test results as determined by NVSL review;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases and DNA from all genotype tests for at least 5 years and will forward copies of records and any of these materials to NVSL within 5 business days of request; *Except that*, NVSL may authorize a shorter retention time in a standard operating procedure or contract.

(7) Will allow APHIS to inspect the laboratory without notice during normal business hours. An inspection may include, but is not limited to, review and copying of records, examination of slides, review of quality control procedures, observation of sample handling/tracking procedures, observation of the test being conducted, and interviewing of personnel;

(8) Will report all test results to State and Federal animal health officials and record them in the National Scrapie Database within timeframes and in the manner and format specified by the Administrator; and

(9) Complies with any other written guidance provided to the laboratory by the Administrator.

(b) A laboratory may request approval to conduct one or more types of program-approved scrapie test or genotype test on one or more types of tissue. To be approved, a laboratory must meet the requirements in paragraph (a) of this section for each type of test and for each type of tissue for which they request approval.

(c) The Administrator may suspend or withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (a) of this section. The Administrator shall give written

notice of the suspension or the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond. Such action shall become effective upon oral or written notification, whichever is earlier, to the laboratory or manufacturer. If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing may be requested in accordance with the procedure in § 79.4(c)(3) of this chapter. The action under appeal shall continue in effect pending the final determination of the Administrator, unless otherwise ordered by the Administrator. The Administrator's decision constitutes final agency action.

(d) The Administrator may require approved laboratories to reimburse APHIS for part or all of the costs associated with the approval and monitoring of the laboratory.

Subpart B—Scrapie Free Flock Certification Program

- 12. In part 54, the heading for subpart B is revised to read as set forth above.
- 13. Section 54.21 is revised to read as follows:

§ 54.21 Participation.

Any owner of a sheep or goat flock may apply to enter the Scrapie Free Flock Certification Program by sending a written request to a State scrapie certification board or to the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved. A notice containing a current list of flocks participating in the Scrapie Free Flock Certification Program, and the certification status of each flock, may be obtained from the APHIS Web site at <http://www.aphis.usda.gov/animal-health/scrapie>. A list of noncompliant flocks and a list of flocks that sold exposed animals that could not be traced may also be obtained from this site, and these lists may be obtained by writing to the National Scrapie Program Coordinator, Surveillance Preparedness and Response Services, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

(Approved by the Office of Management and Budget under control number 0579-0101)

PART 79—SCRAPIE IN SHEEP AND GOATS

- 14. The authority citation for part 79 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

■ 15. Section 79.1 is amended as follows:

- a. Revise the definition for animal identification number (AIN).
- b. In the definition for breed association and registries, by removing the words "listed in § 151.9 of this chapter".
- c. By removing the definition for certificate.
- d. Add a definition for classification or reclassification investigation.
- e. Revise the definitions for consistent State, exposed animal, and exposed flock.
- f. Add a definition for flock identification (ID) number.
- g. In the definition for flock plan, by removing the citation "§ 54.8(a)(f)" and by adding the words "§ 54.8(a) through (j)" in its place.
- h. Add definitions for flock under investigation, genetically less susceptible exposed sheep, genetically resistant exposed sheep, genetically resistant sheep, genetically susceptible animal, genetically susceptible exposed animal, group/lot identification number (GIN).
- i. Revise the definition for high-risk animal.
- j. Add definitions for interstate certificate of veterinary inspection (ICVI) and low-risk commercial flock.
- k. Remove the definition for low-risk commercial sheep.
- l. Add a definition for low-risk exposed animal.
- m. Remove the definition for low-risk goat.
- n. Add a definition for National Uniform Eartagging System (NUES).
- o. In the definition for noncompliant flock, in paragraph (3), by removing the words "owner statement" and adding the words "owner/hauler statement" in their place.
- p. Revise the definitions for official eartag, official genotype test, and official identification device or method.
- q. Add definitions for official identification number, officially identified, and owner/hauler statement.
- r. Remove the definition for owner statement.
- s. Add a definition for person.
- t. Revise the definition for premises identification number (PIN).
- u. Add a definition for restricted animal sale or restricted livestock facility.
- v. In the heading of the definition for Scrapie Flock Certification Program (SFCP), by adding the word "Free" immediately after the word "Scrapie".
- w. In the heading of the definition for Scrapie Flock Certification Program standards, by adding the word "Free" immediately following the word

"Scrapie" and, in footnote 2, by removing the Internet address "<http://www.aphis.usda.gov/vs>" and adding the Internet address "<http://www.aphis.usda.gov/animal-health/scrapie>" in its place.

- x. In the definition for scrapie-positive animal, in paragraph (2) by adding the words ", and/or ELISA," immediately after the word "immunohistochemistry" and in paragraph (5) by removing the words "test method" and adding the words "method or combination of methods" in their place.
 - y. By removing the definition for separate contemporary lambing groups.
 - z. Revise the definition for slaughter channels, paragraph (1) of the definition for suspect animal, and the definition for terminal feedlot.
 - aa. Add a definition for test eligible.
- The additions and revisions read as follows:

§ 79.1 Definitions.

* * * * *

Animal identification number (AIN). This term has the meaning set forth in § 86.1 of this subchapter, except that only AIN devices approved and distributed in accordance with § 79.2(k) and methods approved for use in sheep and goats in accordance with § 79.2(a)(2) are included.

* * * * *

Classification or reclassification investigation. An epidemiological investigation conducted or directed by a DSE for the purpose of designating or redesignating the status of a flock or animal. In conducting such an investigation, the DSE will evaluate the available records for flocks and individual animals and conduct or direct any testing needed to assess the status of a flock or animal. The status of an animal or flock will be determined based on the applicable definitions in this section and, when needed to make a designation under § 79.4, official genotype test results, exposure risk, scrapie type involved, and/or results of official scrapie testing on live or dead animals.

* * * * *

Consistent State. (1) A State that the Administrator has determined conducts an active State scrapie control program that meets the requirements of § 79.6 or effectively enforces a State-designed plan that the Administrator determines is at least as effective in controlling scrapie as the requirements of § 79.6.

(2) A list of Consistent States can be found on the Internet at <http://www.aphis.usda.gov/animal-health/scrapie>.

(3) When the Administrator determines that a State should be added

to or removed from the list of Consistent States, APHIS will publish a notice in the **Federal Register** advising the public of the Administrator's determination, providing the reasons for that determination, and soliciting public comments. After considering any comments we receive, APHIS will publish a second notice either advising the public that the Administrator has decided to add or remove the State from the list of Consistent States or notifying the public that the Administrator has decided not to make any changes to the list of Consistent States, depending on the information presented in the comments.

* * * * *

Exposed animal. Any animal or embryo that has been in a flock or in an enclosure off the premises of the flock with a scrapie-positive female animal; resides in a noncompliant flock; or has resided on the premises of a flock before or while it was designated an infected or source flock and before a flock plan was completed. An animal shall not be designated an exposed animal if it only resided on the premises before the date that infection was most likely introduced to the premises as determined by a Federal or State representative. If the probable date of infection cannot be determined based on the epidemiologic investigation, a date 2 years before the birth of the oldest scrapie-positive animal(s) will be used. If the actual birth date is unknown, the date of birth will be estimated based on examination of the teeth and any available records. If an age estimate cannot be made, the animal will be assumed to have been 48 months of age on the date samples were collected for scrapie diagnosis. Exposed animals will be further designated as genetically resistant exposed sheep, genetically less susceptible exposed sheep, genetically susceptible exposed animals, or low-risk exposed animals. An animal will no longer be an exposed animal if it is redesignated in accordance with § 79.4.

Exposed flock. (1) Any flock that was designated an infected or source flock that has completed a flock plan and that retained a female genetically susceptible exposed animal;

(2) Any flock under investigation that retains a female genetically susceptible exposed animal or a suspect animal, or whose owner declines to complete genotyping and live-animal and/or post-mortem scrapie testing required by the APHIS or State representative investigating the flock; or

(3) Any noncompliant flock or any flock for which a PEMMP is required

that is not in compliance with the conditions of the PEMMP. A flock will no longer be an exposed flock if it is redesignated in accordance with § 79.4.

* * * * *

Flock identification (ID) number. A nationally unique number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. The flock ID number must begin with the State postal abbreviation, must have no more than nine alphanumeric characters, and must not contain the characters "I", "O", or "Q" other than as part of the State postal abbreviation or another standardized format authorized by the administrator and issued through the National Scrapie Database. Flock identification numbers will be linked in the National Scrapie Database to one or more PINs and may be used in conjunction with an animal number unique within the flock to provide a unique official identification number for an animal, or may be used in conjunction with the date and a sequence number to provide a GIN for a group of animals when group identification is permitted.

* * * * *

Flock under investigation. Any flock in which an APHIS or State representative has determined that a scrapie suspect animal, high-risk animal, or scrapie-positive animal resides or may have resided. A flock will no longer be a flock under investigation if it is redesignated in accordance with § 79.4.

Genetically less susceptible exposed sheep. Any sheep or sheep embryo that is:

(1) An exposed sheep or sheep embryo of genotype AA QR, unless it is epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are not less susceptible where Q represents any genotype other than R at codon 171; or

(2) An exposed sheep or sheep embryo of genotype AV QR, unless it is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie, or to another scrapie type to which AV QR sheep are not less susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or

(3) An exposed sheep or sheep embryo of a genotype that has been exposed to a scrapie type to which the Administrator has determined that genotype is less susceptible.

Genetically resistant exposed sheep. Any exposed sheep or sheep embryo of genotype RR unless it is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are not resistant.

Genetically resistant sheep. Any sheep or sheep embryo of genotype RR unless it is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type that affects RR sheep.

Genetically susceptible animal. Any goat or goat embryo, sheep or sheep embryo of a genotype other than RR or QR, or sheep or sheep embryo of undetermined genotype where Q represents any genotype other than R at codon 171.

Genetically susceptible exposed animal. Excluding low-risk exposed animals, any exposed animal or embryo that is also:

(1) A genetically susceptible animal; or

(2) A sheep or sheep embryo of genotype AV QR that is epidemiologically linked to a scrapie-positive RR or QR sheep, to a flock that the DSE has determined may be affected by valine associated scrapie (based on an evaluation of the genotypes of the scrapie-positive animals linked to the flock), or to a scrapie type to which AV QR sheep are susceptible where Q represents any genotype other than R at codon 171 and V represents any genotype other than A at codon 136; or

(3) A sheep or sheep embryo of genotype AA QR that is epidemiologically linked to a scrapie-positive RR or AA QR sheep or to a scrapie type to which AA QR sheep are susceptible where Q represents any genotype other than R at codon 171; or

(4) A sheep or sheep embryo of genotype RR that is epidemiologically linked to a scrapie-positive RR sheep or to a scrapie type to which RR sheep are susceptible.

Group/lot identification number (GIN). The identification number used to uniquely identify a unit of animals that is managed together as one group. The format of the GIN may be either as defined in § 71.1 of this chapter, or the flock identification number followed by a six-digit representation of the date on which the group or lot of animals was assembled (MM/DD/YY). If more than one group is created on the same date a sequential number will be added to the end of the GIN. If a flock identification number is used, the flock identification number, date, and sequential number will be separated by hyphens.

High-risk animal. The female offspring or embryo of a scrapie-positive female animal, or any suspect animal, or

a female genetically susceptible exposed animal, or any exposed animal that the Administrator determines to be a potential risk based on the scrapie type, the epidemiology of the flock or flocks with which it is epidemiologically linked, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, and other animal or flock characteristics. An animal will no longer be a high-risk animal if it is redesignated in accordance with § 79.4.

* * * * *

Interstate certificate of veterinary inspection (ICVI). An official document issued by a Federal, State, Tribal, or accredited veterinarian certifying the inspection of animals in preparation for interstate movement or other uses as described in this part and in accordance with § 79.5.

* * * * *

Low-risk commercial flock. A flock composed of commercial whitefaced, whitefaced cross, or commercial hair sheep or commercial goats that were born in, and have resided throughout their lives in, flocks with no known risk factors for scrapie, including any exposure to female blackfaced sheep other than whiteface crosses born on the premises; that has never contained a scrapie-positive female, suspect female, or high-risk animal; and that has never been an infected, exposed, or source flock or a flock under investigation. The animals are identified with a legible permanent brand or ear notch pattern registered with an official brand registry or with an official flock identification eartag. The term "brand" includes official brand registry brands on eartags in those States whose brand law or regulation recognizes brands placed on eartags as official brands. Low-risk commercial flocks may exist only in a State where in the previous 10 years no flock that had met the definition of a low-risk commercial flock prior to a classification investigation was designated a source or infected flock.

Low-risk exposed animal. Any exposed animal to which the DSE has determined one or more of the following applies:

(1) The positive animal that was the source of exposure was not born in the flock and did not lamb in the flock or in an enclosure where the exposed animal resided;

(2) The Administrator and State representative concur that the animal is unlikely to be infected due to factors such as, but not limited to, where the animal resided or the time period the animal resided in the flock;

(3) The exposed animal is male and was not born in an infected or source flock;

(4) The exposed animal is a castrated male;

(5) The exposed animal is an embryo of a genetically resistant exposed sheep or a genetically less susceptible exposed sheep unless placed in a recipient that was a genetically susceptible exposed animal; or

(6) The animal was exposed to a scrapie type and/or is of a genotype that the Administrator has determined poses low risk of transmission.

* * * * *

National Uniform Eartagging System (NUES). This term has the meaning set forth in § 86.1 of this subchapter.

* * * * *

Official eartag. This term has the meaning set forth in § 86.1 of this subchapter, except that only eartags approved and distributed in accordance with § 79.2(k) are included.

Official genotype test. A test to determine the genotype of a live or dead animal conducted at either the National Veterinary Services Laboratories or at an approved laboratory. The test subject must be an animal that is officially identified and the test accurately recorded on an official form supplied or approved by APHIS, with the samples collected and shipped to the laboratory using a shipping method specified by the laboratory by:

- (1) An accredited veterinarian;
- (2) A State or APHIS representative;

or

(3) The animal's owner or owner's agent, using a tamper-resistant sampling kit approved by APHIS for this purpose.

* * * * *

Official identification device or method. This term has the meaning set forth in § 86.1 of this subchapter, except that only devices approved and distributed in accordance with § 79.2(k) are included.

Official identification number. This term has the meaning set forth in § 86.1 of this subchapter.

Officially identified. Identified by means of an official identification device or method approved by the Administrator for use in sheep and goats in accordance with this part.

* * * * *

Owner/hauler statement. A signed written statement by the owner or hauler that includes:

- (1) The name, address, and phone number of the owner and, if different, the hauler;
- (2) The date the animals were moved;
- (3) The flock identification number or PIN assigned to the flock or premises of the animals;

(4) If moving individually unidentified animals, the group/lot identification number and any information required to officially identify the animals;

(5) The number of animals;

(6) The species, breed, and class of animals. If breed is unknown, for sheep the face color and for goats the type (milk, fiber, or meat) must be recorded instead; and

(7) The name and address of point of origin, if different from the owner's address, and the destination.

* * * * *

Person. An individual, partnership, company, corporation, or any other legal entity.

* * * * *

Premises identification number (PIN). This term has the meaning set forth in § 86.1 of this subchapter. APHIS may also maintain historical and/or State premises numbers and link them to the premises identification number in records and databases. Such secondary or historical numbers are typically the State's two-letter postal abbreviation followed by a number assigned by the State.

Restricted animal sale or restricted livestock facility. A sale where any animals in slaughter channels are maintained separate from other animals not in slaughter channels and are sold in lots that consist entirely of animals sold for slaughter only or a livestock facility at which all animals are in slaughter channels and where the sale or facility manager maintains a copy of, or maintains a record of, the information from, the owner/hauler statement for all animals entering and leaving the sale or facility. A restricted animal sale may be held at a livestock facility that is not restricted.

* * * * *

Slaughter channels. Animals in slaughter channels include any animal that is sold, transferred, or moved either directly to or through a restricted animal sale or restricted livestock facility to a slaughter establishment that is under continuous inspection by the Food Safety and Inspection Service (FSIS) or under State inspection that FSIS has recognized as at least equal to Federal inspection or to a custom exempt slaughter establishment as defined by FSIS for immediate slaughter or to an individual for immediate slaughter for personal use or to a terminal feedlot. Any animal sold at an unrestricted sale is not in slaughter channels. Animals in slaughter channels must be accompanied by an owner/hauler statement completed in accordance with § 79.3(g). Animals in slaughter channels

may not be held in the same enclosure with sexually intact animals from another flock of origin that are not in slaughter channels. When selling animals that do not meet the requirements to move as breeding animals, owners must note on the bill of sale that the animals are sold only for slaughter.

* * * * *

Suspect animal. * * *

(1) A mature sheep or goat as evidenced by eruption of the first incisor that has been condemned by FSIS or a State inspection authority for central nervous system (CNS) signs, or that exhibits any of the following clinical signs of scrapie and has been determined to be suspicious for scrapie by an accredited veterinarian or a State or USDA representative, based on one or more of the following signs and the severity of the signs: Weakness of any kind including, but not limited to, stumbling, falling down, or having difficulty rising, not including those with visible traumatic injuries and no other signs of scrapie; behavioral abnormalities; significant weight loss despite retention of appetite or in an animal with adequate dentition; increased sensitivity to noise and sudden movement; tremors; star gazing; head pressing; bilateral gait abnormalities such as but not limited to incoordination, ataxia, high stepping gait of forelimbs, bunny-hop movement of rear legs, or swaying of back end, but not including abnormalities involving only one leg or one front and one back leg; repeated intense rubbing with bare areas or damaged wool in similar locations on both sides of the animal's body or, if on the head, both sides of the poll; abraded, rough, thickened, or hyperpigmented areas of skin in areas of wool/hair loss in similar locations on both sides of the animal's body or, if on the head, both sides of the poll; or other signs of CNS disease. An animal will no longer be a suspect animal if it is redesignated in accordance with § 79.4 of this part.

* * * * *

Terminal feedlot. (1) A dry lot approved by a State or APHIS representative or an accredited veterinarian who is authorized to perform this function where animals in the terminal feedlot are separated from all other animals by at least 30 feet at all times or are separated by a solid wall through, over, or under which fluids cannot pass and contact cannot occur and must be cleaned of all organic material prior to being used to contain sheep or goats that are not in slaughter channels, where only castrated males

are maintained with female animals and from which animals are moved only to another terminal feedlot or directly to slaughter; or

(2) A dry lot approved by a State or APHIS representative or an accredited veterinarian authorized to perform this function where only animals that either are not pregnant based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, an ICVI issued by an accredited veterinarian stating the animals are open, or the animals are under 6 months of age at time of receipt, where only castrated males are maintained with female animals, and all animals in the terminal feedlot are separated from all other animals such that physical contact cannot occur and from which animals are moved only to another terminal feedlot or directly to slaughter; or

(3) A pasture when approved by and maintained under the supervision of the State and in which only nonpregnant animals are permitted based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, or an ICVI issued by an accredited veterinarian stating the animals are open, or the animals are under 6 months of age at time of receipt, where only castrated males are maintained with female animals, where there is no direct fence-to-fence contact with another flock, and from which animals are moved only to another terminal feedlot or directly to slaughter.

(4) Records of all animals entering and leaving a terminal feedlot must be maintained for 5 years after the animal leaves the feedlot and must meet the requirements of § 79.2, including either a copy of the required owner/hauler statements for animals entering and leaving the facility or the information required to be on the statements. Records must be made available for inspection and copying by an APHIS or State representative upon request.

Test eligible. An animal that meets a test protocol's age and post-exposure elapsed time requirements for the test to be meaningfully applied.

* * * * *

■ 16. Section 79.2 is revised to read as follows:

§ 79.2 Identification and records requirements for sheep and goats in interstate commerce.

(a) No sheep or goat that is required to be individually identified or group identified by § 79.3 may be sold, disposed of, acquired, exhibited, transported, received for transportation, offered for sale or transportation,

loaded, unloaded, or otherwise handled in interstate commerce or commingled with such animals or be loaded or unloaded at a premises or animal concentration point (including premises that exhibit animals) that engages in interstate commerce of animals unless each sheep or goat has been identified in accordance with this section.

(1) The sheep or goat must be identified to its flock of origin and, for an animal born after January 1, 2002, to its flock of birth⁴ by the owner of the animal or his or her agent, at whichever of the following points in interstate commerce comes first:

(i) Prior to the point of first commingling of the sheep or goats with sheep or goats from any other flock of origin;

(ii) Upon unloading of the sheep or goats at an approved livestock facility that is approved to handle that species and class of animals as described in § 71.20 of this subchapter that has agreed to act as an agent for the owner to apply official identification and prior to commingling with animals from another flock of origin. Such animals must be accompanied by an owner/hauler statement that contains the information needed for the livestock facility to officially identify the animals to their flock of origin and, when required, their flock of birth;

(iii) Upon transfer of ownership of the sheep or goats;

(iv) Prior to moving a sheep or goat from the premises on which it resides if the owner of the premises engages in the interstate commerce of animals unless the animals are moving to a livestock facility approved to handle the species and class of animal to be moved as described in § 71.20 of this subchapter that has agreed to act as an agent for the owner to apply official identification and in accordance with paragraph (a)(1)(ii) of this section or to a slaughter plant listed in accordance with § 71.21 of this subchapter as part of a group lot.

(v) In the case of animals that have only resided on premises and in flocks

⁴ You need not identify an animal to its flock of birth or its flock of origin if this information is unknown because the animal changed ownership while it was exempted from flock of origin identification requirements in accordance with § 79.6(a)(10)(i). Such animals may be moved interstate with individual animal identification that is only traceable to the State of origin and to the owner of the animals at the time they were so identified. To use this exemption the person applying the identification must have supporting documentation indicating that the animals were born and had resided throughout their life in the State. Likewise, animals born before January 1, 2002, need only be identified to their flock of origin and, for animals not required to be identified prior to [effective date of final rule] may, be identified to the owner of the animals and the flock of residence as of [effective date of final rule].

owned by persons that do not engage in interstate commerce, upon unloading a sheep or goat at a livestock facility or other premises that engages in interstate commerce of animals and prior to commingling with animals from another flock of origin. Such animals must be accompanied by an owner/hauler statement that contains the information needed to officially identify the animals to their flock of origin and, when required, their flock of birth;

(2) The sheep or goats must be identified and remain identified using a device or method approved by the Administrator. All animals required to be individually identified by § 79.3 shall be identified with official identification devices or methods. A list of approved identification devices and methods, including restrictions on their use, is available at <http://www.aphis.usda.gov/animal-health/scrapie>. Written requests for approval of sheep or goat identification device types or methods not listed at <http://www.aphis.usda.gov/animal-health/scrapie> should be sent to the National Scrapie Program Coordinator, Surveillance Preparedness and Response Services, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737-1235. If the Administrator determines that an identification device or method will provide an effective means of tracing sheep and goats in interstate commerce, APHIS will provide public notice that the device type or method, along with any restrictions on its use, has been added to the list of approved devices and methods of official sheep and goat identification.

(3) No person shall buy or sell, for his or her own account or as the agent of the buyer or seller, transport, receive for transportation, offer for sale or transportation, load, unload, or otherwise handle any animal that is in or has been in interstate commerce that has not been identified as required by this section including loading or unloading at a premises (including premises that exhibit animals) that engages in interstate commerce of animals. No person shall commingle animals with any animal that is in or has been in interstate commerce that has not been identified as required by this section. If the person transporting animals is aware of any animal in the shipment that loses its identification to its flock of origin while in interstate commerce, the person transporting the animal is required to inform the receiving party of this fact, and it is the responsibility of the person who has control or possession of the animal upon unloading/delivery to identify the animal or have the animal identified

prior to commingling it with any other animals. This shall be done by applying individual animal identification to the animal as required in paragraph (a)(2) of this section and recording the means of identification and the corresponding animal identification number on the waybill or other shipping document. If the flock of origin cannot be determined, all possible flocks of origin shall be listed on the record, or if this cannot be done, the animal must be identified with a slaughter only eartag and may only move in slaughter channels or in the case of sheep may move for other purposes if the animal is inspected by an accredited veterinarian, found free of evidence of infectious or contagious disease and officially genotyped as AA QR or AA RR.

(b) *Individual identification numbers.* The State animal health official or Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved, whoever is responsible for issuing official identification devices or numbers in that State and for assigning flock identification numbers and premises identification numbers in that State in the National Scrapie Database, may issue sets of unique serial numbers or flock identification/production numbers for use on official individual identification devices (such as eartags or tattoos). Flock identification/production numbers may only be assigned to owners of breeding flocks.

(1) Official identification numbers for use on animals not in slaughter channels may only be assigned either directly to the owner of a breeding flock or, in the case of official serial numbers or serial number devices, to APHIS or State representatives or accredited veterinarians or other responsible individuals as described in paragraphs (b)(2) and (3) of this section for reassignment to owners of breeding flocks. APHIS or State representatives or accredited veterinarians that reissue official serial numbers or devices must provide, in a manner acceptable to APHIS, assignment data associating assigned serial sequences to the flock of origin and, when required, the flock of birth. One such method would be to enter the data into the AIN module of the National Scrapie Database.

(2) The official responsible for issuing eartags in a State may also assign serial numbers of official eartags to other responsible persons, such as 4-H leaders, if the State animal health official and Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved agree

that such assignments will improve scrapie control and eradication within the State. Such persons assigned serial numbers may either directly apply eartags to animals, or may reassign eartag numbers to producers. Such persons must maintain appropriate records in accordance with paragraph (g) of this section that permit traceback of animals to their flock of origin, or flock of birth when required, and must either reassign the tags in the National Scrapie Database or, if permitted by the Veterinary Services, Surveillance Preparedness and Response Services Field Office for the State involved, provide a written record of the reassignment to the Field Office or the State Office for entry into the National Scrapie Database.

(3) *Persons handling sheep and goats in commerce.* Sets of unique individual identification serial numbers may be assigned to persons who handle sheep and goats, but who do not own breeding flocks, if they apply to and are approved by the State animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State in which the person maintains his or her business location, whichever is responsible for issuing official identification devices or numbers in that State and for assigning flock identification numbers and premises identification numbers in that State in the National Scrapie Database. Such persons must provide, in a manner acceptable to APHIS, assignment data associating assigned serial sequences to the flock of origin and, when required, the flock of birth. One such method would be to enter the data into the online animal identification number (AIN) management system module of the National Scrapie Database.

(4) *Breed registries.* Sets of unique individual identification numbers may also be assigned by the Administrator to breed registries that agree to reassign the sequences to the flock of origin and, when required, the flock of birth and to provide associated registry identifiers such as registry tattoo numbers to APHIS in the online animal identification number (AIN) management system module of the National Scrapie Database.

(5) *Noncompliance.* In addition to any applicable criminal or civil penalties any person who fails to comply with the requirements of this section or that makes false statements in order to acquire official identification numbers or devices shall not be assigned official identification numbers or official identification devices for a period of at least 1 year. If a person who is not in

compliance with these requirements has already been assigned such numbers, the Administrator may withdraw the assignment by giving notice to such person. Such withdrawal or failure to assign official identification numbers may be appealed in accordance with § 79.4(c)(3). A person shall be subject to criminal and civil penalties if he or she continues to use assigned numbers that have been withdrawn from his or her use.

(c) No person shall apply a premises or flock identification number or a brand or ear notch pattern to an animal that did not originate on the premises or flock to which the number was assigned by a State or APHIS representative or to which the brand or ear notch pattern has been assigned by an official brand registry. This includes individual identification such as USDA eartags that have been assigned to a premises or flock and registration tattoos that contain prefixes that have been assigned to a premises or flock for use as premises or flock identification. Unless the number sequence was issued specifically for use on animals born in a flock, this would not preclude the owner of a flock from using an official premises or flock identification number tag assigned to that flock on an animal owned by him or her that resides in that flock but that was born or previously resided on a different premises as long as the records required in paragraph (g) of this section are maintained.

(d) No person shall sell or transfer an official identification device or number assigned to his or her premises or flock except when it is transferred with a sheep or goat to which it has been applied as official identification or as directed in writing by an APHIS or State representative.

(e) No person shall use an official identification device or number provided for the identification of sheep and goats other than for the identification of a sheep or goat.

(f) *Records required of persons who purchase, acquire, sell, or dispose of animals.* Persons who engage in the interstate commerce of animals including persons that handle or own animals that have been in interstate commerce or that purchase, acquire, sell, or dispose of sheep and/or goats to persons who engage in the interstate commerce of animals, whether or not the animals are required to be officially identified, must maintain business records (such as yarding receipts, sale tickets, invoices, and waybills) for 5 years. These persons must make the records available for inspection and copying by any authorized USDA or State representative upon that

representative's request and presentation of his or her official credentials. The records must include the following information:

(1) The number of animals purchased or sold (or transferred without sale);

(2) The date of purchase, sale, or other transfer;

(3) The name and address of the person from whom the animals were purchased or otherwise acquired or to whom they were sold or otherwise transferred;

(4) The species, breed, and class of animal. If breed is unknown, for sheep the face color and for goats the type (milk, fiber, or meat) must be recorded instead;

(5) A copy of the brand inspection certificate for animals officially identified with brands or ear notches;

(6) A copy of any certificate or owner/hauler statement required for movement of the animals purchased, sold, or otherwise transferred; and

(7) If the flock of origin or the receiving flock is under a flock plan or post-exposure management and monitoring plan, any additional records required by the plan.

(g) *Records required of persons who apply official identification to animals.* Persons who apply official individual or group/lot identification to animals must maintain records for 5 years. These persons must make the records available for inspection and copying by any authorized USDA or State representative upon that representative's request and presentation of his or her official credentials. The records must include the following information:

(1) The flock identification number of the flock of origin, the name and address of the person who currently owns the animals, and the name and address of the owner of the flock of origin if different;

(2) The name and address of the owner of the flock of birth, if known, for animals born after January 1, 2002, in another flock and not already identified to flock of birth;

(3) The date the animals were officially identified;

(4) The number of sheep and the number of goats identified;

(5) The breed and class of the animals. If breed is unknown, for sheep the face color and for goats the type (milk, fiber, or meat) must be recorded instead;

(6) The official identification numbers applied to animals by species or the GIN applied in the case of a group lot;

(7) Whether the animals were identified with "Slaughter Only" or "Meat" identification devices; and

(8) Any GIN with which the animal was previously identified.

(h) *Removal or loss of official identification devices.* Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices, including devices applied to imported animals in their countries of origin and recognized by the Administrator as official, is prohibited except at the time of slaughter, at any other location upon the death of the animal, or as otherwise approved by the State or Tribal animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved when a device needs to be replaced.

(1) All man-made identification devices affixed to sheep or goats moved interstate must be removed at slaughter and correlated with the carcasses through final inspection by means approved by the Food Safety and Inspection Service (FSIS). If diagnostic samples, including whole heads, are taken, the identification devices must be packaged with the samples and must be left attached to approximately 1 inch of tissue or to the whole head to allow for identity testing and be correlated with the carcasses through final inspection by means approved by FSIS. Devices collected at slaughter must be made available to APHIS and FSIS.

(2) All official identification devices affixed to sheep or goat carcasses moved interstate for rendering must be removed at the rendering facility and made available to APHIS. If diagnostic samples, including whole heads, are taken, the identification devices must be packaged with the samples and must be left attached to approximately 1 inch of tissue or to the whole head to allow for identity testing.

(3) If a sheep or goat loses an official identification device except while in interstate commerce as described in paragraph (a)(3) of this section and needs a new one, the person applying the new official identification device must record the official identification number on the old device if known in addition to the information required to be recorded in accordance with paragraph (g) of this section.

(i) *Replacement of official identification devices for reasons other than loss.* (1) Circumstances under which a State or Tribal animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved may authorize replacement of an official identification device include, but are not limited to:

(i) Deterioration of the device such that loss of the device appears likely or the number can no longer be read;

(ii) Infection at the site where the device is attached, necessitating application of a device at another location (*e.g.*, a slightly different location of an eartag in the ear);

(iii) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(iv) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(2) Any time an official identification device is replaced, as authorized by the State or Tribal animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved, the person replacing the device must record the following information about the event and maintain the record for 5 years:

(i) The date on which the device was removed;

(ii) Contact information for the location where the device was removed;

(iii) The official identification number (to the extent possible) on the device removed;

(iv) The type of device removed (*e.g.*, metal eartag, RFID eartag);

(v) The reason for the removal of the device;

(vi) The new official identification number on the replacement device; and

(vii) The type of replacement device applied.

(j) *Use of more than one official eartag.* Beginning on [effective date of final rule], no more than one official eartag may be applied to an animal; except that:

(1) Another official eartag may be applied providing it bears the same official identification number as an existing one.

(2) In specific cases when the need to maintain the identity of an animal is intensified (*e.g.*, such as for export shipments, quarantined herds, field trials, experiments, or disease surveys), a State or Tribal animal health official or the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved may approve the application of a second official eartag. The person applying the second official eartag must record the following information about the event and maintain the record for 5 years: The date the second official eartag is added; the reason for the additional official eartag

device; and the official identification numbers of both official eartags.

(3) An eartag with an animal identification number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to an animal that is already officially identified with another eartag. The person applying the AIN eartag must record the date the AIN tag is added and the official identification numbers of all official eartags on the animal and must maintain those records for 5 years.

(4) An official eartag that utilizes a flock identification number may be applied to a sheep or goat that is already officially identified with an official eartag if the animal has resided in the flock to which the flock identification number is assigned.

(k) *Requirements for approval of official identification devices.* (1) The Administrator may approve companies to produce official identification devices for use on sheep or goats. Devices may be plastic, metal, or other suitable materials and must be an appropriate size for use in sheep and goats. Devices must be able to legibly accommodate the required alphanumeric sequences. Devices must resist removal and be difficult to place on another animal once removed unless the construction of the device makes such tampering evident, but need not be tamper-proof. Devices must be readily distinguishable as USDA official sheep and goat identification devices; must carry the alphanumeric sequences, symbols, or logos specified by APHIS; must be an allowed color for the intended use, and must have a means of discouraging counterfeiting, such as use of a unique copyrighted logo or trade mark. Devices for use only on animals in slaughter channels must be medium blue and marked with the words "Meat" or "Slaughter Only". Devices that use RFID must conform to ISO 11784 and ISO 11785 standards unless otherwise approved. The Administrator may specify the color, shape or size of a device for an intended use to make them readily identifiable.

(2) Written requests for approval of official identification devices for sheep and goats should be sent to the National Scrapie Program Coordinator, Surveillance Preparedness and Response Services, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235. The request must include:

(i) The materials used in the device and in the case of RFID the transponder type and data regarding the lifespan and read range.

(ii) Any available data regarding the durability of the device, durability and

legibility of the identification numbers, rate of adverse reactions such as ear infections, and retention rates of the devices in animals, preferably sheep and/or goats.

(iii) A signed statement agreeing to:

(A) Send official identification devices only to a State or APHIS representative, to the owner of a premises or to the contact person for a premises at the address listed in the National Scrapie Database, or as directed by APHIS;

(B) When requested by APHIS, provide a report by State of all tags produced, including the tag sequences produced and the name and address of the person to whom the tags were shipped, and provide supplemental reports of this information when requested by APHIS;

(C) Maintain the security and confidentiality of all tag recipient information acquired as a result of being an approved tag manufacturer and utilize the information only to provide official identification tags; and

(D) Enter the sequences of tags shipped into the online animal identification number (AIN) management system module of the National Scrapie Database through an Internet Web page interface or other means specified by APHIS prior to shipping the identification device.

(iv) Twenty-five sample devices. Additional tags must be submitted if requested by APHIS.

(3) Approval will only be given for devices for which data have been provided supporting high legibility, readability (visual and RFID), and retention rates in sheep and goats that minimize injury throughout their lifespan, or for which there is a reasonable expectation of such performance. Approval to produce official identification devices will be valid for 1 year and must be renewed annually. The Administrator may grant provisional approval to produce devices for periods of less than 1 year in cases where there is limited or incomplete data. The Administrator may decline to renew a company's approval or suspend or withdraw approval if the devices do not show adequate retention and durability or cause injury in field use or if any of the requirements of this section are not met by the tag company. Companies shall be given 60 days' written notice of intent to withdraw approval. Any person who is approved to produce official identification tags in accordance with this section and who knowingly produces tags that are not in compliance with the requirements of this section, and any person who is not approved to produce such tags but does

so, shall be subject to such civil penalties and such criminal liabilities as are provided by 18 U.S.C. 1001, 7 U.S.C. 8313, or other applicable Federal statutes. Such action may be in addition to, or in lieu of, withdrawal of approval to produce tags.

■ 17. Section 79.3 is revised to read as follows:

§ 79.3 General restrictions.

The following prohibitions and movement conditions apply to the movement of or commingling with sheep and goats in interstate commerce, and no sheep or goat may be sold, disposed of, acquired, exhibited, transported, received for transportation, offered for sale or transportation, loaded, unloaded, or otherwise handled in interstate commerce, or commingled with such animals, or be loaded or unloaded at a premises or animal concentration point (including premises that exhibit animals) that engages in interstate commerce of animals except in compliance with this part.

(a) No sexually intact animal of any age or castrated animal 18 months of age and older (as evidenced by the eruption of the second incisor) may be moved or commingled with animals in interstate commerce unless it is individually identified to its flock of birth⁵ and is accompanied by an ICVI, except that an ICVI is not required unless the animal is moved across a state line, and except for the following, which may move with group lot identification and an owner/hauler statement:

(1) Animals in slaughter channels that are under 18 months of age;

(2) Animals in slaughter channels at 18 months and older (as evidenced by the eruption of the second incisor) if the animals were kept as a group on the same premises on which they were born and have not been maintained in the same enclosure with unidentified animals from another flock at any time, including throughout the feeding, marketing, and slaughter process;

⁵ You need not identify an animal to its flock of birth or its flock of origin if this information is unknown because the animal changed ownership while it was exempted from flock of origin identification requirements in accordance with § 79.6(a)(10)(i). Such animals may be moved interstate with individual animal identification that is only traceable to the State of origin and to the owner of the animals at the time they were so identified. To use this exemption the person applying the identification must have supporting documentation indicating that the animals were born and had resided throughout their life in the State. Likewise, animals born before January 1, 2002, need only be identified to their flock of origin and, for animals not required to be identified prior to [Effective date of final rule] may, be identified to the owner of the animals and the flock of residence as of [Effective date of final rule].

(3) Animals in slaughter channels 18 months of age and older (as evidenced by the eruption of the second incisor) that are identified with official individual identification or in the case of animals from flocks that are low-risk commercial flocks that are identified using identification methods or devices approved for this purpose;

(4) Animals moving for grazing or other management purposes between two premises both owned or leased by the flock owner and recorded in the National Scrapie Database as additional flock premises and where commingling will not occur with unidentified animals that were born in another flock or any animal that is not part of the flock; and

(5) Animals moving to a livestock facility approved in accordance with § 71.20 of this subchapter and that has agreed to act as an agent for the owner to apply official identification if the animals have been in the same flock in which they were born and have not been maintained in the same enclosure with unidentified animals born in another flock at any time.

(b) No scrapie-positive or suspect animal may be moved other than by permit to an APHIS approved research or quarantine facility or for destruction under APHIS or State supervision. Such animals must be individually identified and listed on the permit.

(c) No indemnified high-risk animal or indemnified sexually intact genetically susceptible exposed animal may be moved other than by permit to an APHIS approved research or quarantine facility or for destruction at another site. Such animals that are not indemnified may be moved to slaughter under permit. Animals moved in accordance with this paragraph must be individually identified and listed on the permit.

(d) No exposed animal may be moved unless it is officially individually identified.

(e) No animal may be moved from an infected flock or source flock except as allowed by an approved flock plan.

(f) No animal may be moved from an exposed flock, a flock under investigation or a flock subject to a PEMMP except as allowed in a PEMMP or where a PEMMP is not required, as allowed by written instructions from an APHIS or State representative.

(g) *Animals moved to slaughter.* Once an animal enters slaughter channels the animal may not be removed from slaughter channels. An animal is in slaughter channels if it was sold through a restricted animal sale, resided in a terminal feedlot, was sold with a bill of sale marked for slaughter only, was

identified with an identification device or tattoo marked “slaughter only” or “MEAT” or was moved in a manner not permitted for other classes of animals. Animals in slaughter channels may move either directly to a slaughter establishment that is under continuous inspection by the Food Safety and Inspection Service (FSIS) or under State inspection that FSIS has recognized as at least equal to Federal inspection or to a custom exempt slaughter establishment as defined by FSIS for immediate slaughter or to an individual for immediate slaughter for personal use, to a terminal feedlot, or may move indirectly to such a destination through a restricted animal sale or restricted livestock facility. Once an animal has entered slaughter channels it may only be officially identified with an official blue eartag marked with the words “Meat” or “Slaughter Only” or an ear tattoo reading “Meat.” Animals in slaughter channels must be accompanied by an owner/hauler statement indicating the owner’s name and address; the name and address of the person or livestock facility from which and where they were acquired, if different from the owner; the slaughter establishment, restricted animal sale, restricted livestock facility or terminal feedlot to which they are being moved, and a statement that the animals are in slaughter channels. A copy of the owner/hauler statement must be provided to the slaughter establishment, restricted animal sale, restricted livestock facility or terminal feedlot to which the animals are moved. Any bill of sale regarding the animals must indicate that the animals were sold for slaughter only.

(h) No animals designated for testing as part of a classification or reclassification investigation may be moved until testing is completed and results reported, except for movement by permit for testing, slaughter, research, or destruction. Such animals must be individually identified and listed on the permit.

(i) The following animals, if not restricted as part of a flock plan or PEMMP, may be moved to any destination without further restriction after being officially identified and designated or redesignated by a DSE to be:

(1) Genetically resistant exposed sheep;

(2) Genetically less susceptible exposed sheep; or

(3) Low-risk exposed animals.

(j) *Additional requirements for animals moved from Inconsistent States.* Such animals must meet the following

requirements in addition to other requirements of this section.

(1) Sheep and goats not in slaughter channels must be enrolled in the Scrapie Free Flock Certification Program or an equivalent APHIS recognized program or be sheep that are officially genotyped and determined to be AA QR or AA RR, be officially identified, and be accompanied by an ICVI that also states the individual animal identification numbers, the flock of origin and, for any animal born after January 1, 2002, the flock of birth, if different.

(2) Animals in slaughter channels must be officially identified with an official blue eartag marked with the words "Meat" or "Slaughter Only" and may move only directly to slaughter or to a terminal feedlot. Animals 18 months of age and older (as evidenced by the eruption of the second incisor) in slaughter channels must also be accompanied by an ICVI that states the individual animal identification numbers and, for any animal born after January 1, 2002, the flock of birth (and the flock of origin, if different).

(k) APHIS may enter into compliance agreements with persons such as dealers and owners of slaughter establishments and markets whereby animals may be received unidentified even if they cannot be identified to their flock of birth or origin because they were moved or commingled while unidentified, in violation of this regulation or an intrastate regulation as provided by § 79.6, if the violation is reported to the Veterinary Services, Surveillance Preparedness and Response Services, Assistant Director responsible for the State involved so that corrective action can be taken against the principal violator. In such cases the animal must be identified with a slaughter only tag, and is moved only in slaughter channels or, in the case of sheep, moved for other purposes if the animal is inspected by an accredited veterinarian, found free of evidence of infectious or contagious disease, and officially genotyped as AA QR or AA RR.

■ 18. Section 79.4 is revised to read as follows:

§ 79.4 Designation of scrapie-positive animals, high-risk animals, exposed animals, suspect animals, exposed flocks, infected flocks, noncompliant flocks, and source flocks; notice to owners.

(a) *Designation.* Based on a classification investigation as defined in § 79.1, including testing of animals, if needed, a designated scrapie epidemiologist will designate a flock to be an exposed flock, an infected flock, a source flock, a flock under

investigation, and/or a non-compliant flock, or designate an animal to be a scrapie-positive animal, high-risk animal, exposed animal, genetically susceptible exposed animal, genetically resistant exposed sheep, genetically less susceptible exposed sheep, low-risk exposed animal, and/or a suspect animal after determining that the flock or animal meets the criteria of the relevant definition in § 79.1.

(b) *Redesignation.* A reclassification investigation as defined in § 79.1 may be conducted to determine whether the current designated status of a flock or animal may be changed or removed. Reclassification investigations will be initiated and conducted, and redesignation decisions will be made in accordance with procedures approved by the Administrator. These procedures are available at <http://www.aphis.usda.gov/animal-health/scrapie>.

(c) *Testing and notification procedures.* Any animal that may be a high-risk animal, any animal that may have been exposed to the lambing of a high-risk animal, any suspect animal, and any animal that was born in the flock after a high-risk animal may have lambed may be selected for testing. Which animals are selected and the method of testing selected will be based on the risk associated with the flock and the type and number of animals available for test. When flock records are adequate to determine that all high-risk animals that lambed in the flock are available for testing, the testing may be limited to postmortem testing of all high-risk and suspect animals. Testing may include an official genotype test, live-animal testing using a live-animal official test, the postmortem examination and testing of genetically susceptible animals in the flock that cannot be evaluated by a live animal test, postmortem examination of other animals, and postmortem examination and testing of animals found dead or cull animals at slaughter. Animals may not be tested for scrapie to establish the designation of the flock until they are test eligible. Animals are generally considered test eligible when the animals are over 14 months of age if born after the exposure or are 18 months post exposure. If testing these animals is necessary to establish the status of a flock they must be held for later testing unless sent directly to slaughter or a terminal feedlot.

(1) *Noncooperation.* If an owner does not make his or her animals available for testing within 60 days of notification, within 60 days of becoming test eligible, or as mutually agreed, or fails to submit required postmortem

samples, the flock will be designated a source, infected, or exposed flock, whichever definition applies and a noncompliant flock.

(2) *Notice to owner.* As soon as possible after making a designation or redesignation determination, a State or APHIS representative will attempt to notify the owner(s) of the flock(s) or animal(s) in writing of the designation.

(3) *Appeal.* The owner of an animal may appeal the designation of an animal as a scrapie-positive animal, high-risk animal, exposed animal, genetically susceptible exposed animal, genetically resistant exposed sheep, genetically less susceptible exposed sheep, low-risk exposed animal, or a suspect animal. The owner of a flock may appeal the designation of the flock as an exposed flock, an infected flock, a source flock, a flock under investigation, or a non-compliant flock. The owner of a laboratory or test manufacturing facility may appeal the suspension or withdrawal of approval for a laboratory or a test. To do so, the owner must appeal by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal must include all of the facts and reasons upon which the owner relies to show that the reasons for the proposed action are incorrect or do not support the action. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. The action under appeal shall continue in effect pending the final determination of the Administrator, unless otherwise ordered by the Administrator. Such action shall become effective upon oral or written notification, whichever is earlier, to the owner. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. The Administrator's decision constitutes final agency action.

■ 19. Section 79.5 is revised as follows:

§ 79.5 Issuance of Interstate Certificates of Veterinary Inspection (ICVI).

(a) ICVIs are required as specified by § 79.3 for certain interstate movements of sheep or goats and may be used to meet the requirements for entry into terminal feedlots. An ICVI must show the following information, except when § 79.3 states that the information is not required for the specific type of interstate movement:

(1) The ICVI must show the species, breed or, if breed is unknown, the face

color of sheep or the type of goats (milk, fiber, or meat), and class of animal, such as replacement ewe lambs, slaughter lambs or kids, cull ewes, club lambs, bred ewes, etc.; the number of animals covered by the ICVI; the purpose for which the animals are to be moved; the address at which the animals were loaded for interstate movement or for movement to a terminal feedlot when an ICVI is required; the address to which the animals are destined; and the names of the consignor and the consignee and their addresses if different from the address at which the animals were loaded or the address to which the animals are destined; and if different the current owner;

(2) Each animal's official individual identification numbers: *Provided*, that, in the case of animals identified with flock identification that is assigned to the flock of origin and that meets the requirements for individual animal identification, the flock identification number may be recorded instead of the individual identification numbers, and for animals allowed by § 79.3 to move with group lot identification, the group lot number may be recorded instead of the individual identification numbers. An ICVI may not be issued for any animal that is not officially identified if official identification is required. If the animals are not required by the regulations to be officially identified, the ICVI must state the exemption that applies (e.g., sheep and goats moving for grazing without change of ownership). If the animals are required to be officially identified but the identification number is not required to be recorded on the ICVI, the ICVI must state that all animals to be moved under the ICVI are officially identified and state the exemption that applies (e.g., the ewes are identified with flock of origin tags so only the flock ID must be recorded on the ICVI);

(3) If any animals intended for breeding have undergone an official genotype test, the name of the testing laboratory, date the sample was taken, and result of the test; and

(4) A statement by the issuing accredited, State, or Federal veterinarian to the effect that on the date of issuance the animals were free of evidence of infectious or contagious disease and insofar as can be determined exposure thereto. This statement may be made with respect to scrapie for animals exposed to scrapie that's movement is not restricted that have been designated genetically resistant or less susceptible sheep or low-risk exposed animals. Except as provided in paragraphs (b)

and (c) of this section, all information required by this paragraph must be typed or legibly written on the ICVI. Note that in accordance with paragraphs (a), (b), and (e) of § 79.3, scrapie-positive, suspect, and high-risk animals, some exposed animals, and some animals that originated in an infected or source flock require permits rather than ICVIs.

(b) As an alternative to typing or writing individual animal identification on an ICVI, if agreed to by the receiving State or Tribe, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a State form or APHIS form that requires individual identification of animals or a printout of official identification numbers generated by computer or other means;

(2) A legible copy of the document must be stapled to the original and each copy of the ICVI;

(3) Each copy of the document must identify each animal to be moved with the ICVI, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and
(ii) Either the unique serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

(c) Ownership brands documents attached to ICVIs. As an alternative to typing or writing ownership brands on an ICVI, an official brand inspection certificate may be used to provide this information, but only under the following conditions:

(1) A legible copy of the official brand inspection certificate must be stapled to the original and each copy of the ICVI;

(2) Each copy of the official brand inspection certificate must show the ownership brand of each animal to be moved with the ICVI, but any other ownership brands, and any unused space for recording ownership brands, must be crossed out in ink; and

(3) The following information must be typed or written in ink in the official identification column on the original and each copy of the ICVI and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the attached document; and

(ii) Either the serial number on the official brand inspection certificate or, if the official brand inspection certificate is not imprinted with a serial number, both the name of the person who prepared the official brand inspection certificate and the date it was signed.

■ 20. Section 79.6 is amended as follows:

■ a. In paragraph (a) introductory text, by adding the words “, including scrapie surveillance activities,” after the words “control activities”.

■ b. By redesignating paragraphs (a)(10)(i) through (vi) as paragraphs (a)(12) through (17), respectively, and revising paragraph (a)(10).

■ c. By adding paragraph (a)(11).

■ d. In paragraph (b), by adding the words “from the date the State is notified of the deficiency” after the words “2-year extension”.

The revision and addition read as follows:

§ 79.6 Standards for States to qualify as Consistent States.

(a) * * *

(10) Has effectively implemented ongoing scrapie surveillance that meets the following criteria:

(i) Collects and submits surveillance samples from targeted animals slaughtered in State-inspected establishments and from slaughter establishments within the State that are not covered under § 71.21 of this subchapter, or allows and facilitates the collection of such samples by USDA personnel or contractors; and

(ii) Transmits required submission and epidemiological information for all scrapie samples using the electronic submission system provided by APHIS for inclusion in the National Scrapie Database and for transmission of the submission information to an approved laboratory; and

(iii) Achieves the annual State-level scrapie surveillance minimums for sheep and goats originating from the State as determined annually with input from the States and made available to the public at <http://www.aphis.usda.gov/animal-health/scrapie> at least 6 months before the start of the collection period; or

(iv) Conducts annual surveillance at a level that will detect scrapie if it is present at a prevalence of 0.1 percent in the population of targeted animals originating in the State, with a 95 percent confidence.

(11) If a State does not meet the requirements of paragraph (a)(10) of this section as of [*EFFECTIVE DATE OF FINAL RULE*], the State must provide APHIS with a plan and a timeline for complying with all the requirements of paragraph (a)(10) by [*DATE 12*

MONTHS AFTER EFFECTIVE DATE OF FINAL RULE] and must meet the requirements of paragraph (a)(10) by [*DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE*].

* * * * *

Done in Washington, DC, this 28th day of August 2015.

Gary Woodward,
Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2015-21909 Filed 9-9-15; 8:45 am]

BILLING CODE 3410-34-P



FEDERAL REGISTER

Vol. 80

Thursday,

No. 175

September 10, 2015

Part III

The President

Proclamation 9316—Labor Day, 2015

Executive Order 13706—Establishing Paid Sick Leave for Federal Contractors

Presidential Documents

Title 3—

Proclamation 9316 of September 4, 2015

The President

Labor Day, 2015

By the President of the United States of America**A Proclamation**

Every year, our Nation sets aside Labor Day to celebrate the working men and women of America, whose grit and resilience have built our country and made our economic progress possible. Our economy has now added 8 million jobs over the past 3 years, a pace that has not been exceeded since 2000, and our businesses have created 13.1 million jobs over 66 straight months—extending the longest streak on record. By almost every measure, the American economy and our workers are better off than when I took office; but this has not come easy, and our work is not yet done.

These gains are part of our Nation's long legacy of fighting for middle-class economics—policies that ensure opportunity is open to everyone who is willing to work hard and play by the rules—and they have made America stronger and more prosperous. As a Nation, we can build on these advances and accelerate our progress. History shows that working families can get a fair shot in this country, but only if we are willing to organize and fight for it. Together, we can ensure our growing economy benefits everyone and fuels rising incomes and a thriving middle class.

At the beginning of the last century, Americans came together to fight for dignity and justice in the workplace. With courage and determination, women and men stood up, marched, and raised their voices for a 40-hour workweek, weekends, and workplace safety laws. It is because of workers who agitated—and the unions who had their backs—that we enjoy many of the protections we often take for granted today, including overtime pay, a minimum wage, and the right to organize for better pay and benefits. These hard-won victories are the foundation of our robust middle class, which has led to the largest, most prosperous economy in the world, and they are central to the belief that our economy does not grow from the top down—it grows from the middle out.

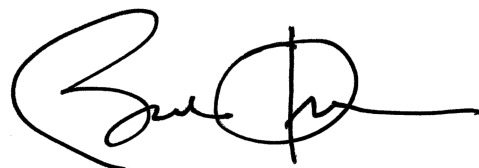
As President, I am committed to defending these pillars of opportunity and bolstering our Nation's pathways into the middle class. That is why I have been fighting since day one to secure a better bargain for all Americans—one where an honest day's work is rewarded with an honest day's pay, where our workplaces are safer, and where it is easier, not harder, to join a union. Policies like paid sick days, paid family and medical leave, workplace flexibility, the right to organize, and equal pay for equal work are national economic priorities that are essential to building an economy that benefits from the contributions of all our people. And because everyone has the right to a fair living wage, I signed an Executive Order to raise the minimum wage for workers on new Federal contracts, and I have called on the Congress to raise the national minimum wage. Additionally, my Administration has proposed extending overtime pay to nearly 5 million workers, which would give more Americans the chance to be paid for their extra hours of work or have more time at home with their families.

Since I took office, Governors, mayors, and local leaders have joined me in expanding these policies by enacting paid sick days and paid family leave and raising the minimum wage in States, cities, and counties across

our Nation. Still, more work remains because in America, no one who is working full-time should have to raise their family in poverty. A secure future should be possible for everyone who clocks in each morning, every parent who works the graveyard shift to provide for their family, and every young person who dreams of going to college and knows that with hard work they can get there. That is the future we are fighting for, and I will keep pushing until the American dream is within the reach of all people who are willing to work for it. This Labor Day, let us remember the struggles and the progress that have defined America, and let us resolve to continue building a Nation where everyone is treated fairly, where hard work pays off, and where all things are possible for all people.

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 September 7, 2015, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the contributions and resilience of working Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

Presidential Documents

Executive Order 13706 of September 7, 2015

Establishing Paid Sick Leave for Federal Contractors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with sources that allow their employees to earn paid sick leave, it is hereby ordered as follows:

Section 1. Policy. This order seeks to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid leave allowing for family care. Providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers in the search for dedicated and talented employees. These savings and quality improvements will lead to improved economy and efficiency in Government procurement.

Sec. 2. Establishing paid sick leave for Federal contractors and subcontractors. (a) Executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as “contracts”), as described in section 6 of this order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that all employees, in the performance of the contract or any subcontract thereunder, shall earn not less than 1 hour of paid sick leave for every 30 hours worked.

(b) A contractor may not set a limit on the total accrual of paid sick leave per year, or at any point in time, at less than 56 hours.

(c) Paid sick leave earned under this order may be used by an employee for an absence resulting from:

- (i) physical or mental illness, injury, or medical condition;
- (ii) obtaining diagnosis, care, or preventive care from a health care provider;
- (iii) caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described in paragraphs (i) or (ii) of this subsection or is otherwise in need of care; or
- (iv) domestic violence, sexual assault, or stalking, if the time absent from work is for the purposes otherwise described in paragraphs (i) and (ii) of this subsection, to obtain additional counseling, to seek relocation, to seek assistance from a victim services organization, to take related legal action, including preparation for or participation in any related civil or criminal legal proceeding, or to assist an individual related to the employee as described in paragraph (iii) of this subsection in engaging in any of these activities.

(d) Paid sick leave accrued under this order shall carry over from 1 year to the next and shall be reinstated for employees rehired by a covered contractor within 12 months after a job separation.

(e) The use of paid sick leave cannot be made contingent on the requesting employee finding a replacement to cover any work time to be missed.

(f) The paid sick leave required by this order is in addition to a contractor's obligations under 41 U.S.C. chapter 67 (Service Contract Act) and 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), and contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of this order.

(g) A contractor's existing paid leave policy provided in addition to the fulfillment of Service Contract Act or Davis-Bacon Act obligations, if applicable, and made available to all covered employees will satisfy the requirements of this order if the amount of paid leave is sufficient to meet the requirements of this section and if it may be used for the same purposes and under the same conditions described herein.

(h) Paid sick leave shall be provided upon the oral or written request of an employee that includes the expected duration of the leave, and is made at least 7 calendar days in advance where the need for the leave is foreseeable, and in other cases as soon as is practicable.

(i) Certification.

(i) A contractor may only require certification issued by a health care provider for paid sick leave used for the purposes listed in subsections (c)(i), (c)(ii), or (c)(iii) of this section for employee absences of 3 or more consecutive workdays, to be provided no later than 30 days from the first day of the leave.

(ii) If 3 or more consecutive days of paid sick leave is used for the purposes listed in subsection (c)(iv) of this section, documentation may be required to be provided from an appropriate individual or organization with the minimum necessary information establishing a need for the employee to be absent from work. The contractor shall not disclose any verification information and shall maintain confidentiality about the domestic violence, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(j) Nothing in this order shall require a covered contractor to make a financial payment to an employee upon a separation from employment for accrued sick leave that has not been used, but unused leave is subject to reinstatement as prescribed in subsection (d) of this section.

(k) A covered contractor may not interfere with or in any other manner discriminate against an employee for taking, or attempting to take, paid sick leave as provided for under this order or in any manner asserting, or assisting any other employee in asserting, any right or claim related to this order.

(l) Nothing in this order shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under this order.

Sec. 3. Regulations and Implementation. (a) The Secretary of Labor (Secretary) shall issue such regulations by September 30, 2016, as are deemed necessary and appropriate to carry out this order, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, including providing exclusions from the requirements set forth in this order where appropriate; defining terms used in this order; and requiring contractors to make, keep, and preserve such employee records as the Secretary deems necessary and appropriate for the enforcement of the provisions of this order or the regulations thereunder. To the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council shall issue regulations in the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations and contracts subject to this order the contract clause described in section 2(a) of this order.

(b) Within 60 days of the Secretary issuing regulations pursuant to subsection (a) of this section, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts as described in section 6(d)(i)(C) and (D) of this order, entered into after January 1, 2017, consistent with the effective date of such agency action, comply with the requirements set forth in section 2 of this order.

(c) Any regulations issued pursuant to this section should, to the extent practicable and consistent with section 7 of this order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*; the Service Contract Act; the Davis-Bacon Act; the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*; the Violence Against Women Act of 1994, 42 U.S.C. 13925 *et seq.*; and Executive Order 13658 of February 12, 2014, Establishing a Minimum Wage for Contractors.

Sec. 4. Enforcement. (a) The Secretary shall have the authority for investigating potential violations of and obtaining compliance with this order, including the prohibitions on interference and discrimination in section 2(k) of this order.

(b) This order creates no rights under the Contract Disputes Act, and disputes regarding whether a contractor has provided employees with paid sick leave prescribed by this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order.

Sec. 5. Severability. If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 6. 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 the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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

(d) This order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 3(a) of this order, if:

(i) (A) it is a procurement contract for services or construction;

(B) it is a contract or contract-like instrument for services covered by the Service Contract Act;

(C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or

(D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(ii) the wages of employees under such contract or contract-like instrument are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, including employees who qualify for an exemption from its minimum wage and overtime provisions.

(e) For contracts or contract-like instruments covered by the Service Contract Act or the Davis-Bacon Act, this order shall apply only to contracts

or contract-like instruments at the thresholds specified in those statutes. For procurement contracts in which employees' wages are governed by the Fair Labor Standards Act, this order shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 3 of this order.

(f) This order shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 3(a) of this order.

(g) Independent agencies are strongly encouraged to comply with the requirements of this order.

Sec. 7. Effective Date. (a) This order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued, or the contract has been awarded outside the solicitation process, on or after:

(i) January 1, 2017, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 3(a) of this order; or

(ii) January 1, 2017, for contracts where an agency action is taken pursuant to section 3(b) of this order, consistent with the effective date for such action.

(b) This order shall not apply to contracts or contract-like instruments that are awarded, or entered into pursuant to solicitations issued, on or before the effective date for the relevant action taken pursuant to section 3 of this order.



THE WHITE HOUSE,
September 7, 2015.

Reader Aids

Federal Register

Vol. 80, No. 175

Thursday, September 10, 2015

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.fdsys.gov.

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: www.ofr.gov.

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

52605-52934.....	1
52935-53234.....	2
53235-53456.....	3
53457-53690.....	4
53691-54222.....	8
54223-54406.....	9
54407-54700.....	10

CFR PARTS AFFECTED DURING SEPTEMBER

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.

2 CFR	430.....52850, 54443, 54444
25.....	54407
200.....	54407
910.....	53235
2000.....	54223
3 CFR	
Proclamations:	
9309.....	53443
9310.....	53445
9311.....	53447
9312.....	53449
9313.....	53451
9314.....	53453
9315.....	53455
9316.....	53695
Executive Orders:	
13705.....	54405
13706.....	54697
5 CFR	
1653.....	52605
5801.....	54223
6 CFR	
Proposed Rules:	
5.....	53019
46.....	53933
7 CFR	
271.....	53240
272.....	54410
273.....	53240, 54410
274.....	53240
275.....	53240
301.....	53457
1205.....	53243
1218.....	53257
1784.....	52606
1980.....	53457
Proposed Rules:	
1c.....	53933
51.....	53021
504.....	53021
989.....	53022
1205.....	53265
9 CFR	
Proposed Rules:	
54.....	54460
79.....	54460
101.....	53475
116.....	53475
317.....	54442
10 CFR	
Ch. I.....	54223
72.....	53961
Proposed Rules:	
51.....	53266
73.....	53478
429.....	52676
430.....	52850, 54443, 54444
431.....	52676
745.....	53933
12 CFR	
1282.....	53392
14 CFR	
25.....	52615
39.....	52935, 52937, 52939, 52941, 52946, 52948, 52953, 52955
71.....	54417
97.....	53694, 53696, 53700, 53702
Proposed Rules:	
39.....	53024, 53028, 53030, 53480
73.....	54444
91.....	53033
1230.....	53933
15 CFR	
730.....	52959
732.....	52959
734.....	52959
736.....	52959
738.....	52959
740.....	52959, 52962
742.....	52959
743.....	52959
744.....	52959, 52963
746.....	52959
747.....	52959
748.....	52959
750.....	52959
752.....	52959
754.....	52959
756.....	52959
758.....	52959
760.....	52959
762.....	52959
764.....	52959
766.....	52959
768.....	52959
770.....	52959
772.....	52959
774.....	52959
Proposed Rules:	
27.....	53933
16 CFR	
Proposed Rules:	
312.....	53482
315.....	53272
456.....	53274
1211.....	53036
1251.....	54417
19 CFR	
207.....	52617

20 CFR	90.....52984	1042.....53756	3.....53753
Proposed Rules:	Proposed Rules:	1065.....53756	4.....53439, 53753
431.....53933	75.....53070	1066.....53756	6.....53753
21 CFR	31 CFR	1068.....53756	7.....53436, 53753
520.....53458	Proposed Rules:	42 CFR	8.....53753
524.....53458	Ch. X.....52680	52i.....53739	9.....53753
558.....53458	32 CFR	Proposed Rules:	10.....53753
Proposed Rules:	Proposed Rules:	413.....53087	12.....53753
15.....54256	219.....53933	44 CFR	13.....53753
101.....54446	33 CFR	64.....52633	15.....53753
22 CFR	100.....52620, 52993, 52996,	67.....53007	16.....53753
22.....53704	52999, 53463	45 CFR	17.....53753
Proposed Rules:	117.....52622, 52999, 53000,	Proposed Rules:	19.....53753
171.....54256	53463, 53464, 54236	46.....53933	22.....53753
205.....53483	154.....54418	92.....54172	23.....53436
225.....53933	155.....54418	690.....53933	25.....53753
24 CFR	156.....54418	46 CFR	28.....53753
960.....53709	165.....52622, 52625, 53263,	35.....54418	30.....53753
982.....52619	53465	39.....54418	31.....53439
3280.....53712	Proposed Rules:	503.....52637, 52638	35.....53439
3282.....53712	165.....53754	Proposed Rules:	42.....53753
3285.....53712	34 CFR	401.....54484	50.....53753
26 CFR	Proposed Rules:	403.....54484	52.....53436, 53439, 53753
1.....52972, 52976, 53732,	97.....53933	404.....54484	53.....53753
54374	38 CFR	47 CFR	1842.....52642
54.....54374	Proposed Rules:	0.....53747	1852.....52642
Proposed Rules:	16.....53933	2.....53747	49 CFR
1.....52678, 53058, 53068	40 CFR	11.....53747	105.....54418
28.....54447	9.....53000	15.....53747	107.....54418
28 CFR	52.....52627, 52630, 53001,	18.....53747	171.....54418
2.....52982	53467, 53735, 53739, 54237	43.....52641	591.....53011
Proposed Rules:	180.....53469, 54242, 54248	73.....53747	592.....53011
46.....53933	721.....53000	74.....53747	Proposed Rules:
29 CFR	Proposed Rules:	76.....53747, 54252	11.....53933
Proposed Rules:	9.....53756	78.....53747	512.....53756
21.....53933	22.....53756	80.....53747	523.....53756
30 CFR	26.....53933	90.....53747	534.....53756
7.....52984	51.....54146	95.....53747	535.....53756
18.....52984	52.....52701, 52710, 53086,	97.....53747	537.....53756
44.....52984	53484, 53757, 54468, 54471	Proposed Rules:	583.....53756
46.....52984	60.....54146	0.....52714	1011.....53758
48.....52984	61.....54146	1.....52714	1034.....53758
49.....52984	63.....54146	2.....52714	1102.....53758
56.....52984	85.....53756	15.....52714, 52715	1104.....53758
57.....52984	86.....53756	18.....52714	1115.....53758
70.....52984	174.....54257	54.....53088, 53757	50 CFR
71.....52984	180.....54257	73.....52715	20.....52645, 52663
72.....52984	600.....53756	74.....52715	622.....53263, 53473
74.....52984	1033.....53756	48 CFR	648.....53015
75.....52984	1036.....53756	Ch. I.....53436, 53440	660.....53015
	1037.....53756	1.....53753	679.....52673, 54253, 54254,
	1039.....53756	2.....53753	54255, 54440

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List August 11, 2015

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.