



FEDERAL REGISTER

Vol. 80

Monday,

No. 234

December 7, 2015

Pages 75921–76200

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.

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Presidential Determination No. 2016–03 of November 18, 2015**The President****Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012****Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy**

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the report submitted to the Congress by the Energy Information Administration on October 6, 2015, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with my prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions. However, in the Joint Plan of Action, the interim arrangement to address concerns with Iran’s nuclear program reached between the P5+1, European Union and Iran in November 2013, the United States committed to allow oil purchases from Iran to continue at the levels that prevailed at that time. Accordingly, my Administration is not seeking further reductions of Iranian oil purchases.

I will continue to monitor this situation closely.

The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, November 18, 2015

Rules and Regulations

Federal Register

Vol. 80, No. 234

Monday, December 7, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31049; Amdt. No. 3671]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 7, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 7, 2015.

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

For Examination

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

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

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT:

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical.

Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 20, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 7 JANUARY 2016

Plymouth, IN, Plymouth Muni, VOR RWY 10, Amdt 12

Plymouth, IN, Plymouth Muni, VOR RWY 28, Amdt 11

Iron Mountain Kingsford, MI, Ford, ILS OR LOC RWY 1, Amdt 13

Iron Mountain Kingsford, MI, Ford, NDB RWY 1, Orig-A, CANCELED

Meridian, MS, Key Field, Takeoff Minimums and Obstacle DP, Amdt 6

Pittstown, NJ, Sky Manor, RNAV (GPS) RWY 7, Amdt 1

Delaware, OH, Delaware Muni—Jim Moore Field, NDB RWY 10, Orig-A, CANCELED

Ebensburg, PA, Ebensburg, RNAV (GPS) RWY 7, Orig-A

Ebensburg, PA, Ebensburg, RNAV (GPS) RWY 25, Orig-B

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Decatur, AL, Pryor Field Rgnl, VOR RWY 18, Amdt 13A, CANCELED

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Fort Morgan, CO, Fort Morgan Muni, Takeoff Minimums and Obstacle DP, Amdt 1

Reidsville, GA, Swinton Smith Fld at Reidsville Muni, NDB RWY 11, Amdt 8A, CANCELED

Indianapolis, IN, Greenwood Muni, NDB RWY 1, Amdt 3, CANCELED

Goodland, KS, Renner Fld/Goodland Muni/, RNAV (GPS) RWY 12, Amdt 2

Glasgow, KY, Glasgow Muni, VOR/DME RWY 8, Amdt 9, CANCELED

Prestonsburg, KY, Big Sandy Rgnl, VOR/DME—A, Amdt 3, CANCELED

Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 17, Amdt 4

Sidney, NY, Sidney Muni, VOR RWY 25, Amdt 3A, CANCELED

Lehigh, PA, Jake Arner Memorial, RNAV (GPS) RWY 8, Amdt 1B

Lehigh, PA, Jake Arner Memorial, RNAV (GPS) RWY 26, Amdt 1B

Portland, TN, Portland Muni, VOR/DME RWY 19, Amdt 3A, CANCELED

Trenton, TN, Gibson County, VOR/DME—A, Amdt 6A, CANCELED

Bellingham, WA, Bellingham Intl, ILS OR LOC RWY 16, ILS RWY 16 (SA CAT I), Amdt 8

Bellingham, WA, Bellingham Intl, RNAV (GPS) Y RWY 16, Amdt 3

Bellingham, WA, Bellingham Intl, RNAV (RNP) Z RWY 16, Amdt 1

Bellingham, WA, Bellingham Intl, RNAV (RNP) Z RWY 34, Amdt 1

Bellingham, WA, Bellingham Intl, Takeoff Minimums and Obstacle DP, Amdt 6

Port Angeles, WA, William R Fairchild Intl, Takeoff Minimums and Obstacle DP, Amdt 3

Port Angeles, WA, William R Fairchild Intl, WATTS SIX, Graphic DP

Charleston, WV, Yeager, Takeoff Minimums and Obstacle DP, Amdt 9

Riverton, WY, Riverton Rgnl, ILS OR LOC RWY 28, Amdt 3

[FR Doc. 2015–30723 Filed 12–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31050; Amdt. No. 3672]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 7, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 2015.

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

For Examination

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

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

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT:

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 20, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

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

* * * *Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|----------------|-------|-------------------|---------------------------------|---------|----------|-------------------------------------|
| 7-Jan-16 | TX | Houston | William P. Hobby | 5/0182 | 11/17/15 | VOR/DME RWY 35, Amdt 3. |
| 7-Jan-16 | TX | Houston | William P. Hobby | 5/0184 | 11/17/15 | VOR/DME RWY 4, Amdt 18. |
| 7-Jan-16 | CA | Lakeport | Lampson Field | 5/1798 | 11/03/15 | RNAV (GPS)-A, Orig-A. |
| 7-Jan-16 | CA | Fresno | Fresno Chandler Execu- tive. | 5/3572 | 11/02/15 | GPS RWY 12, Orig-B. |
| 7-Jan-16 | CA | Fresno | Fresno Chandler Execu- tive. | 5/3574 | 11/02/15 | GPS RWY 30, Orig-C. |
| 7-Jan-16 | FL | Tallahassee | Tallahassee Intl | 5/3607 | 11/02/15 | ILS OR LOC/DME RWY 36, Amdt 25B. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|------------|-------|-------------|-------------------------------|---------|----------|--|
| 7-Jan-16 | FL | Tallahassee | Tallahassee Intl | 5/3620 | 11/02/15 | ILS OR LOC RWY 27, ILS RWY 27 (CAT II), Amdt 10. |
| 7-Jan-16 | CA | Chino | Chino | 5/4191 | 11/02/15 | ILS OR LOC RWY 26R, Amdt 8. |
| 7-Jan-16 | WA | Everett | Snohomish County (Paine Fld). | 5/4281 | 11/02/15 | ILS or LOC/DME Z RWY 16R, ILS Z RWY 16R (SA CAT II), Orig-A. |
| 7-Jan-16 | AZ | Mesa | Falcon Fld | 5/4921 | 11/02/15 | RNAV (GPS) RWY 4R, Amdt 1D. |
| 7-Jan-16 | SC | Charleston | Charleston Executive | 5/6365 | 11/02/15 | ILS OR LOC RWY 9, Amdt 2A. |
| 7-Jan-16 | MD | Westminster | Clearview Airpark | 5/8975 | 11/17/15 | VOR-A, Amdt 4. |

[FR Doc. 2015-30724 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31046; Amdt. No. 3669]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 7, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey

Avenue SE., West Bldg., Ground Floor, Washington, DC 20590-0001.

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

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

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

Availability

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

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, their complex

nature, and the need for a special format make publication in the **Federal Register** expensive and impractical.

Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

Further, the SIAPs and Takeoff Minimums and ODPs contained in this

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 6, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 10 DECEMBER 2015

Fairbanks, AK, Fairbanks Intl, ILS OR LOC RWY 20R, ILS RWY 20R (SA CAT I), ILS RWY 20R (SA CAT II), Amdt 25

Kenai, AK, Kenai Muni, ILS OR LOC RWY 20R, Amdt 5

Kenai, AK, Kenai Muni, RNAV (GPS) RWY 2L, Amdt 3

Kenai, AK, Kenai Muni, RNAV (GPS) RWY 20R, Amdt 3

Kenai, AK, Kenai Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Kenai, AK, Kenai Muni, VOR RWY 20R, Amdt 20

Kenai, AK, Kenai Muni, VOR/DME RWY 2L, Amdt 9

McGrath, AK, Mc Grath, VOR/DME OR TACAN RWY 16, Amdt 1A, CANCELED

Sheridan, AR, Sheridan Muni, RNAV (GPS) RWY 19, Orig

Sheridan, AR, Sheridan Muni, Takeoff Minimums and Obstacle DP, Orig

Nogales, AZ, Nogales Intl, VOR OR GPS–A, Amdt 3C, CANCELED

Chico, CA, Chico Muni, VOR/DME RWY 13L, Amdt 7C, CANCELED

Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 26, Amdt 3

Ontario, CA, Ontario Intl, VOR/DME RWY 8R, Orig-A, CANCELED

Bridgeport, CT, Igor I Sikorsky Memorial, VOR RWY 6, Amdt 21, CANCELED

Bridgeport, CT, Igor I Sikorsky Memorial, VOR RWY 29, Amdt 2, CANCELED

Washington, DC, Manassas Rgnl/Harry P Davis Field, RNAV (GPS) RWY 34L, Orig

Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, VOR RWY 32, Amdt 10A, CANCELED

St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR/DME RWY 18L, Amdt 1C, CANCELED

Tallahassee, FL, Tallahassee Intl, RADAR–1, Amdt 6

Clarion, IA, Clarion Muni, RNAV (GPS) RWY 14, Amdt 1

Orange City, IA, Orange City Muni, NDB OR GPS RWY 34, Amdt 3A, CANCELED

Orange City, IA, Orange City Muni, RNAV (GPS) RWY 16, Orig

Orange City, IA, Orange City Muni, RNAV (GPS) RWY 34, Orig

Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC RWY 10R, ILS RWY 10R (SA CAT I), ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 12

Rochelle, IL, Rochelle Muni Airport-Koritz Field, RNAV (GPS) RWY 7, Amdt 2

Rochelle, IL, Rochelle Muni Airport-Koritz Field, RNAV (GPS) RWY 25, Amdt 2

Fort Wayne, IN, Smith Field, RNAV (GPS) RWY 23, Amdt 1

Fort Wayne, IN, Smith Field, RNAV (GPS) RWY 31, Amdt 1

Independence, KS, Independence Muni, NDB RWY 35, Orig-B, CANCELED

Wakeeney, KS, Trego Wakeeney, RNAV (GPS)–A, Orig

Wakeeney, KS, Trego Wakeeney, RNAV (GPS)–B, Orig

Wakeeney, KS, Trego Wakeeney, Takeoff Minimums and Obstacle DP, Orig

Richmond, KY, Central Kentucky Rgnl, RNAV (GPS) RWY 18, Amdt 1B

Richmond, KY, Central Kentucky Rgnl, RNAV (GPS) RWY 36, Amdt 2

Vidalia, LA, Concordia Parish, RNAV (GPS) RWY 14, Orig

Vidalia, LA, Concordia Parish, RNAV (GPS) RWY 32, Orig

Vidalia, LA, Concordia Parish, Takeoff Minimums and Obstacle DP, Orig

Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RWY 15R, Amdt 2D, CANCELED

Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RWY 27, Amdt 2E, CANCELED

Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RWY 33L, Amdt 2F, CANCELED

Nantucket, MA, Nantucket Memorial, NDB RWY 24, Amdt 11B, CANCELED

Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, VOR/DME RWY 15L, Amdt 2A, CANCELED

Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 29, ILS RWY 29 (SA CAT I), ILS RWY 29 (SA CAT II), Amdt 4

Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 36, Amdt 2

Gaylord, MI, Gaylord Rgnl, NDB RWY 9, Amdt 13A, CANCELED

Hart/Shelby, MI, Oceana County, RNAV (GPS) RWY 9, Orig

Hart/Shelby, MI, Oceana County, RNAV (GPS) RWY 27, Orig

Hart/Shelby, MI, Oceana County, Takeoff Minimums and Obstacle DP, Orig

Jackson, MI, Jackson County-Reynolds Field, NDB RWY 24, Amdt 14, CANCELED

Traverse City, MI, Cherry Capital, NDB RWY 28, Amdt 11, CANCELED

Brainerd, MN, Brainerd Lakes Rgnl, NDB RWY 23, Amdt 6, CANCELED

Owatonna, MN, Owatonna Degner Rgnl, ILS OR LOC RWY 30, Amdt 3

Owatonna, MN, Owatonna Degner Rgnl, RNAV (GPS) RWY 30, Amdt 1

Kansas City, MO, Charles B. Wheeler Downtown, NDB RWY 19, Amdt 18A, CANCELED

Kansas City, MO, Charles B. Wheeler Downtown, VOR RWY 3, Amdt 19A, CANCELED

Kansas City, MO, Charles B. Wheeler Downtown, VOR RWY 19, Amdt 20A, CANCELED

Kansas City, MO, Charles B. Wheeler Downtown, VOR RWY 21, Amdt 14B, CANCELED

Springfield, MO, Downtown, RNAV (GPS)–A, Orig

Springfield, MO, Downtown, RNAV (GPS)–B, Orig

Springfield, MO, Downtown, Takeoff Minimums and Obstacle DP, Orig

Springfield, MO, Springfield-Branson National, ILS OR LOC RWY 2, Amdt 19

Pascagoula, MS, Trent Lott Intl, ILS OR LOC RWY 17, Amdt 3

Pascagoula, MS, Trent Lott Intl, RNAV (GPS) RWY 17, Amdt 2

Pascagoula, MS, Trent Lott Intl, RNAV (GPS) RWY 35, Amdt 1

Dillon, MT, Dillon, RNAV (GPS) RWY 35, Orig

Miles City, MT, Frank Wiley Field, VOR/DME RWY 4, Orig-B, CANCELED

Andrews, NC, Western Carolina Rgnl, RNAV (GPS) RWY 8, Amdt 1

Asheville, NC, Asheville Rgnl, ILS OR LOC RWY 16, Amdt 3B, CANCELED

Asheville, NC, Asheville Rgnl, ILS OR LOC RWY 34, Amdt 23H, CANCELED

- Asheville, NC, Asheville Rgnl, ILS OR LOC RWY 35, Orig
- Asheville, NC, Asheville Rgnl, RNAV (GPS) RWY 16, Amdt 1, CANCELED
- Asheville, NC, Asheville Rgnl, RNAV (GPS) RWY 17, Orig
- Asheville, NC, Asheville Rgnl, RNAV (GPS) RWY 34, Amdt 1, CANCELED
- Asheville, NC, Asheville Rgnl, RNAV (GPS) RWY 35, Orig
- Williston, ND, Sloulin Fld Intl, VOR/DME RWY 29, Amdt 4, CANCELED
- Columbus, NE., Columbus Muni, VOR/DME RWY 32, Amdt 3B, CANCELED
- Kearney, NE., Kearney Rgnl, NDB RWY 36, Amdt 5, CANCELED
- Lincoln, NE., Lincoln, ILS OR LOC RWY 18, Amdt 7B
- Lincoln, NE., Lincoln, ILS OR LOC RWY 36, Amdt 11I
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 14, Amdt 1A
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 17, Orig
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 18, Amdt 1B
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 32, Orig-A
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 35, Orig
- Lincoln, NE., Lincoln, RNAV (GPS) RWY 36, Amdt 1C
- Albuquerque, NM, Albuquerque Intl Sunport, ILS OR LOC RWY 3, Amdt 3
- Albuquerque, NM, Albuquerque Intl Sunport, ILS OR LOC RWY 8, Amdt 6
- Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) Y RWY 3, Amdt 1
- Albuquerque, NM, Albuquerque Intl Sunport, RNAV (RNP) Z RWY 3, Amdt 1A
- Albuquerque, NM, Albuquerque Intl Sunport, RNAV (RNP) Z RWY 8, Amdt 1A
- Hobbs, NM, Lea County Rgnl, VOR OR TACAN RWY 3, Amdt 21A, CANCELED
- Albany, NY, Albany Intl, Takeoff Minimums and Obstacle DP, Amdt 13
- Monticello, NY, Sullivan County Intl, NDB RWY 15, Amdt 7B, CANCELED
- New York, NY, Long Island Mac Arthur, ILS OR LOC RWY 6, ILS RWY 6 (SA CAT I), ILS RWY 6 (SA CAT II), Amdt 25
- New York, NY, Long Island Mac Arthur, RNAV (GPS) RWY 6, Amdt 2
- New York, NY, Long Island Mac Arthur, RNAV (GPS) RWY 15R, Amdt 1
- New York, NY, Long Island Mac Arthur, RNAV (GPS) RWY 24, Amdt 2
- New York, NY, Long Island Mac Arthur, RNAV (GPS) RWY 33L, Amdt 1
- Rome, NY, Griffiss Intl, VOR/DME RWY 33, Orig-A, CANCELED
- Cincinnati, OH, Cincinnati Muni Airport Lunken Field, NDB RWY 21L, Amdt 17B, CANCELED
- Bartlesville, OK, Bartlesville Muni, VOR RWY 17, Amdt 11, CANCELED
- Corvallis, OR, Corvallis Muni, NDB RWY 17, Amdt 2A, CANCELED
- Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 34, Amdt 12
- Providence, RI, Theodore Francis Green State, RNAV (GPS) RWY 34, Amdt 2
- Greenwood, SC, Greenwood County, VOR RWY 27, Amdt 12B, CANCELED
- Mitchell, SD, Mitchell Muni, ILS OR LOC RWY 31, Orig-B
- Mitchell, SD, Mitchell Muni, RNAV (GPS) RWY 13, Orig-A
- Mitchell, SD, Mitchell Muni, RNAV (GPS) RWY 18, Orig
- Mitchell, SD, Mitchell Muni, RNAV (GPS) RWY 31, Orig-A
- Mitchell, SD, Mitchell Muni, RNAV (GPS) RWY 36, Orig
- Mitchell, SD, Mitchell Muni, Takeoff Minimums and Obstacle DP, Amdt 1A
- Mitchell, SD, Mitchell Muni, VOR RWY 13, Amdt 11A
- Mitchell, SD, Mitchell Muni, VOR RWY 31, Amdt 5A
- Watertown, SD, Watertown Rgnl, NDB RWY 35, Amdt 9, CANCELED
- Vermillion, SD, Harold Davidson Field, RNAV (GPS) RWY 12, Orig
- Vermillion, SD, Harold Davidson Field, RNAV (GPS) RWY 30, Amdt 2
- Yankton, SD, Chan Gurney Muni, NDB RWY 31, Amdt 3A, CANCELED
- Centerville, TN, Centerville Muni, RNAV (GPS) RWY 2, Orig
- Centerville, TN, Centerville Muni, RNAV (GPS) RWY 20, Orig
- Centerville, TN, Centerville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
- Dickson, TN, Dickson Muni, RNAV (GPS) RWY 17, Amdt 1B
- Abilene, TX, Abilene Rgnl, NDB RWY 35R, Amdt 5D, CANCELED
- Dallas-Fort Worth, TX, Dallas/Fort Worth Intl, VOR RWY 13R, Amdt 1C, CANCELED
- Edna, TX, Jackson County, RNAV (GPS)-A, Orig
- Edna, TX, Jackson County, RNAV (GPS)-B, Orig
- Edna, TX, Jackson County, Takeoff Minimums and Obstacle DP, Orig
- Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 18, Amdt 1
- Georgetown, TX, Georgetown Muni, RNAV (GPS) RWY 36, Amdt 1
- Houston, TX, William P Hobby, ILS OR LOC RWY 4, ILS RWY 4 (SA CAT I), ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 43
- Houston, TX, William P Hobby, RNAV (GPS) RWY 4, Amdt 3
- Mc Allen, TX, Mc Allen Miller Intl, ILS OR LOC RWY 14, Amdt 9
- Mc Allen, TX, Mc Allen Miller Intl, ILS OR LOC RWY 32, Amdt 1
- Mc Allen, TX, Mc Allen Miller Intl, RNAV (GPS) RWY 14, Amdt 1
- Mc Allen, TX, Mc Allen Miller Intl, RNAV (GPS) RWY 32, Amdt 2
- Mc Allen, TX, Mc Allen Miller Intl, Takeoff Minimums and Obstacle DP, Amdt 2
- Mc Allen, TX, Mc Allen Miller Intl, VOR RWY 14, Amdt 16
- Mc Allen, TX, Mc Allen Miller Intl, VOR RWY 32, Amdt 2
- Odessa, TX, Odessa-Schlemeyer Field, NDB RWY 20, Amdt 5, CANCELED
- Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 2, Amdt 6A, CANCELED
- Everett, WA, Snohomish County (Paine Fld), Takeoff Minimums and Obstacle DP, Amdt 3
- Shelton, WA, Sanderson Field, GPS RWY 5, Amdt 1B, CANCELED
- Shelton, WA, Sanderson Field, RNAV (GPS) RWY 5, Orig
- Shelton, WA, Sanderson Field, RNAV (GPS) RWY 23, Amdt 1
- Appleton, WI, Appleton Intl, VOR/DME RWY 3, Amdt 8G, CANCELED
- Appleton, WI, Appleton Intl, VOR/DME RWY 21, Amdt 1B, CANCELED
- Cable, WI, Cable Union, GPS RWY 34, Orig, CANCELED
- Cable, WI, Cable Union, RNAV (GPS) RWY 35, Orig
- Cable, WI, Cable Union, Takeoff Minimums and Obstacle DP, Amdt 5A
- Eau Claire, WI, Chippewa Valley Rgnl, NDB RWY 22, Amdt 7, CANCELED
- Middleton, WI, Middleton Muni—Morey Field, VOR RWY 10, Amdt 1B, CANCELED
- Tomah, WI, Bloyer Field, RNAV (GPS) RWY 7, Orig
- Tomah, WI, Bloyer Field, RNAV (GPS) RWY 25, Orig
- Tomah, WI, Bloyer Field, Takeoff Minimums and Obstacle DP, Orig
- Charleston, WV, Yeager, ILS OR LOC RWY 5, Amdt 7, CANCELED
- Charleston, WV, Yeager, LOC RWY 5, Orig
- Charleston, WV, Yeager, RNAV (GPS) Y RWY 5, Amdt 2
- Charleston, WV, Yeager, RNAV (RNP) Z RWY 5, Amdt 1

[FR Doc. 2015-30730 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31047; Amdt. No. 3670]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 7, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 7, 2015.

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

For Examination

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

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

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT:

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

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

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 6, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

* * * *Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|------------|-------|---------------|--|---------|----------|--|
| 10-Dec-15 | MS | Indianola | Indianola Muni | 5/0366 | 10/23/15 | RNAV (GPS) RWY 36, Amdt 2. |
| 10-Dec-15 | WA | Oak Harbor | Aj Eisenberg | 5/0595 | 10/26/15 | RNAV (GPS) RWY 7, Amdt 2D. |
| 10-Dec-15 | MI | Pellston | Pellston Rgnl Airport of Emmet County. | 5/2023 | 10/23/15 | RNAV (GPS) RWY 32, Orig-A. |
| 10-Dec-15 | CA | Oakdale | Oakdale | 5/2586 | 10/27/15 | RNAV (GPS) RWY 10, Amdt 1A. |
| 10-Dec-15 | OR | Albany | Albany Muni | 5/2587 | 10/27/15 | Takeoff Minimums and (Obstacle) DP, Amdt 2A. |
| 10-Dec-15 | MT | Scobey | Scobey | 5/2588 | 10/27/15 | RNAV (GPS) RWY 12, Orig-B. |
| 10-Dec-15 | CA | Lompoc | Lompoc | 5/2611 | 10/27/15 | RNAV (GPS) RWY 25, Amdt 1A. |
| 10-Dec-15 | CA | Willows | Willows-Glenn County | 5/2650 | 10/27/15 | Takeoff Minimums and (Obstacle) DP, Amdt 1A. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2713 | 10/23/15 | LDA/DME RWY 16, Orig-A. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2715 | 10/23/15 | RNAV (GPS) Y RWY 12, Orig-A. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2716 | 10/23/15 | RNAV (GPS) Z RWY 12, Orig-B. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2717 | 10/23/15 | RNAV (RNP) RWY 30, Orig-B. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2718 | 10/23/15 | VOR OR GPS-A, Amdt 6A. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2719 | 10/23/15 | VOR/DME OR GPS-B, Amdt 4A. |
| 10-Dec-15 | CA | Merced | Merced Rgnl/Macready Field. | 5/2723 | 10/27/15 | Takeoff Minimums and (Obstacle) DP, Amdt 5A. |
| 10-Dec-15 | CA | Bishop | Bishop | 5/2729 | 10/23/15 | Takeoff Minimums and (Obstacle) DP, Amdt 3. |
| 10-Dec-15 | CA | Chino | Chino | 5/3001 | 10/28/15 | RNAV (GPS) RWY 26R, Orig-C. |
| 10-Dec-15 | IN | Terre Haute | Terre Haute Intl-Hulman Field. | 5/3051 | 10/23/15 | RNAV (GPS) RWY 23, Amdt 1A. |
| 10-Dec-15 | WY | Powell | Powell Muni | 5/3148 | 10/28/15 | NDB RWY 31, Amdt 2A. |
| 10-Dec-15 | WY | Powell | Powell Muni | 5/3156 | 10/28/15 | RNAV (GPS) RWY 13, Orig-A. |
| 10-Dec-15 | WY | Powell | Powell Muni | 5/3157 | 10/28/15 | RNAV (GPS) RWY 31, Orig-A. |
| 10-Dec-15 | CO | Canon City | Fremont County | 5/3475 | 10/27/15 | RNAV (GPS) Y RWY 29, Orig-A. |
| 10-Dec-15 | CO | Canon City | Fremont County | 5/3476 | 10/27/15 | RNAV (RNP) RWY 29, Orig-A. |
| 10-Dec-15 | CO | Canon City | Fremont County | 5/3477 | 10/27/15 | RNAV (RNP) RWY 11, Orig-A. |
| 10-Dec-15 | WV | Ravenswood | Jackson County | 5/5042 | 10/22/15 | RNAV (GPS) RWY 22, Orig. |
| 10-Dec-15 | AK | Anchorage | Merrill Field | 5/7064 | 10/22/15 | Takeoff Minimums and (Obstacle) DP, Amdt 1A. |
| 10-Dec-15 | MN | Mankato | Mankato Rgnl | 5/7271 | 10/23/15 | RNAV (GPS) RWY 15, Orig. |
| 10-Dec-15 | MN | Mankato | Mankato Rgnl | 5/7273 | 10/23/15 | RNAV (GPS) RWY 33, Orig. |
| 10-Dec-15 | MN | Mankato | Mankato Rgnl | 5/7274 | 10/23/15 | VOR RWY 15, Amdt 7. |
| 10-Dec-15 | MN | Mankato | Mankato Rgnl | 5/7275 | 10/23/15 | VOR RWY 33, Amdt 8. |
| 10-Dec-15 | NC | Ocracoke | Ocracoke Island | 5/7875 | 10/27/15 | RNAV (GPS) RWY 24, Orig. |
| 10-Dec-15 | NC | Ocracoke | Ocracoke Island | 5/7876 | 10/27/15 | RNAV (GPS) RWY 6, Orig. |
| 10-Dec-15 | FL | Titusville | Arthur Dunn Air Park | 5/9064 | 10/26/15 | RNAV (GPS) RWY 15, Orig-A. |
| 10-Dec-15 | FL | Titusville | Arthur Dunn Air Park | 5/9065 | 10/26/15 | RNAV (GPS) RWY 33, Orig-A. |
| 10-Dec-15 | WI | Mosinee | Central Wisconsin | 5/9662 | 10/23/15 | RNAV (GPS) RWY 26, Amdt 1A. |
| 10-Dec-15 | NC | Winston Salem | Smith Reynolds | 5/9748 | 10/26/15 | VOR/DME RWY 15, Amdt 1B. |
| 10-Dec-15 | NC | Winston Salem | Smith Reynolds | 5/9749 | 10/26/15 | ILS OR LOC RWY 33, Amdt 29B. |
| 10-Dec-15 | NC | Winston Salem | Smith Reynolds | 5/9750 | 10/26/15 | RNAV (GPS) RWY 33, Orig. |
| 10-Dec-15 | FL | Venice | Venice Muni | 5/9753 | 10/26/15 | RNAV (GPS) RWY 13, Amdt 1C. |
| 10-Dec-15 | FL | Venice | Venice Muni | 5/9754 | 10/26/15 | RNAV (GPS) RWY 31, Amdt 1C. |
| 10-Dec-15 | PA | Pittsburgh | Allegheny County | 5/9762 | 10/23/15 | RNAV (GPS) RWY 10 Amdt 4A. |
| 10-Dec-15 | PA | Pittsburgh | Allegheny County | 5/9764 | 10/23/15 | ILS OR LOC RWY 10, Amdt 6A. |
| 10-Dec-15 | PA | Pittsburgh | Allegheny County | 5/9766 | 10/23/15 | ILS OR LOC RWY 28, Amdt 29A. |

[FR Doc. 2015-30725 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 4, 5, 92, 115, 125, 135, 200, 202, 214, 236, 242, 248, 266, 401, 570, 573, 574, 576, 578, 582, 583, 700, 761, 880, 881, 882, 883, 884, 886, 891, 902, 905, 943, 963, 964, 965, 970, 982, 990, 1000, 1003, and 1006

[Docket No. FR-5783-F-02]

RIN 2501-AD66

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Conforming Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On December 19, 2014, the Office of Management and Budget (OMB) published a joint, Governmentwide interim rule with all Federal award-making agencies, entitled “Federal Awarding Agency Regulatory Implementation of Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” In that rule, all Federal award-making agencies, including HUD, implemented the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. HUD also amended its administrative requirements for grants and cooperative agreements. This final rule conforms HUD’s regulations to OMB’s rule, revises cross references within affected HUD regulations, and makes other conforming changes and corrections.

DATES: *Effective Date:* January 6, 2016.

FOR FURTHER INFORMATION CONTACT: Scott Moore, Financial Operations Analyst, Office of the Chief Financial Officer, Financial Policy & Procedures Division, 451 7th Street SW., Room 3210, Washington, DC 20410, telephone number 202-402-2277, or Loyd LaMois, Supervisory Program Analyst, Office of Strategic Planning and Management, 451 7th Street SW., Room 3156, Washington, DC 20410, telephone number 202-402-3964. These are not a toll-free numbers. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 2014 (79 FR 75867), OMB published a joint, Governmentwide interim rule of all Federal award-making agencies entitled,

“Federal Awarding Agency Regulatory Implementation of Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” In the joint interim rule, HUD and all other Federal award-making agencies implemented OMB’s final guidance entitled, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance) published on December 26, 2013 (78 FR 78589). The Uniform Guidance followed publication of a Notice of Proposed Guidance published on February 1, 2013 (78 FR 7282), and an Advance Notice of Proposed Guidance published on February 28, 2012 (77 FR 11778), and incorporated public comments received on those two documents. The Uniform Guidance is codified at 2 CFR part 200.

OMB’s Uniform Guidance provides a Governmentwide framework for Federal grant management designed to reduce administrative burden for non-Federal entities receiving Federal awards, while reducing the risk of waste, fraud, and abuse. The Uniform Guidance establishes requirements and responsibilities for all Federal agencies that award Federal financial assistance and all non-Federal entities that receive Federal awards. In developing the Uniform Guidance, OMB consolidated existing OMB circulars into a single set of requirements. OMB circulars consolidated and superseded by the Uniform Guidance include:

- A-21, “Cost Principles for Educational Institutions”;
- A-87, “Cost Principles for State, Local and Indian Tribal Governments”;
- A-102, “Grant Awards and Cooperative Agreements with State and Local Governments”;
- A-110, “Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations”;
- A-133, “Audits of States, Local Governments and Non-Profit Organizations”.

The Uniform Guidance also replaces provisions of OMB circulars that relate to Single Audit Act audits. OMB’s consolidation of prior guidance was aimed at eliminating duplicative or nearly duplicative language in order to clarify existing guidance. The Uniform Guidance does not broaden the scope of applicability of the guidance superseded.

The policy reforms brought about by the Uniform Guidance include:

- Eliminating duplicative/conflicting guidance;

- Focusing on performance over compliance for accountability;
- Encouraging efficient use of information technology (IT)/shared services;
- Providing for consistent treatment of costs;
- Limiting allowable costs for the best use of Federal resources;
- Incorporating standard business processes using data definitions;
- Strengthening oversight; and
- Targeting audit requirements on risk of waste, fraud, and abuse.

The Uniform Guidance also streamlines audit procedures by:

- Raising the Single Audit threshold from \$500,000 to \$750,000;
- Raising the questioned cost limit in Single Audits from \$10,000 to \$25,000; and
- Requiring assessment of Governmentwide audit quality to be conducted every 6 years (beginning in 2018).

A. Applicability of Uniform Guidance to HUD Grantees

In the December 19, 2014, joint, interim rule, HUD adopted and codified the Uniform Guidance as requirements for Federal awards at a new part, 2 CFR part 2400. HUD also amended 24 CFR parts 84 and 85, which had codified OMB Circulars superseded by 2 CFR part 200, by removing all substantive provisions and including a saving provision that provides that Federal awards made prior to December 26, 2014, will continue to be governed by parts 84 or 85 as codified in the 2013 edition of the Code of Federal Regulations (CFR) or as provided under the terms of the Federal award.

HUD implemented OMB Circular A-102 in 1988, by codifying its provisions in 24 CFR part 85 (March 11, 1988, 53 FR 8025, 8650). In 1994, HUD implemented OMB Circular A-110 by codifying its provisions in 24 CFR part 84 (September 13, 1994, 59 FR 47011). HUD codified the provisions of OMB Circular A-133 in 24 CFR parts 84 and 85 in 1997 (November 18, 1997, 62 FR 61617). In the intervening years since codifying the guidance in these circulars, HUD has cross-referenced applicable provisions of 24 CFR parts 84 and 85 throughout program regulations. Because HUD has implemented 2 CFR part 200 and removed, with certain exceptions, 24 CFR parts 84 and 85, this final rule conforms 24 CFR to the Uniform Guidance by removing references to 24 CFR parts 84 and 85 and replacing them with corresponding references to 2 CFR part 200.

Grant recipients and those who monitor grants are strongly encouraged to review the Uniform Guidance to obtain a better understanding of the Uniform Guidance and its implications for their Federal awards. The Federal Council on Financial Assistance Reform (COFAR) has provided additional tools to assist in the transition to the Uniform Guidance. These tools include:

- Frequently Asked Questions for New Uniform Guidance at 2 CFR part 200: <https://cfo.gov/wp-content/uploads/2014/11/2014-11-26-Frequently-Asked-Questions.pdf>.
- Uniform Guidance Crosswalk from Existing Guidance to Final Guidance: www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf.
- COFAR webcast trainings and slides: Available through the COFAR Web site <https://cfo.gov/cofar/>; specifically, through that Web site's page on Resources for Understanding the Uniform Guidance, <https://cfo.gov/cofar/#RUUG>.

Additional tools are available through links from COFAR's Web site homepage, <https://cfo.gov/cofar/>, in such sections (as of the date of this rule) as Resources for Understanding the Uniform Guidance, Measuring the Impact of the Uniform Guidance, the COFAR Training Webcast Series, Federal Spending Transparency, and Related Links.

In addition, grant recipients are encouraged to review guidance issued by HUD on February 26, 2015, entitled "Transition to 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance" (Notice SD-2015-01). This guidance is available at <http://portal.hud.gov/hudportal/documents/huddoc?id=15-01sdn.pdf>.

B. Other Conforming Changes

As noted above, HUD implemented OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," in 24 CFR parts 84 and 85 in 1997. In HUD's 1997 interim rule, HUD also removed and reserved 24 CFR part 44—Non-Federal Audit Requirements for State and Local Government, and 24 CFR part 45—Non-Federal Audit Requirements for Institutions of Higher Education and Other Nonprofit Institutions, since these parts were no longer applicable because of HUD's implementation of the circular. In drafting this final rule, HUD discovered the inadvertent retention of references to 24 CFR parts 44 and 45. HUD is using this final rule to correct this oversight and is replacing outdated

references to parts 44 and 45 with references to 2 CFR part 200, subpart F—Audit Requirements, or section(s) of that subpart, as applicable.

HUD is revising § 4.5 to conform to Section 233 of the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111-8, March 11, 2009). HUD is revising § 570.402(a)(1) to conform to HUD's final rule entitled "Removal of Obsolete Community Planning and Development (CPD) Regulations (79 FR 51893, September 2, 2014). HUD is also correcting other copy and typographical errors.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). This rule updates references to regulatory provisions that have been removed by HUD in implementing the Uniform Guidance, and substitutes references to appropriate sections of the Uniform Guidance, corrects outdated references to 24 CFR parts 44 and 45, and makes other conforming changes. As a result, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts

State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)¹ requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.² However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

List of Subjects

24 CFR Part 4

Administrative practice and procedure, Government employees, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

¹ 2 U.S.C. 1532.

² 2 U.S.C. 1534.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 115

Administrative practice and procedure, Aged, Fair housing, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 125

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 214

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (government agencies), Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 248

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 266

Intergovernmental relations, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 401

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Island Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 573

Arson, Community facilities, Loan programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

Community facilities, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 582

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Individuals with disabilities, Mental health programs, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Civil rights, Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Homeless, Indians, Individuals with disabilities, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 700

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 943

Public housing, Reporting and recordkeeping requirements.

24 CFR Part 963

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 990

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1006

Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Hawaiian Natives, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends title 24 CFR parts 4, 5, 92, 115, 125, 135, 200, 202, 214, 236, 242, 248, 266, 401, 570, 573, 574, 576, 578, 582, 583, 700, 761, 880, 881, 882, 883, 884, 886, 891, 902, 905, 943, 963, 964, 965, 970, 982, 990, 1000, 1003, and 1006, as follows:

PART 4—HUD REFORM ACT

- 1. The authority citation for part 4 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3537a, 3545.

- 2. Revise § 4.5(a) to read as follows:

§ 4.5 Notice and documentation of assistance subject to section 102(a).

(a) *Notice.* Before the Department solicits an application for assistance subject to Section 102(a), it will post a notice describing application procedures and selection criteria not less than 30 calendar days before the deadline by which applications must be submitted.

* * * * *

§ 4.9 [Amended]

- 3. Amend § 4.9(a)(1)(iii) by removing “24 CFR part 85” and adding in its place “2 CFR 200.80”.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 4. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

§ 5.107 [Amended]

- 5. Amend § 5.107 by removing “revised OMB Circular A–133, ‘Audits of States, Local Governments and Non-profit Organizations’ (see 24 CFR 84.26)” and adding in its place “2 CFR part 200, subpart F”.

§ 5.109 [Amended]

- 6. Amend § 5.109(g) by removing “(see, e.g., 24 CFR parts 84 and 85)” and adding in its place “(see, e.g., 2 CFR 200.311)”.

§ 5.801 [Amended]

- 7. Amend § 5.801(d)(1) by removing “OMB Circular A–133 (See 24 CFR 84.26)” and adding in its place “2 CFR part 200, subpart F”.

§ 5.1003 [Amended]

- 8. Amend § 5.1003 by removing “Data Universal Numbering System (DUNS)” and “DUNS number” wherever they appear and adding in their place “unique entity identifier”.

- 9. Amend § 5.1004 as follows:

- a. Revise the section heading; and

- b. Remove “Central Contractor Registration (CCR)” and “CCR” and add in their place “System of Award Management (SAM)” and “SAM in accordance with 2 CFR part 25, appendix A”, respectively.

The revision reads as follows:

§ 5.1004 System of award management.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

- 10. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839

§ 92.2 [Amended]

- 11. In § 92.2, amend paragraph (6) of the definition of “Community housing development organization,” by removing “24 CFR 84.21, ‘Standards for Financial Management Systems;’” and adding in its place “2 CFR 200.302, ‘Financial Management’ and 2 CFR 200.303, ‘Internal Controls;’”.

§ 92.64 [Amended]

■ 12. Amend § 92.64(a)(2)(ii) by removing “24 CFR 85.21” and adding in its place “2 CFR 200.305”.

§ 92.204 [Amended]

■ 13. Amend § 92.204(a)(2)(ii) by removing “24 CFR 85.21” and adding in its place “2 CFR 200.305”.

§ 92.207 [Amended]

■ 14. Amend § 92.207(e) by removing “OMB Circulars A–87 or A–122, as applicable” and adding in its place “2 CFR part 200, subpart E.”

§ 92.214 [Amended]

■ 15. Amend § 92.214(b)(2) by removing “2 CFR part 225 (OMB Circular A–87, entitled ‘Cost Principles for State, Local and Indian Tribal Governments’)” and adding in its place “2 CFR 200.406”.

§ 92.220 [Amended]

■ 16. Amend § 92.220(a)(1)(ii) by removing “24 CFR 85.26(b)” and adding in its place “2 CFR 200.80”.

§ 92.257 [Amended]

■ 17. Amend § 92.257(e) by removing “(see 24 CFR parts 84 and 85)” and adding in its place “(see 2 CFR 200.311)”.

§ 92.351 [Amended]

■ 18. Amend § 92.351(b) by removing “Section 85.36(e) of this title” and replacing with “Section 200.321 of title 2 Code of Federal Regulations”.

§ 92.356 [Amended]

■ 19. Amend § 92.356(a) by:
■ a. Removing “24 CFR 85.36 and 24 CFR 84.42, respectively,” and adding in its place “2 CFR 200.317 and 2 CFR 200.318”; and

■ b. Removing “24 CFR 85.36 and 24 CFR 84.42” and adding in its place “2 CFR 200.317 and 200.318”.

■ 20. Revise § 92.502(c)(2) to read as follows:

§ 92.502 Program disbursement and information system.

* * * * *

(c) * * *

(2) HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15-day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the participating jurisdiction’s United States Treasury account of the HOME

Investment Trust Fund. Interest earned after 15 days belongs to the United States and must be remitted to the United States as provided in 2 CFR 200.305(b)(9), except interest amounts up to \$500 per year may be retained for administrative expenses.

* * * * *

§ 92.504 [Amended]

■ 21. Amend § 92.504 as follows:

■ a. In paragraph (c)(1)(x) by:

■ i. Removing “24 CFR 85.43” and adding in its place “2 CFR 200.338”;

■ ii. Removing “for convenience” and adding in its place “in whole or in part”; and

■ iii. Removing “24 CFR 85.44” and adding in its place “2 CFR 200.339”; and

■ b. In paragraph (c)(2)(ix) by:

■ i. Removing “24 CFR 85.43” and adding in its place “2 CFR 200.338”;

■ ii. Removing “for convenience” and adding in its place “in whole or in part”; and

■ iii. Removing “24 CFR 85.44” and adding in its place “2 CFR 200.339”.

■ 22. Revise § 92.505 to read as follows.

§ 92.505 Applicability of uniform administrative requirements.

The requirements of 2 CFR part 200 apply to participating jurisdictions, State recipients, and subrecipients receiving HOME funds, except for the following provisions: §§ 200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in § 92.257), 200.312, 200.329, 200.333, and 200.334. The provisions of 2 CFR 200.305 apply as modified by § 92.502(c). If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, the definitions in 24 CFR part 92 govern.

§ 92.506 [Amended]

■ 23. Amend § 92.506 by removing “24 CFR 84.26 and 85.26” and adding in its place “2 CFR part 200, subpart F”.

■ 24. Revise § 92.507 to read as follows:

§ 92.507 Closeout.

HOME funds will be closed out in accordance with 2 CFR part 200, subpart D.

§ 92.508 [Amended]

■ 25. Amend § 92.508 as follows:

■ a. In paragraph (a)(3)(ii) remove “24 CFR 85.20” and add in its place “2 CFR 200.302”;

■ b. In paragraph (a)(5)(i) add “, in accordance with 2 CFR 200.302,” after “Records”; and

■ c. In paragraph (a)(5)(iv) remove “, in accordance with 24 CFR 85.20,” and add “and other records required by 2

CFR 200.302” at the end of the paragraph.

§ 92.551 [Amended]

■ 26. Amend § 92.551(c)(2) by:

■ a. Removing “24 CFR 85.12” and adding in its place “2 CFR 200.207”; and

■ b. Adding “, including remedies under 2 CFR 200.338” at the end of the paragraph.

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

■ 27. The authority citation for part 115 continues to read as follows:

Authority: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d).

■ 28. Revise § 115.308(e) to read as follows:

§ 115.308 Reporting and recordkeeping requirements.

* * * * *

(e) All files will be kept in such fashion as to permit audits under 2 CFR part 200, subpart F.

PART 125—FAIR HOUSING INITIATIVES PROGRAM

■ 29. The authority citation for part 125 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3616 note.

§ 125.104 [Amended]

■ 30. Amend § 125.104(g) by removing “part 44 or part 45, as appropriate, of this title” and adding in its place “2 CFR part 200, subpart F.”

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

■ 31. The authority citation for part 135 continues to read as follows:

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

§ 135.11 [Amended]

■ 32. Amend § 135.11 as follows:

■ a. In paragraph (a), remove “(24 CFR 85.36)” from the paragraph heading and add in its place “2 CFR part 200, subpart D”;

■ b. In paragraph (a)(1), remove “24 CFR 85.36(c)” and “24 CFR 85.36(c)(2)” and add in their place “2 CFR 200.319”;

■ c. In paragraph (a)(2), remove “24 CFR 85.36(d)” and add in its place “2 CFR 200.320”; and

■ d. In paragraph (b), remove “OMB Circular No. A–110” everywhere it appears and add in its place “2 CFR part 200, subpart D”.

§ 135.36 [Amended]

■ 33. Amend § 135.36(c) by removing “24 CFR 85.36 (see 24 CFR 85.36(b)(8)).” and adding in its place “2 CFR 200.318(h).”

Appendix to Part 135 [Amended]

■ 34. Amend the appendix to part 135 as follows:

- a. In section III, introductory text, remove “24 CFR 85.36(d)” and add in its place “2 CFR 200.320”; and
- b. In section III, paragraph (3)(i), remove “(24 CFR 85.36(d)(3))” and add in its place “(2 CFR 200.320)”.

PART 200—INTRODUCTION TO FHA PROGRAMS

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

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 36. Revise § 200.11 to read as follows:

§ 200.11 Audit requirements for State and local governments as mortgagees.

Requirements set forth in 2 CFR part 200, subpart F, apply to State and local governments (as defined at 2 CFR 200.90 and 200.64, respectively) that receive mortgage insurance as mortgagees.

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 37. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 38. Revise § 202.10(c) to read as follows:

§ 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.

* * * * *

(c) *Audit requirements.* The insuring of loans and mortgages under the Act constitutes “Federal financial assistance” (as defined in 2 CFR 200.40) for purposes of audit requirements set out in 2 CFR part 200, subpart F. Non-Federal entities (as defined in 2 CFR 200.69) that receive insurance as lenders and mortgagees shall conduct audits in accordance with 2 CFR part 200, subpart F.

PART 214—HOUSING COUNSELING PROGRAM

■ 39. The authority citation for part 214 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d).

§ 214.103 [Amended]

■ 40. Amend § 214.103 as follows:

- a. In paragraph (e), remove “24 CFR 1.6, 24 CFR 84.21, and 24 CFR 121” and add in its place “2 CFR part 200, subpart D, 24 CFR 1.6, and 24 CFR part 121”;
- b. In paragraph (i)(2), remove “24 CFR part 84 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to States, Local and Federally Recognized Indian Tribal Governments), as applicable, and with the OMB Circulars described therein” and add in its place “2 CFR part 200”.

§ 214.315 [Amended]

■ 41. Amend § 214.315(a) by removing “24 CFR 1.6, 24 CFR 84.21, and 24 CFR part 121” and adding in its place “2 CFR part 200, subpart D, 24 CFR 1.6, and 24 CFR part 121”.

§ 214.500 [Amended]

■ 42. Amend § 214.500 by removing “24 CFR parts 84 and 85” and adding in its place “2 CFR part 200, subpart F”.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 43. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1, and 1735d; 42 U.S.C. 3535(d).

§ 236.901 [Amended]

■ 44. Amend § 236.901 by removing “24 CFR part 44” and adding in its place “2 CFR part 200, subpart F”.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

■ 45. The authority citation for part 242 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715n(f), and 1715u; 42 U.S.C. 3535(d).

§ 242.58 [Amended]

■ 46. Amend § 242.58(c)(1) by removing “OMB Circular A–133 (Audits of states, local governments, and nonprofit organizations)” and adding in its place “2 CFR part 200, subpart F”.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

■ 47. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 17151 note, 4101 note, and 4101–4124; 42 U.S.C. 3535(d).

§ 248.101 [Amended]

■ 48. In § 248.101, amend paragraph (6) of the definition of “Community-Based Nonprofit Organization” by removing “Attachment F of OMB Circular No. A–110 (Rev.) ‘Standards for Financial Management Systems’” and adding in its place “2 CFR 200.302 and 200.303”.

§ 248.173 [Amended]

■ 49. Amend § 248.173(q) by removing “part 45 of this title” and adding in its place “2 CFR part 200, subpart F”.

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 50. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.510 [Amended]

■ 51. Amend § 266.510(c) by removing “24 CFR part 85.26” and adding in its place “2 CFR part 200, subpart F”.

PART 401—MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

■ 52. The authority citation for part 401 continues to read as follows:

Authority: 12 U.S.C. 1715z–1 and 1735f–18(b); 42 U.S.C. 1437(c)(8), 1437f(t) note, and 3535(d).

§ 401.302 [Amended]

■ 53. Amend § 401.302(a) by removing “Parts 84 and 85 of this title” and adding in its place “Part 200 of 2 CFR”.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 54. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 55. Amend § 570.200 by:

- a. In paragraph (a)(5) introductory text:
 - i. Removing “OMB Circulars A–87, ‘Cost Principles for State, Local and Indian Tribal Governments’; A–122, ‘Cost Principles for Non-profit Organizations’; or A–21, ‘Cost Principles for Educational Institutions,’ as applicable” and adding in its place “2 CFR part 200, subpart E”;
 - ii. Removing footnote 1;
 - iii. Removing “Attachment B of these Circulars” and adding in its place “2 CFR part 200, subpart E,”; and

- iv. Removing “Attachment A of such circulars” and adding in its place “2 CFR part 200, subpart E.”;
- b. In paragraph (a)(5)(i), removing “HUD’s specific approval or, if charged through a cost allocation plan” and adding in its place “the approval of”;
- c. In paragraph (a)(5)(ii), removing “and penalties (including punitive damages)” and adding in its place “penalties, damages, and other settlements”;
- d. Redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(v);
- e. Adding paragraphs (a)(5)(iii) and (iv);
- f. In paragraph (d)(2), removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”;
- g. In paragraph (f)(1)(i)(B), removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”; and
- h. In paragraph (j)(5), removing “(see 24 CFR parts 84 and 85)” and adding in its place “(see 2 CFR 200.311)”.

The additions read as follows:

§ 570.200 General policies.

- (a) * * *
- (5) * * *

(iii) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445);

(iv) Organization costs (2 CFR 200.455); and

* * * * *

§ 570.206 [Amended]

■ 56. Amend § 570.206(e) by removing “OMB Circular A–21, A–87, or A–122 as applicable” and adding in its place “2 CFR part 200, subpart E”.

§ 570.207 [Amended]

■ 57. Amend § 570.207 as follows:

- a. In paragraph (a)(2), remove “OMB Circular A–87” and add in its place “2 CFR part 200, subpart E”;
- b. In paragraph (b)(1)(i), remove “, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122” and add in its place “or depreciation pursuant to 2 CFR part 200, subpart E.”; and
- c. In paragraph (b)(1)(iii), remove “or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable)” and add in its place “in accordance with 2 CFR part 200, subpart E.”.

§ 570.402 [Amended]

■ 58. Amend § 570.402 as follows:

- a. In paragraph (a)(1), remove the last sentence of the paragraph; and

- b. In paragraph (a)(2), remove “OMB Circulars” and add in its place “2 CFR part 200”.

§ 570.415 [Amended]

■ 59. Amend § 570.415(k)(3)(iii) by removing “OMB Circulars A–101 and A–110” and adding in its place “2 CFR part 200”.

■ 60. Revise § 570.416(j)(2) to read as follows:

§ 570.416 Hispanic-serving institutions work study program.

* * * * *

(j) * * *

(2) *Uniform administrative requirements.* Recipients under HSI–WSP shall comply with the requirements and standards of 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” Audits in accordance with 2 CFR part 200, subpart F, shall be conducted annually.

■ 61. Amend § 570.489 as follows:

■ a. In paragraph (d)(1)(i), add “and the terms and conditions of the award” at the end of the paragraph;

■ b. In paragraph (d)(2)(iii), remove “24 CFR part 85 ‘Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments.’” and add in its place “2 CFR part 200.”;

■ c. In paragraph (d)(2)(iii)(A), remove “part 85” and add in its place “2 CFR part 200”;

■ d. In paragraph (d)(2)(iii)(B), remove “part 85 of this title” and “part 84 of this title, ‘Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,’ as applicable” and add in their place “2 CFR part 200”;

■ e. In paragraph (j), remove “(24 CFR 85.36, ‘Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments’)” and add in its place “(2 CFR 200.88)”;

■ f. Redesignate paragraphs (m) and (n) as paragraphs (n) and (p), respectively;

■ g. Add paragraph (m); and

■ h. Revise newly redesignated paragraphs (n) and (p).

The revision and additions to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(m) *Subrecipient monitoring and management.* The provisions of 2 CFR 200.330 through 200.332 are applicable.

(n) *Audits.* Notwithstanding any other provision of this title, audits of a State

and units of general local government shall be conducted in accordance with 2 CFR part 200, subpart F, which implements the Single Audit Act. States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 2 CFR part 200, subpart F.

* * * * *

(p) *Cost principles and prior approval.* A State must ensure that costs incurred by the State and by its recipients are in conformance with 2 CFR part 200, subpart E. All cost items described in 2 CFR part 200, subpart E, that require Federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR part 200, subpart E, and are otherwise eligible, except for the following:

(1) Depreciation methods for fixed assets shall not be changed without the express approval of the cognizant Federal agency (2 CFR 200.436).

(2) Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program (2 CFR 200.441).

(3) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).

(4) Organization costs (2 CFR 200.455).

§ 570.490 [Amended]

■ 62. Amend § 570.490(a)(1) by removing “24 CFR part 85” and adding in its place “2 CFR 200, subpart F”.

§ 570.500 [Amended]

■ 63. Amend § 570.500(c) by removing “24 CFR 85.36 or 84.40, as applicable” and adding in its place “2 CFR part 200, subpart D”.

■ 64. Revise § 570.502 to read as follows:

§ 570.502 Applicability of uniform administrative requirements.

(a) Grantees and subrecipients shall comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, except that:

(1) Section 200.305 “Payment” is modified for lump sum drawdown for financing of property rehabilitation activities, in accordance with § 570.513.

(2) Section 200.306 “Cost sharing or matching” does not apply.

(3) Section 200.307 “Program income” does not apply. Program income is governed by § 570.504.

(4) Section 200.308 “Revisions of budget and program plans” does not apply.

(5) Section 200.311 “Real property” does not apply, except as provided in § 570.200(j). Real property is governed by § 570.505.

(6) Section 200.313 “Equipment” applies, except that when the equipment is sold, the proceeds shall be program income. Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient.

(7) Section 200.333 “Retention requirements for records” applies except that:

(i) For recipients:

(A) The period shall be 4 years from the date of execution of the closeout agreement for a grant, as further described in this part;

(B) Records for individual activities subject to the reversion of assets provisions at § 570.503(b)(7) or the change of use provisions at § 570.505 must be maintained for 3 years after those provisions no longer apply to the activity;

(C) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained for 3 years after the receivables or liabilities have been satisfied.

(ii) For subrecipients:

(A) The retention period for individual CDBG activities shall be the longer of 3 years after the expiration or termination of the subrecipient agreement under § 570.503, or 3 years after the submission of the annual performance and evaluation report, as prescribed in § 91.520 of this title, in which the specific activity is reported on for the final time;

(B) Records for individual activities subject to the reversion of assets provisions at § 570.503(b)(7) or change of use provisions at § 570.505 must be maintained for as long as those provisions continue to apply to the activity; and

(C) Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied.

(8) Section 200.343 “Closeout” applies to closeout of subrecipients.

(b) [Reserved]

■ 65. Amend § 570.503 by:

■ a. In paragraph (b)(4), removing “administrative” everywhere it appears; and

■ b. Revising paragraph (b)(6).

The revision reads as follows:

§ 570.503 Agreements with subrecipients.

* * * * *

(b) * * *

(6) *Suspension and termination.* The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

* * * * *

§ 570.508 [Amended]

■ 66. Amend § 570.508 by removing “24 CFR 85.42(f)” and adding in its place “2 CFR 200.337”.

§ 570.509 [Amended]

■ 67. Amend § 570.509 as follows:

■ a. In paragraph (e), remove “24 CFR 85.44” and add in its place “2 CFR 200.339”; and

■ b. In paragraph (f), remove “24 CFR 85.43(c)” and add in its place “2 CFR 200.342”.

§ 570.511 [Amended]

■ 68. Amend § 570.511(a)(2) by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

■ 69. Revise § 570.610 to read as follows:

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, as set forth at § 570.502.

§ 570.611 [Amended]

■ 70. Amend § 570.611 as follows:

■ a. In paragraph (a)(1), remove “24 CFR 85.36 and 24 CFR 84.42, respectively,” and add in its place “2 CFR 200.317 and 200.318”; and

■ b. In paragraph (a)(2), remove “24 CFR 85.36 and 84.42” and add in its place “2 CFR 200.317 and 200.318”.

§ 570.904 [Amended]

■ 71. Amend § 570.904(d) by removing “24 CFR 85.36(e)” and both instances of “§ 85.36(e) of this chapter” and adding in their place “2 CFR 200.321”.

PART 573—LOAN GUARANTEE RECOVERY FUND

■ 72. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

§ 573.9 [Amended]

■ 73. Amend § 573.9(b) by removing “2 CFR part 84” everywhere it appears and adding in its place “2 CFR part 200”.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 74. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

§ 574.3 [Amended]

■ 75. In § 574.3, amend the definition of “Project sponsor” by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

§ 574.300 [Amended]

■ 76. Amend § 574.300(c)(5) by removing “24 CFR parts 84 and 85” and adding in its place “2 CFR 200.311”.

§ 574.500 [Amended]

■ 77. Amend § 574.500(c) by:

■ a. Removing “24 CFR 85.43” and adding in its place “2 CFR part 200, subpart D”; and

■ b. Removing “paragraph (a) of that section” and adding in its place “2 CFR 200.338”.

■ 78. Revise § 574.605 to read as follows:

§ 574.605 Applicability of uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The provisions of 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, apply to HOPWA grants.

§ 574.625 [Amended]

■ 79. In § 574.625, amend paragraph (a) by removing “OMB Circular A–102 and 24 CFR 85.36(b)(3)” and adding in its place “2 CFR 200.317 (for recipients and subrecipients that are States) and 2 CFR 200.318 (for recipients and subrecipients that are not States)”.

■ 80. Revise § 574.650 to read as follows:

§ 574.650 Audit.

Grantees and project sponsors are subject to the audit requirements set forth in 2 CFR part 200, subpart F.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAMS

■ 81. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

§ 576.2 [Amended]

■ 82. In § 576.2, amend the definition of “Program income” by removing “24 CFR 85.25” and adding in its place “2 CFR 200.80”.

§ 576.100 [Amended]

■ 83. Amend § 576.100(d) by removing “OMB Circulars A–87 (2 CFR 225) and A–122 (2 CFR 230)” and adding in its place “2 CFR part 200, subpart E”.

§ 576.109 [Amended]

■ 84. Amend § 576.109 as follows:

■ a. In paragraph (a), remove “OMB Circular A–87 (2 CFR part 225), or A–122 (2 CFR part 230), as applicable” and add in its place “2 CFR part 200, subpart E”; and

■ b. In paragraph (b), remove “an indirect cost rate proposal developed in accordance with OMB Circular A–87 (2 CFR part 225), or A–122 (2 CFR part 230), as applicable” and add in its place “2 CFR part 200, subpart E”.

§ 576.200 [Amended]

■ 85. Amend § 576.200(a) by removing “24 CFR 85.12” and adding in its place “2 CFR 200.207”.

■ 86. Revise § 576.201(a), (b), and (c) to read as follows:

§ 576.201 Matching requirement.

(a) The recipient must make matching contributions to supplement the recipient’s ESG program in an amount that equals the recipient’s fiscal year grant for ESG. This amount may include contributions to any project under the recipient’s ESG program, including any subrecipient’s ESG project, if the requirements in this section are met. The first \$100,000 of a State’s fiscal year grant is not required to be matched, but the benefit of this exception must pass to the state’s subrecipients that are least capable of providing matching contributions. The match requirements under this section do not apply if the recipient is a territory.

(b) To be recognized as match for ESG, each contribution must meet the requirements under 2 CFR 200.306, except that:

(1) Notwithstanding 2 CFR 200.306(b)(4), matching contributions are not subject to the expenditure limits in § 576.100; and

(2) Notwithstanding 2 CFR 200.306(b)(5), the recipient may use funds from another Federal program as match for ESG, unless doing so would violate a specific statutory prohibition or the recipient or subrecipient counts ESG funds as match for that program.

(c) The recipient may count as match the value specified in 2 CFR 200.306(d)

for any building the recipient or subrecipient donates for long-term use in the recipient’s ESG program, provided that depreciation on the building is not counted as match or charged to any Federal award. If a third party donates a building to the recipient or subrecipient, the recipient may count as match either depreciation of the building and fair rental charges for the land for each year the building is used for the recipient’s ESG program or, if the building is donated for long-term use in the recipient’s ESG program, the fair market value of the capital assets, as specified in 2 CFR 200.306(h)(2), (i), and (j). To qualify as a donation for long-term use, the donation must be evidenced by a recorded deed or use restriction that is effective for at least 10 years after the donation date. If the donated building is renovated with ESG funds, the minimum period of use under § 576.102(c) may increase the period for which the building must be used in the recipient’s ESG program.

* * * * *

■ 87. In § 576.404, add a sentence at the end of paragraph (a) and revise paragraph (b) introductory text to read as follows:

§ 576.404 Conflicts of interest.

(a) * * * Recipients and subrecipients must also maintain written standards of conduct covering organizational conflicts of interest required under 2 CFR 200.318.

(b) *Individual conflicts of interest.* For the procurement of goods and services, the recipient and its subrecipients must comply with 2 CFR 200.317 and 200.318. For all other transactions and activities, the following restrictions apply:

* * * * *

§ 576.406 [Amended]

■ 88. Amend § 576.406(e) by:

■ a. Removing “Solutions ESG funds” and adding in its place “ESG funds”; and

■ b. Removing “(see 24 CFR parts 84 and 85)” and adding in its place “(see 2 CFR 200.311)”.

■ 89. Revise § 576.407(c) to read as follows:

§ 576.407 Other Federal requirements.

* * * * *

(c) *Uniform requirements.* The requirements of 2 CFR part 200 apply to the recipient and subrecipients, and:

(1) Program income may be used as matching contributions, subject to the requirements in § 576.201;

(2) The disposition of real property for which ESG funds are used for major

rehabilitation, conversion, or other renovation under § 576.102 is governed by the minimum period of use requirements under § 576.102(c).

* * * * *

■ 90. Amend § 576.500 as follows:

■ a. In paragraph (a), add at the end of the first sentence “, including those required by 2 CFR part 200”;

■ b. In paragraph (s)(2), remove “24 CFR part 85 (for governments) and 24 CFR part 84 (for nonprofit organizations)” and add in its place “2 CFR part 200”;

■ c. In paragraph (u)(2), remove “§ 576.101–§ 576.109 and the cost principles in OMB Circulars A–87 (2 CFR part 225) and A–122 (2 CFR part 230)” and add in its place “§ 576.101 through 576.109, financial management in 2 CFR 200.302, and the cost principles in 2 CFR part 200, subpart E”;

■ d. In paragraph (v)(2), remove “24 CFR 85.36 and 24 CFR 84.40–84.48” and add in its place “2 CFR part 200, subpart D”;

■ e. Revise paragraph (z)(1); and

■ f. In paragraph (aa), remove “24 CFR parts 85 and 91” and add in its place “2 CFR part 200 and 24 CFR part 91”.

The revision reads as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(z) * * *

(1) *Federal Government rights.*

Notwithstanding the confidentiality procedures established under paragraph (x) of this section, the recipient and its subrecipients must comply with the requirements for access to records in 2 CFR 200.336.

* * * * *

PART 578—CONTINUUM OF CARE PROGRAM

■ 91. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

§ 578.11 [Amended]

■ 92. Amend § 578.11 as follows:

■ a. In paragraph (b)(2), remove “24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States)” and add in its place “2 CFR 200.302”; and

■ b. In paragraph (c)(3), remove “24 CFR parts 84 and 85 and corresponding OMB circulars” and add in its place “2 CFR part 200, subpart D”.

§ 578.63 [Amended]

■ 93. Amend § 578.63 as follows:

■ a. In paragraph (a), remove “OMB Circulars A–87 or A–122, as applicable”

and add in its place “2 CFR part 200, subpart E”;

- b. In paragraph (b):
- i. Remove “subpart D” and add in its place “this subpart”; and
- ii. Remove “OMB Circulars A–87 or A–122, as applicable” and add in its place “2 CFR part 200, subpart E”.

■ 94. Amend § 578.73 as follows:

- a. In paragraph (b), revise the first sentence;
- b. In paragraph (c)(2), remove “24 CFR 84.23 and 85.24” and add in its place “2 CFR 200.306, with the exception of § 200.306(b)(5)”.

The revision reads as follows:

§ 578.73 Matching requirements.

* * * * *

(b) *Cash sources.* Notwithstanding 2 CFR 200.306(b)(5), a recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that funds from the source are not statutorily prohibited to be used as a match. * * *

* * * * *

§ 578.87 [Amended]

- 95. Amend § 578.87(b)(5) by removing “24 CFR parts 84 and 85” and adding in its place “2 CFR 200.311”.

§ 578.95 [Amended]

- 96. Amend § 578.95(a) by:
 - a. Removing “codes of conduct” and adding in its place “standards of conduct”; and
 - b. Removing “24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations)” and adding in its place “2 CFR 200.317 and 200.318”.
- 97. Revise § 578.99(e) and (g) to read as follows:

§ 578.99 Applicability of other federal requirements.

* * * * *

(e) *Applicability of uniform administrative requirements, cost principles, and audit requirements for Federal awards.* The requirements of 2 CFR part 200 apply to recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

* * * * *

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of 2 CFR part 200, subpart F.

* * * * *

§ 578.103 [Amended]

- 98. Amend § 578.103 as follows:

- a. In paragraph (a)(16)(iii), remove “24 CFR 85.36 and 24 CFR part 84” and add in its place “2 CFR part 200, subpart D”; and
- b. In paragraph (e), remove “24 CFR parts 84 and 85” and add in its place “2 CFR part 200, subpart D”.

§ 578.109 [Amended]

- 99. Amend § 578.109(a) by removing “24 CFR parts 84 and 85” and adding in its place “2 CFR part 200, subpart D”.

PART 582—SHELTER PLUS CARE

■ 100. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

- 101. Amend § 582.340 as follows:
 - a. Revise the heading for paragraph (a) and remove footnote 1;
 - b. Revise paragraph (a)(1);
 - c. In paragraph (a)(2):
 - i. Remove “24 CFR part 44” and add in its place “2 CFR part 200, subpart F”; and
 - ii. Remove “24 CFR part 45” and add in its place “2 CFR part 200, subpart F”; and
 - d. In paragraph (b)(1), add “(as revised April 1, 2013)” after “24 CFR part 85”.

The revisions read as follows:

§ 582.340 Other Federal requirements.

* * * * *

(a) *Uniform requirements.* (1) The policies, guidelines, and requirements of 24 CFR part 85 (as revised April 1, 2013) apply to the acceptance and use of assistance under the program by governmental entities and 24 CFR part 84 (as revised April 1, 2013) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with provisions of the McKinney Act, other Federal statutes, or this part.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

■ 102. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

§ 583.150 [Amended]

- 103. Amend § 583.150(b)(5) by adding “(as revised April 1, 2013)” after “24 CFR parts 84 and 85”.
- 104. Amend § 583.330 as follows:
 - a. Revise paragraph (c);
 - b. In paragraph (e)(1), add “(as revised April 1, 2013)” after “24 CFR part 85”; and
 - c. In paragraph (f), remove “24 CFR part 44 or part 45, as applicable” and

add in its place “2 CFR part 200, subpart F”.

The revision reads as follows:

§ 583.330 Applicability of other Federal requirements.

* * * * *

(c) *Uniform requirements.* The policies, guidelines, and requirements of 24 CFR part 85 (as revised April 1, 2013) apply to the award, acceptance, and use of assistance under the program by governmental entities, and 24 CFR part 84 (as revised April 1, 2013) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of the McKinney Act, other Federal statutes, or this part.

* * * * *

PART 700—CONGREGATE HOUSING SERVICES PROGRAM

■ 105. The authority citation for part 700 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

§ 700.115 [Amended]

- 106. Amend § 700.115 as follows:
 - a. In paragraph (a)(2), remove “OMB Cost Policies, *i.e.*, OMB Circular A–87, 24 CFR 85.36, and OMB Circular A–128” and add in its place “2 CFR part 200, subpart E”; and
 - b. In paragraph (b)(2)(viii), remove “OMB Circular A–87 or 122” and add in its place “2 CFR part 200, subpart E”.
 - 107. Amend § 700.175 as follows:
 - a. Revise paragraph (a); and
 - b. In paragraph (b), remove “OMB Circular A–87 and 24 CFR part 85” and add in its place “2 CFR 200.112 (for all recipients and subrecipients); 200.317 (for recipients and subrecipients that are States); and 200.318(c) and 200.319(a)(5) (for recipients and subrecipients that are not States)”.
- The revision reads as follows:

§ 700.175 Other Federal requirements.

* * * * *

(a) *Uniform administrative requirements, cost principles, and audit requirements for Federal awards.* The policies, guidelines, and requirements in 2 CFR part 200, including the audit requirements described in subpart F, apply to the acceptance and use of assistance under this program.

* * * * *

PART 761—DRUG ELIMINATION PROGRAMS

■ 108. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

§ 761.30 [Amended]

- 109. Amend § 761.30(a) by removing “24 CFR part 85 (as applicable)” and adding in its place “2 CFR part 200”.

§ 761.35 [Amended]

- 110. Amend § 761.35 as follows:
 - a. In paragraph (a)(1), remove “24 CFR part 85.40(b)(1)(2) and 85.50(b)” and add in its place “2 CFR 200.328”; and
 - b. In paragraph (c)(1), remove “24 CFR part 85.41 (b) and (c)” and add in its place “2 CFR 200.327”.

§ 761.40 [Amended]

- 111. Amend § 761.40(d) introductory text by removing “24 CFR part 85” and adding in its place “2 CFR 200.112 (for all recipients and subrecipients), 200.317 (for recipients and subrecipients that are States), and 200.318(c) and 200.319(a)(5) (for recipients and subrecipients that are not States)”.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

- 112. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

- 113. Revise § 880.211 to read as follows:

§ 880.211 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project or a contract administrator under § 880.505 receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

- 114. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

- 115. Revise § 881.211 to read as follows:

§ 881.211 Audit.

(a) Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project or a contract administrator under § 881.505 receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

- 116. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 882.124 [Amended]

- 117. Amend § 882.124 by removing “24 CFR part 44” and adding in its place “2 CFR part 200, subpart F”.

§ 882.516 [Amended]

- 118. In § 882.516, amend paragraph (e) by removing “guidelines prescribed by 24 CFR part 44” and adding in its place “2 CFR part 200, subpart F”.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

- 119. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

- 120. Revise § 883.313 to read as follows:

§ 883.313 Audit.

Where housing assistance under the Section 8 Program is provided for projects developed or owned by non-Federal entities (as defined in 2 CFR 200.69), the audit requirements in 2 CFR part 200, subpart F, shall apply.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

- 121. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

- 122. Revise § 884.124 to read as follows:

§ 884.124 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project, or is a contract administrator under § 884.119 or § 884.120, receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

- 123. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

- 124. Revise § 886.131 to read as follows:

§ 886.131 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project, or is a contract administrator under § 886.120, receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

- 125. Revise § 886.336 to read as follows:

§ 886.336 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

- 126. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

§ 891.160 [Amended]

- 127. Amend § 891.160 by removing “24 CFR 5.107” and adding in its place “2 CFR part 200, subpart F”.

§ 891.515 [Amended]

- 128. Amend § 891.515 by removing “24 CFR part 45” and adding in its place “2 CFR part 200, subpart F”.

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

- 129. The authority citation for part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

§ 902.33 [Amended]

- 130. Amend § 902.33 as follows:
 - a. In paragraph (c), remove “OMB Circular A–133 (see 24 CFR 85.26)” and add in its place “2 CFR part 200, subpart F”; and
 - b. In paragraph (d), remove “OMB Circular A–133” and add in its place “2 CFR part 200, subpart F,”.

§ 902.60 [Amended]

- 131. Amend § 902.60(c)(1) by removing “OMB Circular A–133” and adding in its place “2 CFR part 200, subpart F,”.

§ 902.62 [Amended]

- 132. Amend § 902.62(a)(3) by removing “OMB Circular A–133 (see 24 CFR 85.26)” and adding in its place “2 CFR part 200, subpart F”.

§ 902.64 [Amended]

■ 133. Amend § 902.64(c)(2)(iii) by removing “OMB Circular A–133” and adding in its place “2 CFR part 200, subpart F”.

§ 902.71 [Amended]

■ 134. Amend § 902.71(b) by removing “(see 24 CFR 85.36)” and adding in its place “(see 2 CFR 200.319, as applicable)”.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 135. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

§ 905.100 [Amended]

■ 136. Amend § 905.100(e) by removing “24 CFR part 85” and adding in its place “2 CFR part 200”.

§ 905.108 [Amended]

■ 137. In § 905.108, amend the definition of “Reasonable cost” by removing “24 CFR part 85, and 2 CFR part 225 (codifying OMB Circular A–87)” and adding in its place “2 CFR part 200”.

§ 905.202 [Amended]

■ 138. Amend § 905.202(d) by removing “2 CFR part 225 (codifying OMB Circular A–87)” and adding in its place “2 CFR part 200, subpart E”.

§ 905.308 [Amended]

■ 139. Amend § 905.308(a) by removing “24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments)” and adding in its place “2 CFR part 200”.

§ 905.310 [Amended]

■ 140. Amend § 905.310(a) by removing “24 CFR 85.21” and adding in its place “2 CFR 200.305”.

§ 905.316 [Amended]

■ 141. Amend § 905.316 as follows:

■ a. In paragraph (a), remove “24 CFR 85.36” and add in its place “2 CFR part 200”; and

■ b. In paragraph (d), remove “24 CFR 85.36(h)” and add in its place “24 CFR 85.36 (as revised April 1, 2013)”.

§ 905.320 [Amended]

■ 142. Amend § 905.320(a) by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

§ 905.322 [Amended]

■ 143. Amend § 905.322(c) by removing “24 CFR 85.26” and adding in its place “2 CFR part 200, subpart F”.

§ 905.604 [Amended]

■ 144. Amend § 905.604 to read as follows:

■ a. In paragraph (h), remove “24 CFR part 85” and add in its place “2 CFR part 200”.

■ b. In paragraph (h)(2), remove “24 CFR part 85” everywhere it appears and add in its place “2 CFR part 200”.

PART 943—PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

■ 145. The authority citation for part 943 continues to read as follows:

Authority: 42 U.S.C. 1437k and 3535(d).

§ 943.148 [Amended]

■ 146. Amend § 943.148(b)(2) by removing “part 84 of this title (if the entity is a nonprofit) or part 85 of this title (if the entity is a State or local government)” and adding in its place “2 CFR part 200 (if the entity is a nonprofit or a State or local government)”.

§ 943.150 [Amended]

■ 147. Amend § 943.150 to read as follows:

■ a. In paragraph (a), remove “part 84 or part 85 of this title” and add in its place “2 CFR part 200”; and

■ b. In paragraph (b), remove “part 85 of this title” everywhere it appears and add in its place “2 CFR part 200”.

§ 943.151 [Amended]

■ 148. Amend § 943.151(a) by removing “part 85 of this title” and adding in its place “2 CFR part 200”.

PART 963—PUBLIC HOUSING— CONTRACTING WITH RESIDENT- OWNED BUSINESSES

■ 149. The authority citation for part 963 continues to read as follows:

Authority: 42 U.S.C. 1437 and 3535(d).

§ 963.1 [Amended]

■ 150. Amend § 963.1 by removing “24 CFR 85.36” and adding in its place “24 CFR 85.36 (as revised April 1, 2013)”.

§ 963.10 [Amended]

■ 151. Amend § 963.10(c) by removing “24 CFR 85.36(b)(8)” and adding in its place “24 CFR 85.36(b)(8) (as revised April 1, 2013)”.

§ 963.12 [Amended]

■ 152. Amend § 963.12 as follows:

■ a. In paragraph (a):

■ i. Remove “24 CFR 85.36(d)” and add in its place “24 CFR 85.36(d) (as revised April 1, 2013)”; and

■ ii. Remove “24 CFR 85.36(b)” and add in its place “24 CFR 85.36(b) (as revised April 1, 2013)”; and

■ b. In paragraph (b), remove “24 CFR 85.36(f)” and add in its place “24 CFR 85.36(f) (as revised April 1, 2013)”; and

■ c. In paragraph (c):

■ i. Remove “the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1)” and add in its place “the contract provisions of 24 CFR 85.36(i) (as revised April 1, 2013); the provisions of 24 CFR 85.36(h) (as revised April 1, 2013) or 24 CFR 905.316(d)”; and

■ ii. Remove “recordkeeping requirements imposed by 24 CFR 85.36(i)” and add in its place “recordkeeping requirements imposed by 24 CFR 85.36(i) (as revised April 1, 2013)”.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

■ 153. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

§ 964.230 [Amended]

■ 154. Amend § 964.230 as follows:

■ a. In paragraph (a)(1), remove “OMB Circulars A–110 and A–122” and add in its place “2 CFR part 200”; and

■ b. In paragraph (b), remove “OMB Circulars A–110 and A–122” and add in its place “2 CFR part 200”.

§ 964.350 [Amended]

■ 155. Amend § 964.350(b) by removing “OMB Circular Nos. A–110 and A–122” and adding in its place “2 CFR part 200”.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

■ 156. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

§ 965.205 [Amended]

■ 157. Amend § 965.205 as follows:

■ a. In paragraph (b), remove “24 CFR part 85” and add in its place “2 CFR 200.319”; and

■ b. In paragraph (d)(1), remove “24 CFR part 44” and add in its place “2 CFR part 200, subpart F”.

§ 965.215 [Amended]

■ 158. Amend § 965.215(d) by removing “part 85 of this title” and adding in its place “2 CFR part 200”.

§ 965.308 [Amended]

■ 159. Amend § 965.308 as follows:

■ a. In paragraph (a)(1), remove “24 CFR 85.36(d)(3)” and “§ 85.36(d)(3)(i) of this title” and add in their place “2 CFR 200.320(d)”; and

■ b. In paragraph (a)(2), remove “24 CFR 85.36(d)(4)(i)(A)” and add in its place “2 CFR 200.320(f)”.

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

■ 160. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

§ 970.1 [Amended]

■ 161. Amend § 970.1 by removing “24 CFR part 85” and adding in its place “2 CFR part 200”.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 162. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 982.159 [Amended]

■ 163. Amend § 982.159(b) by removing “24 CFR part 44” and adding in its place “2 CFR part 200, subpart F”.

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

■ 164. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

§ 990.190 [Amended]

■ 165. Amend § 990.190(d) by removing “24 CFR part 85” and adding in its place “2 CFR part 200, subpart F”.

§ 990.195 [Amended]

■ 166. Amend § 990.195(e) by removing “24 CFR 85.25” everywhere it appears and adding in its place “24 CFR 85.25 (as revised April 1, 2013)”.

§ 990.280 [Amended]

■ 167. Amend § 990.280(b)(2) by removing “e.g., OMB Circulars” and adding in its place “e.g., 2 CFR part 200”.

§ 990.310 [Amended]

■ 168. Amend § 990.310 by removing “24 CFR 85.20, 85.40, and 85.41” and adding in its place “2 CFR part 200”.

§ 990.320 [Amended]

■ 169. Amend § 990.320 by removing “24 CFR 85.26” and adding in its place “2 CFR part 200, subpart F”.

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 170. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 171. Amend § 1000.26 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(1) introductory text:

■ i. Remove “Attachment B of OMB Circular A-87” and add in its place “2 CFR part 200, subpart E,”; and

■ ii. Remove “Attachment A of this circular” and add in its place “2 CFR part 200, subpart E,”;

■ c. Revise paragraphs (b)(1)(i) and (ii); and

■ d. Add paragraph (b)(1)(iii).

The revisions and addition read as follows:

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, except for the following sections:

(1) Section 200.113 applies, except that, in lieu of the remedies described in § 200.338, HUD shall be authorized to seek remedies under subpart F of this part.

(2) Section 200.302(a), “Financial management.”

(3) Section 200.305, “Payment,” applies, except that HUD shall not require a recipient to expend retained program income before drawing down or expending IHBG funds.

(4) Section 200.306, “Cost sharing or matching.”

(5) Section 200.307, “Program income.”

(6) Section 200.308, “Revision of budget and program plans.”

(7) Section 200.311, “Real property,” except as provided in 24 CFR 5.109.

(8) Section 200.313, “Equipment,” applies, except that in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 200.314, “Supplies,” applies, except in all cases in which the

supplies are sold, the proceeds shall be program income.

(10) Section 200.317, “Procurement by states.”

(11) Sections 200.318 through 200.326 apply, as modified in this paragraph (a)(11):

(i) *De minimis procurement.* A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.

(ii) *Utilizing Federal supply sources in procurement.* In accordance with Section 101(j) of NAHASDA, recipients may use Federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

(12) Section 200.325, “Bonding requirements,” applies. There may be circumstances under which the bonding requirements of 2 CFR 200.325 are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(13) Section 200.328(b) through (d) and (f), “Monitoring and reporting program performance.”

(14) Section 200.333, “Retention requirements for records.”

(15) Section 200.338, “Remedies for noncompliance.”

(16) Section 200.343, “Closeout.”

(b) * * *

(1) * * *

(i) Depreciation method for fixed assets shall not be changed without the approval of the Federal cognizant agency.

(ii) Penalties, damages, fines and other settlements are unallowable costs to the IHBG program.

(iii) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances

and personal living expenses (goods or services for personal use), regardless of whether reported as taxable income to the employees (2 CFR 200.445) requires HUD prior approval.

* * * * *

§ 1000.30 [Amended]

■ 172. Amend § 1000.30(a) by removing “24 CFR 85.36” in the two places where it appears and adding in its place “2 CFR 200.318”.

§ 1000.52 [Amended]

■ 173. Amend § 1000.52 as follows:

- a. In paragraph (c)(2)(iii), remove “24 CFR 85.36” and add in its place “2 CFR 200.318 through 200.326”; and
- b. In paragraph (c)(3):
 - i. Remove “24 CFR 85.36” in the two places where it appears and add in its place “2 CFR 200.320”; and
 - ii. Remove “of paragraph (c)(1) of this section”.

§ 1000.503 [Amended]

■ 174. Amend § 1000.503 as follows:

- a. In paragraph (a)(4), remove “Office of Management and Budget (OMB) Circular A-133 audits” and add in its place “audits under 2 CFR part 200, subpart F”;
- b. In paragraph (a)(5), remove “OMB Circular A-133” and add in its place “2 CFR part 200, subpart F.”; and
- c. In paragraph (a)(6), remove “OMB Circular A-133” and add in its place “2 CFR part 200, subpart F.”.

§ 1000.544 [Amended]

■ 175. Amend § 1000.544 by:

- a. Removing “including OMB Circular A-133” and adding in its place “implemented by 2 CFR part 200, subpart F”;
- b. Removing “in OMB Circular A-133, subpart B, section 200” and adding in its place “in 2 CFR 200.501”.
- 176. Revise § 1000.548 to read as follows:

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

No. A copy of the recipient audit under the Single Audit Act relating to NAHASDA activities is only required to be submitted to the Federal Audit Clearinghouse pursuant to 2 CFR part 200, subpart F.

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

■ 177. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

§ 1003.4 [Amended]

■ 178. In § 1003.4, amend the definition of “Subrecipient” by:

- a. Removing “§ 1003.201(o)” and adding in its place “§ 1003.201(l)”;
- b. Removing “24 CFR 85.36 or in 24 CFR part 84, as applicable” and adding in its place “2 CFR 200.318 through 200.326”.

§ 1003.206 [Amended]

■ 179. Amend § 1003.206 as follows:

- a. In paragraph (a)(4):
 - i. Remove “or use allowances for such items in accordance with OMB Circulars A-21, A-87 or A-122, as applicable” and add in its place “for such items in accordance with 2 CFR part 200, subpart E”;
 - ii. Remove “(OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street NW., Suite G-2200, Washington, DC 20503, Telephone, 202-395-7332.)”;
- b. In paragraph (c), remove “OMB Circular A-21, A-87, or A-122, as applicable” and add in its place “2 CFR part 200, subpart E”.

§ 1003.207 [Amended]

■ 180. Amend § 1003.207 as follows:

- a. In paragraph (a)(2), remove “OMB Circular A-87” and add in its place “2 CFR part 200, subpart E”;
- b. In paragraph (b)(1)(i), remove “leasing, depreciation or use allowances pursuant to OMB Circular A-21, A-87 or A-122 as applicable” and add in its place “leasing or depreciation pursuant to 2 CFR part 200, subpart E.”.
- 181. Amend § 1003.501 as follows:
 - a. Revise paragraph (a);
 - b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b);
 - c. Revise the heading of newly redesignated paragraph (b);
 - d. In newly redesignated paragraph (b)(1):
 - i. Remove “Attachment B of OMB Circulars A-21, A-87, or A-123, as applicable,” and add in its place “2 CFR part 200, subpart E”;
 - ii. Remove “Attachment A of such circulars” and add in its place “2 CFR part 200, subpart E.”.
 - e. In newly redesignated paragraph (b)(1)(i), remove “specific approval of HUD or, if charged through a cost allocation plan,” and add in its place “the approval of”;
 - f. In newly redesignated paragraph (b)(1)(ii), remove “and penalties” and add in its place “, penalties, damages, and other settlements”;

■ g. Add paragraphs (b)(1)(iii) and (iv). The revision and additions read as follows:

§ 1003.501 Applicability of uniform administrative requirements and cost principles.

(a) Grantees and subrecipients shall comply with the requirements and standards of 2 CFR part 200, except for the following sections:

- (1) Paragraph (a) of § 200.302, “Financial management.”
- (2) Section 200.306, “Cost sharing or matching.”
- (3) Section 200.307, “Program income” applies as modified by § 1003.503.
- (4) Section 200.308, “Revisions of budget and program plans.”
- (5) Section 200.311, “Real property,” except as provided in § 1003.600.
- (6) Section 200.313, “Equipment” applies, except that in all cases in which the equipment is sold, the proceeds shall be program income.
- (7) Section 200.314, “Supplies,” applies, except in all cases in which the supplies are sold, the proceeds shall be program income.
- (8) Section 200.325, “Bonding requirements” applies. However, there may be circumstances under which the bonding requirements of 2 CFR 200.325 are inconsistent with other responsibilities and obligations of the grantee. In such circumstances, acceptable methods to provide performance and payment assurance may include:
 - (i) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or
 - (ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.
- (9) Paragraphs (b) through (d) and (f) of § 200.328, “Monitoring and reporting program performance.”
- (10) Section 200.333, “Retention requirements for records” applies. However, the retention period referenced in 2 CFR 200.333 pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 1003.506(a) in which the specific activity is reported.
- (11) Section 200.343, “Closeout.”
 - (b) *Cost principles.* (1)* * *
 - (iii) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or

services for personal use), regardless of whether reported as taxable income to the employees (2 CFR 200.445), require HUD prior approval.

(iv) Organization costs (2 CFR 200.455) require HUD prior approval.

■ 182. Amend § 1003.502 as follows:

■ a. In paragraph (b)(3), remove “§ 85.25” and add in its place “2 CFR 200.307”.

■ b. Revise paragraph (b)(7).

The revision reads as follows:

§ 1003.502 Agreements with subrecipients.

* * * * *

(b) * * *

(7) *Suspension and termination.* The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

* * * * *

§ 1003.503 [Amended]

■ 183. Amend § 1003.503 as follows:

■ a. In paragraph (a), remove “24 CFR 85.25” and add in its place “2 CFR 200.307”;

■ b. In paragraph (b)(6), remove “24 CFR 85.25” and add in its place “2 CFR 200.307”; and

■ c. In paragraph (b)(7), remove “24 CFR 85.25(g)(2)” and add in its place “2 CFR 200.307(e)(2)”.

§ 1003.507 [Amended]

■ 184. Amend § 1003.507 by removing “24 CFR 85.42(f)” and adding in its place “2 CFR 200.337”.

§ 1003.508 [Amended]

■ 185. Amend § 1003.508 as follows:

■ a. In paragraph (b)(4), remove “24 CFR part 44” and add in its place “2 CFR part 200, subpart F”;

■ b. In paragraph (d), remove “24 CFR 85.44” and add in its place “2 CFR 200.339”; and

■ c. In paragraph (e), remove “24 CFR 85.43(c)” and add in its place “2 CFR 200.342”.

§ 1003.509 [Amended]

■ 186. Amend § 1003.509(e) by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

§ 1003.510 [Amended]

■ 187. Amend § 1003.510 as follows:

■ a. In paragraph (d)(2)(iii), remove “24 CFR 85.36” and add in its place “2 CFR 200.320”;

■ b. In paragraph (d)(3), remove “24 CFR 85.36” in the two places where it appears and add in their place “2 CFR 200.320”.

§ 1003.511 [Amended]

■ 188. Amend § 1003.511(a)(2) by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

§ 1003.600 [Amended]

■ 189. Amend § 1003.600(f) by removing “24 CFR parts 84 and 85” and adding in its place “2 CFR 200.311(c).”

§ 1003.606 [Amended]

■ 190. Amend § 1003.606 as follows:

■ a. In paragraph (a)(1), remove “24 CFR 85.36 and 24 CFR 84.42” and add in its place “2 CFR 200.112, 200.318(c), and 200.319(a)(5)”;

■ b. In paragraph (a)(2), remove “24 CFR 85.36 and 24 CFR 84.42” and add in its place “2 CFR 200.318”.

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

■ 191. The authority citation for part 1006 continues to read as follows:

Authority: 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d).

§ 1006.230 [Amended]

■ 192. Amend § 1006.230(d) by removing “OMB Circulars A–87 or A–122 as applicable” and adding in its place “2 CFR part 200, subpart E”.

§ 1006.340 [Amended]

■ 193. Amend § 1006.340(b)(3) by removing “24 CFR part 85” and adding in its place “2 CFR 200.305”.

§ 1006.360 [Amended]

■ 194. Amend § 1006.360 by removing “24 CFR 85.36 or 24 CFR 84.42” and adding in its place “2 CFR 200.317 (for DHHL) and 2 CFR 200.318 (for subrecipients)”.

§ 1006.365 [Amended]

■ 195. Amend § 1006.365(b) by removing “24 CFR 85.36” and adding in its place “2 CFR part 200, subpart D”.

■ 196. Revise § 1006.370 to read as follows:

§ 1006.370 Uniform administrative, requirements, cost principles, and audit requirements for Federal awards.

(a) The DHHL and subrecipients receiving NHHBG funds shall comply with the requirements and standards of 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

(b)(1) With respect to the applicability of cost principles, all items of cost listed in 2 CFR part 200, subpart E, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply

with the general policies and principles stated in 2 CFR part 200, subpart E, and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.

(ii) Fines, penalties, damages, and other settlements are unallowable costs to the NHHBG program.

(iii) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).

(iv) Organization costs (2 CFR 200.455).

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. The Executive Pay Schedule may be obtained by <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>.

§ 1006.375 [Amended]

■ 197. Amend § 1006.375(d) by:

■ a. Removing “OMB Circular A–133” and adding in its place “2 CFR part 200, subpart F”;

■ b. Removing “HUD concurrent with submittal to the Audit Clearinghouse” and adding in its place “the Federal Audit Clearinghouse”.

§ 1006.420 [Amended]

■ 198. Amend § 1006.420(b)(3) by removing “the DHHL” and adding in its place “the DHHL, including their retention under 2 CFR 200.333, noting that the NHHBG Annual Performance Report is the program’s final expenditure report”.

Dated: October 28, 2015.

Julián Castro,

Secretary.

[FR Doc. 2015–29692 Filed 12–4–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9734]

RIN 1545-BJ56

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9734) that was published in the Federal Register on September 18, 2015 (80 FR 56866). These corrections include a change to the effective date that was applicable to transactions issued on or after January 1, 2016, and before January 1, 2017. This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments.

DATES: This correction is effective on December 7, 2015 and applicable on September 18, 2015.

FOR FURTHER INFORMATION CONTACT: Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9734) that are the subject of this correction are under sections 871 and 894 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9734) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.871-15 is amended by revising paragraphs (i)(4) Example 1. (ii), (i)(4) Example 2. (ii), (r)(1), and (r)(3) and adding paragraph (r)(4) to read as follows:

§ 1.871-15 Treatment of dividend equivalents.

* * * * *

(i) * * *

(4) * * *

Example 1. * * *

(ii) Subject to paragraph (i)(2)(iv) of this section, the estimated dividend amounts are the per-share dividend amounts because the estimates are reasonable and specified in accordance with paragraph (i)(2)(iii) of this section. The estimated per-share dividend amounts are dividend equivalents for purposes of this section.

Example 2. * * *

(ii) Because the LIBOR leg of the swap contract is reduced to reflect estimated dividends and the estimated dividend amounts are not specified, Foreign Investor is treated as receiving the actual dividend amounts are in accordance with paragraph (i)(2) of this section. The actual per-share dividend amounts are dividend equivalents for purposes of this section.

* * * * *

(r) * * * (1) In general. This section applies to payments made on or after September 18, 2015 except as provided in paragraphs (r)(2), (3), and (4) of this section.

* * * * *

(3) Effective/applicability date for paragraphs (d)(2) and (e). Paragraphs (d)(2) and (e) of this section apply to any payment made on or after January 1, 2017, with respect to any transaction issued on or after January 1, 2017.

(4) Effective/applicability date for paragraphs (c)(2)(iv), (h), and (q) of this section. [Reserved]. For further guidance, see § 1.871-15T(r)(4).

Par. 3. Section 1.871-15T is amended by removing the language "transaction" and adding in its place "complex contract" in paragraph (h)(7) Example. (iv) and revising paragraph (h)(7) Example. (viii) to read as follows:

§ 1.871-15T Treatment of dividend equivalents (temporary).

* * * * *

(h) * * *

(7) * * *

Example. * * *

(viii) FI concludes that the Contract is not a section 871(m) transaction because the complex contract calculation of 7.68 exceeds the benchmark calculation of 4.473.

* * * * *

Par. 4. Section 1.1441-1 is amended by removing the second occurrence of paragraph (e)(3)(ii)(E) and adding paragraph (e)(3)(ii)(F) to read as follows:

§ 1.1441-1 Requirements for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) [Reserved]. For further guidance, see § 1.1441-1T(e)(3)(ii)(F).

* * * * *

Par. 5. Section 1.1441-1T is amended by revising the last sentence of paragraph (f)(3) to read as follows:

§ 1.1441-1T Requirements for the deduction and withholding of tax on payments to foreign persons (temporary).

* * * * *

(f) * * *

(3) * * * Paragraphs (e)(3)(ii)(E) and (e)(6) of this section apply beginning September 18, 2015.

* * * * *

Par. 6. Section 1.1461-1 is amended by adding a second sentence to paragraph (c)(2)(iii) to read as follows:

§ 1.1461-1 Payments and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(iii) * * * Paragraphs (c)(2)(i)(M) and (c)(2)(ii)(J) of this section apply beginning September 18, 2015.

* * * * *

Martin V. Franks, Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015-30777 Filed 12-4-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9734]

RIN 1545-BJ56

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9734) that was published in the Federal Register on September 18, 2015 (80 FR 56866). These corrections include a change to the effective date that was applicable to transactions issued on or after January 1,

2016, and before January 1, 2017. This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments.

DATES: This correction is effective on December 7, 2015 and applicable on September 18, 2015.

FOR FURTHER INFORMATION CONTACT: Peter Merkel or Karen Walny at (202) 317-6938 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9734) that are the subject of this correction are under sections 871 and 894 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9734) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9734), that are the subject of FR Doc. 2015-21759, are corrected as follows:

1. On page 56866, in the preamble, the first column, under the caption "DATES", the fourth through seventh lines of the paragraph, the language "applicability, see §§ 1.871-14(j)(3), 1.871-15(r), 1.871-15T(r)(4), 1.1441-1(f)(4), 1.1441-1T(f)(3), 1.1441-2(f), 1.1441-3(h)(3), 1.1441-7(a)(4), and " is corrected to read "applicability, see §§ 1.871-14(j)(3), 1.871-15(r), 1.871-15T(r)(4), 1.1441-1(f)(4), 1.1441-1T(f)(3), 1.1441-2(f), 1.1441-3(h)(3), 1.1441-7(a)(4), 1.1461-1(c)(2)(iii), and".

2. On page 56866, in the preamble, the first column, the eleventh line from the bottom of the column, the language "871(m). This information will be used" is corrected to read "871(m) of the Internal Revenue Code. This information will be used".

3. On page 56868, in the preamble, the first column, the ninth line from the bottom of the column, the language "discussed in section E.1 of this" is corrected to read "discussed in section F.1 of this".

4. On page 56869, in the preamble, the second column, the tenth line of the first full paragraph, the language "dividends. As noted in Part II.L. of this" is corrected to read "dividends. As noted in Part II.M. of this".

5. On page 56870, in the preamble, the first column, the thirty-second line from the bottom of the column, the

language "D. Payment of a Dividend Equivalent" is corrected to read "E. Payment of a Dividend Equivalent".

6. On page 56870, in the preamble, the second column, the twenty-second line of the second full paragraph, the language "equivalent, as discussed in Part II.M of" is corrected to read "equivalent, as discussed in Part II.N of".

7. On page 56870, in the preamble, the second column, the eighteenth line from the bottom of the column, the language "E. Amount of a Dividend Equivalent" is corrected to read "F. Amount of a Dividend Equivalent".

8. On page 56870, in the preamble, the third column, the eleventh line from the bottom of the column, the language "defined in § 1.871-15(a)(14)(ii)" is corrected to read "defined in § 1.871-15(a)(5)".

9. On page 56871, in the preamble, the first column, the twenty-sixth line from the bottom of the column, the language "F. Qualified Indices" is corrected to read "G. Qualified Indices".

10. On page 56872, in the preamble, the first column, the last line of the first full paragraph, the language "qualified index rule. See § 1.871-15(l)" is corrected to read "qualified index rule. See § 1.871-15(l)".

11. On page 56872, in the preamble, the second column, the sixth line from the bottom of the column, the language "G. Combined Transactions" is corrected to read "H. Combined Transactions".

12. On page 56873, in the preamble, the third column, the twelfth line from the top of the column, the language "H. Derivatives Referenced to Partnership" is corrected to read "I. Derivatives Referenced to Partnership".

13. On page 56873, in the preamble, the third column, the fifth line from the bottom of the column, the language "I. Anti-Abuse Rule" is corrected to read "J. Anti-Abuse Rule".

14. On page 56874, in the preamble, the first column, the twenty-fourth line from the top of the column, the language "J. Reporting Obligations" is corrected to read "K. Reporting Obligations".

15. On page 56874, in the preamble, the first column, the fifteenth line of the second full paragraph, the language "871(m) transaction the broker or dealer" is corrected to read "871(m) transaction, the broker or dealer".

16. On page 56874, in the preamble, the third column, the first line of column, the language "K. Recordkeeping Rules" is corrected to read "L. Recordkeeping Rules".

17. On page 56874, in the preamble, the third column, the thirty-second line from the top of column, the language "L.

Contingent and Convertible Debt" is corrected to read "M. Contingent and Convertible Debt".

18. On page 56875, in the preamble, the second column, the third line from the top of the column, the language "M. Amounts Subject to Withholding" is corrected to read "N. Amounts Subject to Withholding".

19. On page 56877, in the preamble, the second column, the fifth line from the bottom of the third full paragraph, the language "on the same underlying securities." is corrected to read "on the same underlying security.".

20. On page 56878, in the preamble, the second column, under the paragraph heading "IV. Effective/Applicability Date", the third sentence of the first full paragraph is removed.

Martin V. Franks,

*Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel, (Procedure and Administration).*

[FR Doc. 2015-30778 Filed 12-4-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

West Arm Behm Canal, Naval Surface Warfare Center, Ketchikan, Alaska; Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending existing regulations for an existing restricted area near Ketchikan, Alaska to correct inaccuracies in regards to flashing beacon light descriptions, point of contact changes, and restrictive area distances for small craft.

DATES: *Effective date:* January 6, 2016.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Ms. Linda Speerstra, U.S. Army Corps of Engineers, Alaska District, Regulatory Division, at 907-747-0658.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40

Stat 892; 33 U.S.C. 3), the Corps is amending the regulation at 33 CFR 334.1275 by revising the restricted area regulation for Area 5 in the waters of the West Arm Behm Canal, Naval Surface Warfare Center, Ketchikan, Alaska. This amendment revises the existing restricted area regulation to accurately describe the installed light configuration, update contact information, and increase vessel transiting opportunities.

The proposed rule was published in the **Federal Register** on June 22, 2015 (80 FR 35620), and the regulations.gov docket number is COE-2015-0009. In response to the proposed rule, one comment was received. The commenter recommended that an Environmental Impact Statement (EIS) be conducted. The Corps has determined that an EIS for this type of action is not necessary as it is an administrative action and would not result in environmental impacts. Therefore, no changes to the final rule are required.

Procedural Requirements

a. *Review Under Executive Order 12866.* The rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The restricted area is necessary to protect users of this waterway during naval operations. The restricted area will only be closed for brief amounts of time (usually no more than 20 minutes) when it is activated. The Corps has determined that the changes to this rule would have no significant economic impact on the public. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that these amendments to regulation will not have a significant

impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared and it may be reviewed at the Alaska district office.

d. *Unfunded Mandates Act.* This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. In § 334.1275, revise paragraphs (b)(5), (c), and (d) to read as follows:

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, restricted areas.

* * * * *

(b) * * *

(5) *Area No. 5.* (i) The area will be open unless the Navy is actually conducting operations. To ensure safe and timely passage through the restricted area vessel operators are required to notify the Facility Control Officer of their expected time of arrival, speed and intentions. For vessels not equipped with radio equipment, the Navy shall signal with flashing beacon lights whether passage is prohibited and when it is safe to pass through the area. A flashing amber beacon means that the area is closed to all vessels and to await a clear signal. The flashing amber beacon not lighted is the clear signal and indicates that vessels may proceed through the area. Each closure of the area by the Navy will normally not exceed 20 minutes.

(ii) When Area No. 5 restrictions are in place, vessels may operate within 1000 yards of the shoreline at speeds no greater than 5 knots in accordance with the restriction in effect in Area No. 3.

(c) Vessels will be allowed to transit Area No. 5 within 20 minutes of marine radio or telephone notification to the Navy Facility Control Officer.

(d) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Surface Warfare Center, Carderock Division, and such agencies he/she may designate.

Dated: November 15, 2015.

Edward E. Belk, Jr.,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2015-30776 Filed 12-4-15; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501 and 1502

[EPA-HQ-OARM-2015-0244; FRL-9925-90-OARM]

Environmental Protection Agency Acquisition Regulation (EPAAR); Ratification of Unauthorized Commitments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to address minor non-substantive changes in one subpart and one definition. The direct final rule updates “Ratification of Unauthorized Commitments” and revises the definition of Chief of the Contracting Office (CCO). EPA does not anticipate any adverse comments.

DATES: This rule is effective on February 5, 2016 without further notice, unless adverse comment is received January 6, 2016. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OARM-2015-0244 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* docket.oei@epa.gov.
- *Fax:* (202) 566-1753.
- *Mail:* EPA-HQ-OARM-2015-0244, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of three (3) copies.
- *Hand Delivery:* EPA Docket Center—Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC 20004. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OARM-2015-0244. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov> or email. The <http://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 <http://www.regulations.gov> your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy at the Government Property-Contract Property Administration Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Public Reading Room is (202) 566-1744 and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Rodney Neely, Policy, Training, and Oversight Division, Acquisition Policy and Training Service Center (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-564-2330; email address: neely.rodney@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

1. Do not submit Classified Business Information (CBI) to EPA Web site <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI, and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) Part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

3. Make sure to submit your comments by the comment period deadline identified.

I. Background

The EPA is revising EPAAR subpart 1501.602-3 Ratification of Unauthorized Commitments to the approval authorities and levels to be consistent with the Federal Acquisition Regulations (FAR). The Senior Procurement Executive (SPE) is responsible for ratification approvals for \$25,000 and above. The CCO is the approval authority for ratifications below \$25,000. The procedures of this subpart are clarified, along with minor editorial changes. 1502.100 Definitions is revised to update the definition of CCO.

II. Final Rule

This final rule makes the following changes:

1. Revise EPAAR subpart 1501.602-3 to update approval authorities and levels, remove procedures, and execute minor editorial changes.
2. Revise EPAAR 1502.100 to modify the definition of Chief of the Contracting Office.

Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impact of

today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" 5 U.S.C. 503 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This action revises current EPAAR clauses and will not have a significant economic impact on substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not have a proportionate effect on children.

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

This action is not subject to Executive Order 13211 (66 FR 28335 May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary

consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment in the general public.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of Agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Parts 1501 and 1502

Environmental protection,
Government procurement.

Dated: November 12, 2015.

John R. Bashista,

Director, Office of Acquisition Management.

For the reasons stated in the preamble, Chapter 15 of Title 48 Code

of Federal Regulations, parts 1501 and 1502 are amended as set forth below:

- 1. The authority citation for parts 1501 and 1502 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

PART 1501—GENERAL

- 2. Amend 1501.602–3 by revising paragraph (b) to read as follows:

1501.602–3 Ratification of unauthorized commitments.

* * * * *

(b)(1) *Ratification Approval.* The Senior Procurement Executive (SPE) as defined in 1502.100 is the ratifying official for all ratification actions \$25,000 and above.

(2) The Chief of the Contracting Office (CCO) as defined in 1502.100 is delegated authority to be the ratifying official for all ratification actions below \$25,000.

(3) The CCOs defined in 1502.100 for purposes of ratification authority only must meet the following criteria:

- (i) Must possess a contracting officer’s warrant and be in the 1102 job series;
- (ii) Are prohibited from re-delegating their ratification authority;
- (iii) Are prohibited from approving a ratification if he/she acted as a contracting officer in preparing the determination and findings required under paragraph (c)(3) of this section; and
- (iv) Must abide by the other limitations on ratification of unauthorized commitments set forth in FAR 1.602–3(c) and the EPAAR.

* * * * *

PART 1502—DEFINITION OF WORDS AND TERMS

- 3. Amend 1502.100 by revising the definition of “Chief of the Contracting Office (CCO)” to read as follows:

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati. For purposes of ratification authority only, CCO also includes Regional Acquisition Managers. (See 1501.602–3(b)(3) for the criteria for this ratification authority).

* * * * *

[FR Doc. 2015–30798 Filed 12–4–15; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 80, No. 234

Monday, December 7, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-4344; Directorate Identifier 2015-NE-32-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) CF6-80C2 and CF6-80E1 turbofan engines. This proposed AD was prompted by reports of a burn-through of the accessory heat shield during an accessory compartment fire leading to an engine fire. This proposed AD would require replacing the accessory heat shield assembly. We are proposing this AD to prevent high-temperature gas ingestion into the accessory compartment, engine fire, and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 5, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room

285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513-552-3272; email: aviation.fleetsupport@ge.com. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4344; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Herman Mak, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7147; fax: 781-238-7199; email: herman.mak@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-4344; Directorate Identifier 2015-NE-32-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

We received reports of a burn-through of the accessory heat shield during an

engine fire leading to an accessory compartment fire. A fire burns through the accessory heat shield and ignites the integrated drive generator (IDG), which supports further combustion. The existing accessory heat shield assembly leaves a large area above the sensitive accessories, such as the IDG and the main fuel pump, without adequate protection. A total of five events have occurred. This condition, if not corrected, could result in high-temperature gas ingestion into the accessory compartment, which could lead to engine fire and damage to the airplane.

Related Service Information Under 14 CFR Part 51

We reviewed GE Service Bulletin (SB) No. CF6-80C2 S/B 72-1520, dated September 22, 2015 and GE SB No. CF6-80E1 S/B 72-0525, dated September 22, 2015. These SBs describe the procedures for removing and replacing the accessory heat shield assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or see **ADDRESSES** for other ways to access this service information.

Other Related Service Information

We reviewed GE SB No. CF6-80C2 S/B 72-1523, dated September 22, 2015. The SB describes procedures for removing and replacing the accessory heat shield assembly.

FAA's Determination

We are proposing this NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This NPRM would require replacing the accessory heat shield assembly.

Costs of Compliance

We estimate that this proposed AD affects 935 engines installed on airplanes of U.S. registry. We also estimate that it would take about 5 hours per engine to comply with this proposed AD. The average labor rate is \$85 per hour. Parts would cost about \$1,832 per engine. Based on these figures, we estimate the total cost of this

proposed AD to U.S. operators to be \$2,110,295.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA-2015-4344; Directorate Identifier 2015-NE-32-AD.

(a) Comments Due Date

We must receive comments by February 5, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) CF6-80C2 and CF6-80E1 turbofan engines.

(d) Unsafe Condition

This AD was prompted by reports of a burn-through of the accessory heat shield during an accessory compartment fire leading to an engine fire. We are issuing this AD to prevent high-temperature gas ingestion into the accessory compartment, engine fire, and damage to the airplane.

(e) Compliance

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

(1) For CF6-80C2 engines, at the next engine shop visit after the effective date of this AD, remove from service the accessory heat shield assembly. Use Table 1 of GE Service Bulletin (SB) No. CF6-80C2 S/B 72-1520, dated September 22, 2015 to identify the part numbers (P/Ns) that require removal from service. Install an accessory heat shield assembly eligible for installation.

(2) For CF6-80E1 engines, at the next engine shop visit after the effective date of this AD, remove from service the accessory heat shield assembly. Use Table 1 of GE SB No. CF6-80E1 S/B 72-0525, dated September 22, 2015 to identify the P/Ns that require removal from service. Install an accessory heat shield assembly eligible for installation.

(f) Installation Prohibition

After the effective date of this AD, do not install any accessory heat shield assembly with a P/N listed in Table 1 of GE SB No. CF6-80C2 S/B 72-1520, dated September 22, 2015 or Table 1 of GE SB No. CF6-80E1 S/B 72-0525, dated September 22, 2015, into any engine.

(g) Definition

For the purpose of this AD, an engine shop visit is defined as the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine

maintenance does not constitute an engine shop visit.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: ANE-AD-AMOC@faa.gov.

(i) Related Information

(1) For more information about this AD, contact Herman Mak, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7147; fax: 781-238-7199; email: herman.mak@faa.gov.

(2) GE SB No. CF6-80C2 S/B 72-1520, dated September 22, 2015; GE SB No. CF6-80C2 S/B 72-1523, dated September 22, 2015; and GE SB No. CF6-80E1 S/B 72-0525, dated September 22, 2015 can be obtained from GE using the contact information in paragraph (i)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513-552-3272; email: aviation.fleetsupport@ge.com.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Issued in Burlington, Massachusetts, on November 25, 2015.

Colleen M. D'Alessandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015-30716 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT-OST-2015-0246]

RIN 2105-AE12

Nondiscrimination on the Basis of Disability in Air Travel; Consideration of Negotiated Rulemaking Process

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The Department of Transportation ("Department" or "DOT") announces that it is exploring the feasibility of conducting a negotiated rulemaking (Reg Neg) concerning accommodations for air travelers with disabilities addressing inflight entertainment, supplemental medical oxygen, service animals, accessible lavatories on single-aisle

aircraft, seating accommodations, and carrier reporting of disability service requests. The Department has hired a convener to speak with interested parties about the feasibility of conducting this Reg Neg. The Department anticipates that the interested parties may include disability advocacy organizations, airlines, airports, airline vendors providing wheelchair assistance, aircraft manufacturers, IFE system manufacturers, movie studios, other IFE content providers, service animal training organizations, and other Federal agencies that have a regulatory interest in these issues such as the Department of Justice, the Federal Communications Commission, and the United States Access Board.

DATES: Please submit your comments no later than January 6, 2016.

ADDRESSES: You may submit comments identified by docket number DOT-OST-2015-0246 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: If you have questions about the regulatory negotiation, you may contact Kathleen Blank Riether, Senior Attorney, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at kathleen.blankriether@dot.gov or by telephone at 202-366-9342. To obtain a copy of this notice in an accessible format, you may also contact Kathleen Blank Riether.

SUPPLEMENTARY INFORMATION: Congress enacted the Air Carrier Access Act (ACAA) in 1986. It prohibited discrimination in airline service on the basis of disability by U.S. air carriers. In 1990, following a lengthy rulemaking process that included a regulatory negotiation involving representatives of the airline industry and disability community, the Department issued a final ACAA rule. In 2000, Congress amended the ACAA to specifically include foreign air carriers. The ACAA now prohibits U.S. and foreign air carriers from discriminating against individuals on the basis of disability in air travel. In 2008, the Department revised its disability regulation to, among other things, apply its rule to foreign carriers and add new protections for passengers who use portable oxygen concentrators and passengers who are

deaf or hard of hearing. See 73 FR 27614 (May 13, 2008), effective May 13, 2009.

In the preamble to the 2008 final rule, the Department explained that it had deferred final decisions regarding a number of proposed requirements and expressed its intent to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) seeking additional public input on carrier-supplied in-flight medical oxygen, transport of service animals, in-flight entertainment, and accessible kiosks and Web sites. The Department also announced its intent to carefully monitor ongoing developments with respect to lavatory accessibility on single aisle aircraft during longer flights to determine if a future rulemaking proposal may be warranted. See 73 FR 27614 (May 13, 2008). In September 2011, the Department issued an SNPRM on airline Web sites and automated airport kiosks. See 76 FR 59307 (September 26, 2011). The proceeding culminated in a final rule mandating that airline Web sites and automated airport kiosks be accessible by specific dates. See 78 FR 67882 (November 12, 2013). The Department is now planning to address in-flight medical oxygen, transport of service animals and in-flight entertainment.

Additionally, since the issuance of the 2008 final rule, the Department has become aware of other difficulties individuals with disabilities are having in accessing the air travel system. For example, airlines and disability organizations¹ have raised concerns with the Department of passengers falsely claiming that their pets are service animals. These groups have also pointed out the inconsistency between the Department of Justice definition of a service animal and the Department of Transportation's definition of a service animal. Separately, the Department has noted the industry trend toward greater use of single aisle aircraft that are not equipped with accessible lavatories on medium and long haul flights. The disability community has also expressed distress that single aisle aircraft are increasingly used by airlines for longer flights but lack accessible lavatories. Issues have also been raised about whether premium economy is a different class of service from standard economy as airlines are required to provide seating accommodations to passengers with disabilities within the same class of service. Extra legroom is a standard feature of premium economy, with some carriers providing premium

economy passengers amenities in addition to the standard economy class services. Various disability organizations have reported to the Department that their members are unable to obtain bulkhead seating while traveling with a service animal as the bulkhead seats are now primarily located in what has been designated by airlines as the premium economy section. The Department has also received a petition for rulemaking to modify the existing seating accommodations requirement for passengers who need extra legroom.²

The Department is exploring the feasibility of conducting a negotiated rulemaking on the remaining issues that it deferred final action on in its 2008 final rule as well as the issues described above that have arisen since its 2008 final rule. Specifically, the Department is exploring a Reg Neg to:

- Ensure that the same in-flight entertainment (IFE) available to all passengers is accessible to passengers with disabilities;
- Provide individuals dependent on in-flight medical oxygen greater access to air travel consistent with Federal safety and security requirements;
- Determine the appropriate definition of a service animal;
- Establish safeguards to reduce the likelihood that passengers wishing to travel with their pets will be able to falsely claim that their pets are service animals;
- Address the feasibility of accessible lavatories on new single aisle aircraft;
- Address whether premium economy is a different class of service from standard economy as airlines are required to provide seating accommodations to passengers with disabilities within the same class of service; and
- Require airlines to report annually to the Department the number of requests for disability assistance they receive and the time period within which wheelchair assistance is provided to passengers with disabilities.

In a Reg Neg, an agency invites representatives of interested parties likely to be significantly affected by a regulation to work with each other and the agency on an advisory committee to seek to reach consensus recommendations on the appropriate resolution of the issues before the committee. If a consensus is reached, the Department will issue a proposed rule consistent with that consensus for

¹ See DOT-OST-2009-0093-0001, Psychiatric Service Dog Society Petition for Rulemaking (April 13, 2009).

² See DOT-OST-2012-0030, In Re Petition for Rule Change of Title 14 CFR 382.81(d) Pertaining to Disabled Seating Accommodations (February 7, 2012).

public comment under established rulemaking procedures. The Department believes this cooperative problem-solving approach should be given serious consideration. To do so, the Department must determine, among other statutorily-mandated considerations, whether an appropriate advisory committee can be assembled that will fairly represent all affected interests, negotiate in good faith, and offer a reasonable likelihood of reaching a consensus on the issues.

The Department has retained a neutral convener, Mr. Richard Parker from the University of Connecticut School of Law, to undertake the initial stage in the Reg Neg process and assist the agency in making this threshold determination. Mr. Parker's credentials have been placed in docket DOT-OST-2015-0246. The neutral convener will interview representatives of affected interests, including but not limited to, disability advocacy groups, airlines, and manufacturers of aircraft cabin facilities and equipment and determine whether other interest groups should be included. The convener will examine the potential for adequate and balanced representation of the varied interests on an advisory committee convened to negotiate the regulation and/or to reach consensus on specific issues. Based on these interviews, the convener will submit a written report of findings and recommendations to the Department, and the final report will be available to the public. The convener's report will provide a basis for the Department to decide whether to proceed with a Reg Neg, and, if so, to determine the scope of the issues the committee will address. In the alternative, the Department may also decide to forgo a Reg Neg and proceed with a traditional notice-and-comment rulemaking.

The convener's activities are subject to the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 574. The Federal Government will make no claim to the convener's notes, memoranda, or recollections or to documents provided to the convener in confidence in the course of the convening process. The convener will not interpret Department policy, make decisions on items of policy, regulation, or statute, or take a stand on the merits of substantive matters under discussion.

The Department will provide any comments it receives in response to this notice to the convener and will file the comments in docket DOT-OST-2015-0246. Should the Department decide to proceed with a Reg Neg process, the Agency will follow the procedures set forth in the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.* This would

include the publication of a notice of intent to solicit comment on membership and to invite interested persons to apply for nomination to the committee. It also includes the establishment of an advisory committee under the Federal Advisory Committee Act (5 U.S.C. Appendix 2).

Issued under the authority of delegation in 49 CFR 1.27.

Dated: November 30, 2015.

Kathryn B. Thomson,
General Counsel.

[FR Doc. 2015-30764 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-9X-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC-2015-0022]

Petition Requesting Rulemaking on Products Containing Organohalogen Flame Retardants; Notice of Opportunity for Oral Presentation of Comments

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of opportunity to present oral comments remotely.

SUMMARY: The United States Consumer Product Safety Commission ("Commission" or "CPSC") on October 26, 2015 published a notice announcing that, on December 9, 2015, there will be an opportunity for interested persons to present oral comments on a petition received for rulemaking under the Federal Hazardous Substances Act ("FHSA") regarding additive organohalogen flame retardants. The Commission also will provide for presentations to be made remotely.

DATES: The meeting for interested persons to present oral comments on the petition will begin at 10 a.m. on December 9, 2015, at 4330 East West Highway, Bethesda, MD 20814. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 12 noon Eastern Standard Time (EST) on December 4, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0022, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept

comments submitted by electronic mail (email), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC-2015-0022, into the "Search" box, and follow the prompts. A copy of the petition is available at: <http://www.regulations.gov>, under Docket No. CPSC-2015-0022, Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

SUPPLEMENTARY INFORMATION:

A. Background

On July 1, 2015, the Commission received a petition requesting that the Commission initiate rulemaking under the FHSA to declare several categories of products containing additive organohalogen flame retardants to be "banned hazardous substances." The petition was filed by Earthjustice and the Consumer Federation of America, which are joined by American Academy of Pediatrics, American Medical Women's Association, Consumers Union, Green Science Policy Institute, International Association of Fire Fighters, Kids in Danger, Philip Landrigan, M.D., M.P.H., League of United Latin American Citizens, Learning Disabilities Association of America, and Worksafe.

B. Opportunity for Oral Presentation of Comments

The Commission is providing a forum for oral presentations concerning the petition regarding additive organohalogen flame retardants. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice for information on making requests to give oral presentations at the meeting or remotely.

The Commission is also allowing remote participation. Participants may call into a conference line to make their presentations. The conference line number is 866-623-8636 and participant code is 4816474. Remote participants, as well as those presenting in person, must provide the written text of their comments in advance (see the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice). Call-in participants should be prepared to provide their first name, last name and affiliation.

Participants should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or CPSC staff. To prevent duplicative presentations, groups will be directed to designate a spokesperson. The Commission reserves the right to limit the time further for any presentation and impose restrictions to avoid excessive duplication of presentations.

Dated: December 1, 2015.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2015-30694 Filed 12-4-15; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-127895-14]

RIN 1545-BM33

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-127894-14) that was published in the **Federal Register** on Friday, September 18, 2015 (80 FR 56415). The proposed regulations provide guidance relating to the

substantial equivalence test, which is used to determine whether a complex contract is a section 871(m) transaction. **DATES:** Written or electronic comments and request for a public hearing for the notice of proposed rulemaking at 80 FR 56415, September 18, 2015, are still being accepted and must be received by December 17, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-127895-14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127895-14), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-127895-14). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel or Karen Walny, at (202) 317-6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 871(m) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-127895-14) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking, that is the subject of FR Doc. 2015-21753, is corrected as follows:

1. On page 56415, in the third column, add a **SUMMARY** section to read as follows:

SUMMARY: This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments. This document also provides guidance to withholding agents that are responsible for withholding U.S. tax with respect to a dividend equivalent.

§ 1.871-15 [Corrected]

2. On page 56416, second column, the second and third lines of amendatory instruction 2, the language “by revising

paragraph (c)(2)(vi) and paragraph (h) to read as follows:” is corrected to read “by revising paragraphs (c)(2)(iv), (h), and (q) to read as follows:”.

§ 1.1441-1 [Corrected]

3. On page 56416, second column, the first and second lines of amendatory instruction 3, the language “by revising paragraph (e)(3)(vii) and paragraph (e)(6) to read as follows:” is corrected to read “by revising paragraphs (e)(3)(ii)(E), (e)(5), and (e)(6) to read as follows:”.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2015-30779 Filed 12-4-15; 8:45 am]

BILLING CODE 4830-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1635

RIN 3046-AB02

Genetic Information Nondiscrimination Act of 2008

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) is extending the comment period for the proposed rule “Genetic Information Nondiscrimination Act of 2008” published on October 30, 2015. The Commission is extending the comment period in response to a stakeholder request for an extension.

DATES: Comments regarding this proposal must be received by the Commission on or before January 28, 2016. The comment period was originally scheduled to end on December 29, 2015. Please see the section below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

ADDRESSES: You may submit comments, identified by *RIN number* 3046-AB02, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *FAX:* (202) 663-4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged,

except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll free numbers).

- *Mail:* Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

- *Hand Delivery/Courier:* Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE., Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m., from February 5, 2016 until the Commission publishes the rule in final form.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, at (202) 663-4665 (voice), or Kerry E. Leibig, Senior Attorney Advisor, at (202) 663-4516 (voice), or (202) 663-7026 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

SUPPLEMENTARY INFORMATION: On October 30, 2015, the EEOC published the proposed rule "The Genetic Information Nondiscrimination Act of 2008" in the **Federal Register** (80 FR 66853). The previous comment deadline was December 29, 2015. The EEOC has received a request for an extension of the comment deadline for this proposed rule. This action extends the comment period until January 28, 2016.

Dated: December 2, 2015.

For the Commission.

Jenny R. Yang,

Chair.

[FR Doc. 2015-30807 Filed 12-4-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Effectiveness of Licensing Procedures for Exportation of Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran; Comment Request

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is soliciting comments on the effectiveness of OFAC's licensing procedures for the exportation of agricultural commodities, medicine, and medical devices to Sudan and Iran. Pursuant to section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of Pub. L. 106-387, 22 U.S.C. 7201 *et seq.*) (the "Act"), OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports.

DATES: Written comments should be received on or before January 6, 2016 to be assured of consideration.

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

Federal eRulemaking Portal:
www.regulations.gov

Follow the instructions for submitting comments.

Fax: Attn: Request for Comments (TSRA) (202) 622-0447

Mail: Attn: Request for Comments (TSRA), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about these licensing procedures should be directed to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, telephone: (202) 622-2480 (not a toll free number). Additional information about these licensing procedures is also available at www.treasury.gov/tsra.

SUPPLEMENTARY INFORMATION: The current procedures used by OFAC for

authorizing the export of agricultural commodities, medicine, and medical devices to Sudan and Iran are set forth in 31 CFR 538.523-526 and 31 CFR 560.530-533. Under the provisions of section 906(c) of the Act, OFAC must submit a biennial report to the Congress on the operation, during the preceding two-year period, of the licensing procedures required by section 906 of the Act for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran. This report is to include:

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) A description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period.

This notice solicits comments from interested parties regarding the effectiveness of OFAC's licensing procedures for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran for the time period of October 1, 2012 to September 30, 2014. Interested parties submitting comments are asked to be as specific as possible. In the interest of accuracy and completeness, OFAC requires written comments. All comments received on or before January 6, 2016 will be considered by OFAC in developing the report to the Congress. Consideration of comments received after the end of the comment period cannot be assured.

All comments made will be a matter of public record. OFAC will not accept comments accompanied by a request that part or all of the comments be treated confidentially because of their business proprietary nature or for any other reason; OFAC will return such comments when submitted by regular mail to the person submitting the comments and will not consider them.

Copies of past biennial reports may be obtained from OFAC's Web site (www.treasury.gov/resource-center/sanctions/Programs/Pages/lic-agmed-index.aspx). Written requests may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, Attn: Assistant Director for Licensing.

Note: On October 22, 2012, OFAC issued a new general license authorizing

the export and reexport of medicine and basic medical supplies to Iran. On July 25, 2013, OFAC updated the list of basic medical supplies authorized by that general license to add additional items and on April 7, 2014, OFAC updated the definition of “basic medical supplies” to exclude the word “basic.” Also on April 7, 2014, OFAC expanded the

general license authorizing the export or reexport of food to Iran to include the broader category of agricultural commodities and added a new general license authorizing the export and reexport to Iran of replacement parts for certain medical devices. *See* 31 CFR 560.530(a)(2)–(4). Accordingly, specific

licenses are no longer required for these exports.

Approved: December 1, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30787 Filed 12–4–15; 8:45 am]

BILLING CODE 4810–25–P

Notices

Federal Register

Vol. 80, No. 234

Monday, December 7, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Veterinary Shortage Situation Nominations for the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and solicitation for nominations.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is soliciting nominations of veterinary service shortage situations for the Veterinary Medicine Loan Repayment Program (VMLRP) for fiscal year (FY) 2016, as authorized under the National Veterinary Medical Services Act (NVMSA), 7 U.S.C. 3151a. This notice initiates the nomination period and prescribes the procedures and criteria to be used by State, Insular Area, DC and Federal Lands to nominate veterinary shortage situations. Each year all eligible nominating entities may submit nominations, up to the maximum indicated for each entity in this notice. NIFA is conducting this solicitation of veterinary shortage situation nominations under a previously approved information collection (OMB Control Number 0524-0046).

DATES: Shortage situation nominations, both new and carry over, must be submitted on or before February 10, 2016.

ADDRESSES: Submissions must be made by clicking the submit button on the Veterinarian Shortage Situation nomination form provided in the VMLRP Shortage Situations section at www.nifa.usda.gov/vmlrp.

This form is sent as a data file directly to the Veterinary Medicine Loan Repayment Program; National Institute of Food and Agriculture; U.S. Department of Agriculture.

FOR FURTHER INFORMATION CONTACT:

Danielle Tack; Program Coordinator, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue SW., Washington, DC 20250-2220; Voice: 202-401-6802; Fax: 202-401-6156; Email: vmlrp@nifa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A series of three peer-reviewed studies published in 2007 in the Journal of the American Veterinary Medical Association (JAVMA), and sponsored by the Food Supply Veterinary Medicine Coalition (www.avma.org/KB/Resources/Reference/Pages/about-fsvm-coalition.aspx), drew considerable attention to an existing and apparent growing shortage of food supply veterinarians, the causes of shortages in this sector, and the consequences to the US food safety infrastructure and to the general public if this trend continues to worsen. Subsequently the Government Accountability Office released a report entitled "Veterinary Workforce: Actions Are Needed to Ensure Sufficient Capacity for Protecting Public and Animal Health" (GAO-09-178; Feb 18, 2009). This report was followed by a National Academies of Science report in 2013 entitled "Workforce Needs in Veterinary Medicine". While the 2013 report concluded that some sectors of the veterinary workforce are not in shortage, the authors affirmed that "livestock farmers who live far from populated areas have difficulty obtaining veterinary care." Furthermore, regarding the largest subgroup of veterinarians serving the food animal industries, the reported stated, ". . . new graduates are not entering this type of practice anymore, [and therefore] food-animal-predominant veterinarians, as a group, are now composed of rapidly-aging members."

Food supply veterinary medicine embraces a broad array of veterinary professional activities, specialties and responsibilities, and is defined as the full range of veterinary medical practices contributing to the production of a safe and wholesome food supply and to animal, human, and environmental health. The privately practicing food animal veterinary practitioner population within the US is, numerically, the largest, and arguably

the most important single component of the food supply veterinary medical sector. Private practice food animal veterinarians, working closely with livestock producers and State and Federal officials, constitute the first line of defense against spread of endemic and zoonotic diseases, introduction of high consequence foreign animal diseases, emergence and propagation of antibiotic resistance, and other threats to the health and wellbeing of both animals and humans who consume animal products.

Among the most alarming findings of the Coalition-sponsored studies was that insufficient numbers of veterinary students are selecting food supply veterinary medical careers. This development has led both to current workforce imbalances and to projected worsening of localized shortages over the subsequent 10 years. Burdensome educational debt was the leading concern students listed for opting not to choose a career in food animal practice or other food supply veterinary sectors. According to the American Veterinary Medical Association's (AVMA) 2015 report on veterinary debt and income, the mean veterinary educational debt for students graduating from veterinary school with debt was \$153,191. Such debt loads incentivize students to select other veterinary careers, such as companion animal medicine, which tend to be more financially lucrative and, therefore, enable students to more quickly repay their outstanding educational loans. Furthermore, when this issue was studied in the Coalition report from the perspective of identifying solutions to this workforce imbalance, panelists were asked to rate 18 different strategies for addressing shortages. Responses from the panelists overwhelmingly showed that student debt repayment and scholarship programs were the most important strategies in addressing future shortages (JAVMA 229:57-69). When the VMLRP was first authorized in 2005, the average graduating educational debt of veterinarians was approximately \$75,000. Since that time average educational debt burden has more than doubled thereby greatly exacerbating the leading factor promoting the workforce imbalance this program seeks to mitigate.

The VMLRP is aligned with the USDA Strategic Plan for Fiscal Years 2014-

2018, particularly with the following strategic goals and objectives: Goal 1—Assist Rural Communities to Create Prosperity so They Are Self-Sustaining, Repopulating, and Economically Thriving, Goal 3—Help America Promote Agricultural Production and Biotechnology Exports as America Works to Increase Food Security, Objective 4.3—Protect Public Health by Ensuring Food is Safe, and Objective 4.4—Protect Agricultural Health by Minimizing Major Diseases and Pests to Ensure Access to Safe, Plentiful, and Nutritious Food. A copy of the USDA Strategic Plan is available at www.ocfo.usda.gov/usdasp/sp2014/usda-strategic-plan-fy-2014-2018.pdf.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been approved by OMB Control Number 0524–0046.

List of Subjects in Guidelines for Veterinary Shortage Situation Nominations

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I. Preface and Authority

In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding

section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations.

In FY 2010, NIFA announced the first funding opportunity for the VMLRP. From FY 2010 through FY 2015, NIFA received 995 applications from which 291 VMLRP awards totaling \$25,292,341 were issued. Funding for FY 2016 and future years are based on annual appropriations and balances, if any, carried forward from prior years, and may vary from year to year.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need.

The Secretary delegated the authority to carry out this program to NIFA pursuant to 7 CFR 2.66(a)(141).

Pursuant to the requirements enacted in the NVMSA of 2004 (as revised), and the implementing regulation for this Act, Part 3431 Subpart A of the VMLRP Final Rule [75 FR 20239–20248], NIFA hereby implements guidelines for authorized State Animal Health Officials (SAHO) to nominate veterinary shortage situations for the FY 2016 program cycle:

II. Nomination of Veterinary Shortage Situations

A. General

1. Eligible Shortage Situations

Section 1415A of NARETPA, as amended and revised by Section 7105 of FCEA directs determination of

veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

While the NVMSA (as amended) specifies priority be given to food animal medicine shortage situations, and that consideration also be given to specialty areas such as public health, epidemiology and food safety, the Act does not identify any areas of veterinary practice as ineligible. Accordingly, all nominated veterinary shortage situations will be considered eligible for submission. However, assessment of submitted nominations by the external review panel convened by NIFA will reflect the intent of Congress that priority be given to certain types of veterinary service shortage situations. NIFA therefore anticipates that the stronger nominations will be those directly addressing food supply veterinary medicine shortage situations.

NIFA has adopted definitions of the practice of veterinary medicine and the practice of food supply medicine that are broadly inclusive of the critical roles veterinarians serve in both public practice and private practice situations. Nominations describing either public or private practice veterinary shortage situations will therefore be eligible for submission.

2. State Respondents and Use of Consultation

The only authorized respondent on behalf of each State is the chief State Animal Health Official (SAHO), as duly authorized by the Governor or the Governor's designee in each State. The chief SAHO must submit nominations using the Veterinarian Shortage Situation Nomination Form (OMB Control Number 0524–0046), which is available in the VMLRP Shortage Situations section on the VMLRP Web site at www.nifa.usda.gov/vmlrp. One form must be submitted for each nominated shortage situation. When selecting "SUBMIT" on the form a data file will be sent directly to NIFA. NIFA strongly encourages the SAHO to involve leading health animal experts in the State in the identification and prioritization of shortage situation nominations.

3. Rationale for Capping Nominations and State Allocation Method

In its consideration of fair, transparent and objective approaches to solicitation of shortage area nominations, NIFA evaluated three alternative strategies before deciding on the appropriate strategy. The first option considered was to impose no limits on the number of nominations submitted. The second was to allow each state the same number of nominations. The third (eventually selected) was to differentially cap the number of nominations per state based on defensible and intuitive criteria.

The first option, providing no limits to the number of nominations per state, is fair to the extent that each state and insular area has equal opportunity to nominate as many situations as desired. However, funding for the VMLRP is limited (relative to anticipated demand), so allowing potentially high and disproportionate submission rates of nominations could both unnecessarily burden the nominators and the reviewers with a potential avalanche of nominations and dilute highest need situations with lower need situations. Moreover, NIFA believes that the distribution of opportunity under this program (*i.e.*, distribution of mapped shortage situations resulting from the nomination solicitation and review process) should roughly reflect the national distribution of food supply veterinary service demand. By not capping nominations based on some objective criteria, it is likely there would be no correlation between the mapped pattern and density of certified shortage situations and the actual pattern and density of need. This in turn could undermine confidence in the program with Congress, the public, and other stakeholders.

The second option, limiting all states and insular areas to the same number of nominations suffers from some of the same disadvantages as option one. It has the benefit of limiting administrative burden on both the SAHO and the nomination review process. However, like option one, there would be no correlation between the mapped pattern of certified shortage situations and the actual pattern of need. For example, Guam and Rhode Island would be allowed to submit the same number of nominations as Texas and Nebraska, despite the large difference in the sizes of their respective animal agriculture industries and rural land areas requiring veterinary service coverage.

The third option, to cap the number of nominations in relation to major parameters correlating with veterinary service demand, achieves the goals both

of practical control over the administrative burden to the states and NIFA, and of achieving a mapped pattern of certified nominations that approximates the actual shortage distribution. In addition, this method limits dilution of highest need areas with lower need areas. The disadvantage of this strategy is that there is no validated, unbiased, direct measure of veterinary shortage, and so it is necessary to employ parameters that correlate with the hypothetical cumulative relative need for each state in comparison to other states.

In the absence of a validated unbiased direct measure of relative veterinary service need or risk for each state and insular area, the National Agricultural Statistics Service (NASS) provided NIFA with reliable public data that correlate with demand for food supply veterinary service. NIFA consulted with NASS and determined that the NASS variables most strongly correlated with state-level food supply veterinary service need are "Livestock and Livestock Products Total Sales (\$)" and "Land Area" (acres). The "Livestock and Livestock Products Total Sales (\$)" variable broadly predicts veterinary service need in a State because this is a normalized (to cash value) estimate of the extent of (live) animal agriculture in the state. The State "land area" variable predicts veterinary service need because there is positive correlation between state land area, percent of state area classified as rural and the percent of land devoted to actual or potential livestock production. Importantly, land area is also directly correlated with the number of veterinarians needed to provide veterinary services in a state because of the practical limitations relating to the maximum radius of a standard veterinary service area. Due to fuel and other cost factors, the maximum radius a veterinarian operating a mobile veterinary service can cover is approximately 60 miles, which roughly corresponds to two or three contiguous counties of average size.

Although these two NASS variables are not perfect predictors of veterinary service demand, NIFA believes they account for a significant proportion of several of the most relevant factors influencing veterinary service need and risk for the purpose of fairly and transparently estimating veterinary service demand. To further ensure fairness and equitability, NIFA is employing these variables in a straightforward and transparent manner that ensures every state and insular area is eligible for at least one nomination and that all States receive an

apportionment of nominations, relative to their geographic size and size of agricultural animal industries.

Following this rationale, the Secretary is specifying the maximum number of nominations per state in order to (1) assure distribution of designated shortage areas in a manner generally reflective of the differential overall demand for food supply veterinary services in different states, (2) assure the number of shortage situation nominations submitted fosters emphasis on selection by nominators and applicants of the highest priority need areas, and (3) provide practical and proportional limitations of the administrative burden borne by SAHOs preparing nominations, and by panelists serving on the NIFA nominations review panel.

Furthermore, instituting a limit on the number of nominations is consistent with language in the Final Rule stating, "The solicitation may specify the maximum number of nominations that may be submitted by each State animal health official."

4. State Allocation of Nominations

The number of designated shortage situations per state will be limited by NIFA, and this has an impact on the number of new nominations a state may submit each time NIFA solicits shortage nominations. In the 2016 cycle, NIFA is again accepting the number of nominations equivalent to the allowable number of designated shortage areas for each state. All eligible submitting entities will, for the 2016 cycle, have an opportunity to do the following: (1) Retain designated status for any shortage situation successfully designated in 2015 (if there is no change to any information, the nomination will be approved for 2016 without the need for re-review by the merit panel), (2) rescind any nomination officially designated in 2015, and (3) submit new nominations. The total of the number of new nominations plus designated nominations retained (carried over) may not exceed the maximum number of nominations each entity is permitted. Any amendment to an existing shortage nomination is presumed to constitute a significant change. Therefore, an amended nomination must be rescinded and resubmitted to NIFA as a new nomination and it will be evaluated by the 2016 review panel.

The maximum number of nominations (and potential designations) has been updated based on 2012 NASS Agricultural Census data. Awards from previous years have no bearing on a state's maximum number of allowable shortage nomination

submissions or number of designations for subsequent years. NIFA reserves the right in the future to proportionally adjust the maximum number of designated shortage situations per state to ensure a balance between available funds and the requirement to ensure priority is given to mitigating veterinary shortages corresponding to situations of greatest need. Nomination Allocation tables for FY 2016 are available under the VMLRP Shortage Situations section of the VMLRP Web site at www.nifa.usda.gov/vmlrp.

Table I lists “Special Consideration Areas” which include any State or Insular Area not reporting data, and/or reporting less than \$1,000,000 in annual Livestock and Livestock Products Total Sales (\$), and/or possessing less than 500,000 acres, as reported by NASS. One nomination is allocated to any State or Insular Area classified as a Special Consideration Area.

Table II shows how NIFA determined nomination allocation based on quartile ranks of States for two variables broadly correlated with demand for food supply veterinary services: “Livestock and Livestock Products Total Sales (\$)” (LPTS) and “Land Area (acres)” (LA). The total number of NIFA-designated shortage situations per state in any given program year is based on the quartile ranking of each state in terms of LPTS and LA. States for which NASS has both LPTS and LA values, and which have at least \$1,000,000 LPTS and at least 500,000 acres LA (typically all states plus Puerto Rico), were independently ranked from least to greatest value for each of these two composite variables. The two ranked lists were then divided into quartiles with quartile 1 containing the lowest variable values and quartile 4 containing the highest variable values. Each state then received the number of designated shortage situations corresponding to the number of the quartile in which the state falls. Thus, a state that falls in the second quartile for LA and the third quartile for LPTS may submit a maximum of five shortage situation nominations (2 + 3). This transparent computation was made for each state thereby giving a range of 2 to 8 shortage situation nominations, contingent upon each state’s quartile ranking for the two variables.

The maximum number of designated shortage situations for each State in 2016 is shown in Table III.

While Federal Lands are widely dispersed within States and Insular Areas across the country, they constitute a composite total land area over twice the size of Alaska. If the 200-mile limit U.S. coastal waters and associated

fishery areas are included, Federal Land total acreage would exceed 1 billion. Both State and Federal Animal Health officials have responsibilities for matters relating to terrestrial and aquatic food animal health on Federal Lands. Interaction between wildlife and domestic livestock, such as sheep and cattle, is particularly common in the plains states where significant portions of Federal lands are leased for grazing. Therefore, both SAHOs and the Chief Federal Animal Health Officer (Deputy Administrator, Animal and Plant Health Inspection Service or designee) may submit nominations to address shortage situations on or related to Federal Lands.

NIFA emphasizes that shortage nomination allocation is set to broadly balance the number of designated shortage situations across states prior to the application and award phases of the VMLRP. Awards will be made based strictly on the peer review panels’ assessment of the quality of the match between the knowledge, skills and abilities of the applicant and the attributes of the specific shortage situation applied for, thus no state will be given a preference for placement of awardees. Additionally, unless otherwise specified in the shortage nomination form, each designated shortage situation will be limited to one award.

5. FY 2016 Shortage Situation Nomination Process

As described in Section 4 above, all SAHOs will, for the FY 2016 cycle, have an opportunity to do the following: (1) Retain (carry over) designated status for any shortage situation successfully designated in 2014 and not revised, without need for reevaluation by merit review panel, (2) rescind any nomination officially designated in 2014, and (3) submit new nominations. The total number of new nominations and designated nominations retained (carried over) may not exceed the maximum number of shortages each state is allocated. An amendment to an existing shortage nomination constitutes a significant change and therefore must be rescinded and resubmitted to NIFA as a new nomination, to be evaluated by the 2016 review panel. The maximum number of nominations (and potential designations) for each state is provided on NIFA’s Web site at www.nifa.usda.gov/vmlrp.

The following process is the mechanism by which a SAHO should retain or rescind a designated nomination: Each SAHO will go to the map of VMLRP designated shortage situations for FY 2015 (<http://nifa.usda.gov/vmlrp-map?state=All&fy%5Bvalue%5D%5Byear%5D=2015&=Apply>) to obtain the PDF copy of the nomination form for each designated area that went unfilled (not awarded) in FY 2015. If the SAHO wishes to retain (carry over) one or more designated nomination(s), the SAHO shall copy and paste the prior year information (unrevised) into the current year’s nomination form and select “SUBMIT”.

Both new and retained nominations must be submitted on the Veterinary Shortage Situation Nomination form provided in the VMLRP Shortage Situations section at www.nifa.usda.gov/vmlrp.

Both new and retained nominations must be submitted on the Veterinary Shortage Situation Nomination form provided in the VMLRP Shortage Situations section at www.nifa.usda.gov/vmlrp.

6. Submission and Due Date

Submissions must be made by clicking the submit button on the Veterinarian Shortage Situation nomination form provided in the VMLRP Shortage Situations section at www.nifa.usda.gov/vmlrp.

This form is sent as a data file directly to the Veterinary Medicine Loan Repayment Program; National Institute of Food and Agriculture; U.S. Department of Agriculture. Shortage situation nominations, both new and carry over, must be submitted on or before February 10, 2016.

7. Period Covered

Each shortage situation is approved for one program year cycle only. However, any previously approved shortage situation not filled in a given program year may be resubmitted with no changes as a “carry-over” shortage in response to the solicitation for shortage nominations the following program year. Content of carry-over shortage nominations must not be changed in any respect, except for providing a revised date of submission and/or the name of a new submitting chief SAHO in the event the person holding that post has changed. Carry-over shortage nominations will not be required to undergo panel merit review and shall therefore be automatically approved. However, by resubmitting a nomination in a following program cycle, the SAHO is affirming that it is his or her professional judgment that the original case made for shortage status, and the original description of needs, are still current and accurate.

8. Definitions

For the purpose of implementing the solicitation for veterinary shortage situations, the definitions provided in 7 CFR part 3431 are applicable.

B. Nomination Form and Description of Fields

1. Access to Nomination Form

The veterinary shortage situation nomination form is available in the VMLRP Shortage Situations section at www.nifa.usda.gov/vmlrp. The completed form must be sent to NIFA by selecting "SUBMIT" on the nomination form.

2. Physical Location of Shortage Area or Position

Following conclusion of the nomination and designation process, NIFA will prepare lists and/or maps that include all designated shortage situations for the current program year. This effort requires a physical location that represents the center of the service area for a geographic shortage or the location of the main office or work address for a public practice and/or specialty practice shortage. For example, if the state seeks to certify a tri-county area as a food animal veterinary service (*i.e.*, Type I) shortage situation, a road intersection approximating the center of the tri-county area would constitute a satisfactory physical location for NIFA's listing and mapping purposes. By contrast, if the state is identifying "veterinary diagnostician", a Type III nomination, as a shortage situation, then the nominator would complete this field by filling in the primary address of the location where the diagnostician would work (*e.g.*, State animal disease diagnostic laboratory).

3. Overall Priority of Shortage

Congressional intent is for this program to incentivize applicants to "serve in veterinary service shortage areas with the greatest need." There is therefore the presumption that all areas nominated as shortage situations should be classified as at least "moderate priority" shortages. To assist nomination merit review panelists and award phase peer panelists in scoring shortage nominations and ranking applications from VMLRP applicants, SAHOs are asked to characterize each shortage situation nomination as "Moderate Priority", "High Priority", or "Critical Priority" shortages.

Moderate Priority: This shortage prioritization corresponds to an area lacking in some aspect of food supply veterinary services, commensurate with the service percent full-time-equivalency (FTE) specified. Absence of, or insufficient, trained "eyes and ears" of a veterinarian serving a food animal production area is sufficient to constitute moderate priority shortage

status. This is because access to veterinary services is necessary for basic animal health, animal well-being, production profitability, and for food safety, and because high consequence disease outbreaks in agricultural animals or natural catastrophes can occur spontaneously anywhere. In such cases, early detection of disease and/or treatment of animals are essential. These activities are the authorized purview of a licensed veterinarian. In addition to the above examples, the SAHO is invited to make a unique case based on other situation-specific risk criteria, for classifying a nominated area as a Moderate Priority shortage.

High Priority: This shortage prioritization corresponds to an area lacking sufficient access to food supply veterinary services, commensurate with the service percent FTE specified. High Priority status is justified by meeting the criteria for Moderate Priority status plus any of a variety of additional concerns relating to food supply veterinary medicine and/or public health. For example, the area may exhibit an especially large census of food animals in comparison to available veterinary services. Special animal or public health threats unique to the area, such as a recent history of outbreaks of high consequence, reportable, endemic animal and zoonotic diseases (*e.g.*, Brucellosis, TB, etc.) could also constitute a high priority threat. In addition to the above examples, the SAHO is invited to make a unique case based on other situation-specific risk criteria, for classifying a nominated area as a High Priority shortage.

Critical Priority: This shortage prioritization corresponds to an area severely lacking in some aspect of food supply or public health-related veterinary services, commensurate with the service percent FTE specified. Critical priority status is justified by meeting the criteria for moderate and/or high priority status plus any of a variety of additional serious concerns relating to the roles food supply veterinarians play in protecting animal and public health. For example, an area may exhibit an especially high potential for natural disasters or for incursion of catastrophic foreign animal disease such as Highly Pathogenic Avian Influenza, Mad Cow Disease, or Foot and Mouth Disease. High risk areas could include high through-put international animal importation sites and areas where wildlife and domestic food animals cross national borders carrying infectious disease agents (*e.g.*, the US-Mexico border). In addition to the above examples, the submitting SAHO is invited to make a unique case based on

other situation-specific risk criteria for classifying a nominated area as a Critical Priority shortage.

4. Type I Shortage—80 Percent or Greater Private Practice Food Supply Veterinary Medicine

SAHOs identifying this shortage type must check one or more boxes indicating which specie(s) constitute the veterinary shortage situation. Indicate either "Must Cover" or "May Cover" to stipulate which species a future awardee must be prepared, willing, and committed to provide services for, versus which species an awardee could treat using a minor percentage of their time obligated under a VMLRP contract. The Type I shortage situation must entail at least an 80 percent time commitment to private practice food supply veterinary medicine. The nominator will specify the minimum percent time (between 80 and 100 percent of a standard 40 hour week) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. The shortage situation may be located anywhere (rural or non-rural) so long as the veterinary service shortages to be mitigated are consistent with the definition of "practice of food supply veterinary medicine." The minimum 80 percent time commitment is, in part, recognition of the fact that occasionally food animal veterinary practitioners are expected to meet the needs of other veterinary service sectors such as clientele owning companion and exotic animals. Type I nominations are intended to address those shortage situations where the nominator believes a veterinarian can operate profitably committing between 80 and 100 percent time to food animal medicine activities in the designated shortage area, given the client base and other socio-economic factors impacting viability of veterinary practices in the area. This generally corresponds to a shortage area where clients can reasonably be expected to pay for professional veterinary services and where food animal populations are sufficiently dense to support a (or another) veterinarian. The personal residence of the veterinarian (VMLRP award recipient) and the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area.

5. Type II Shortage—30 Percent or Greater Private Practice Food Supply Veterinary Medicine in a Rural Area (as Defined)

SAHOs identifying this shortage type must check one or more boxes indicating which specie(s) constitute the

veterinary shortage situation. Indicate either "Must Cover" or "May Cover" to stipulate which species a future awardee must be prepared, willing, and committed to provide services for, versus which species an awardee could treat using a minor percentage of their time obligated under a VMLRP contract. The shortage situation must be in an area satisfying the definition of "rural." The minimum 30 percent-time (12 hours/week) commitment of an awardee to serve in a rural shortage situation is in recognition of the fact that there may be some remote or economically depressed rural areas in need of food animal veterinary services that are unable to support a practitioner predominately serving the food animal sector, yet the need for food animal veterinary services for an existing, relatively small, proportion of available food animal business is nevertheless great. The Type II nomination is therefore intended to address those rural shortage situations where the nominator believes there is a shortage of food supply veterinary services, and that a veterinarian can operate profitably committing 30 to 79 percent to food animal medicine in the designated rural shortage area. The nominator will specify the minimum percent time (between 30 and 79 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. Under the Type II nomination category, the expectation is that the veterinarian may provide veterinary services to other veterinary sectors (e.g., companion animal clientele) as a means of achieving financial viability. As with Type I nominations, the residence of the veterinarian (VMLRP award recipient) and/or the address of veterinary practice employing the veterinarian may or may not fall within the geographic bounds of the designated shortage area. However, the awardee is required to verify the specified minimum percent time commitment (30 percent to 79 percent, based on a standard 40 hour work week) to service within the specified geographic shortage area.

6. Type III Shortage—Public Practice Shortage (49 Percent or Greater Public Practice)

SAHOs identifying this shortage type must, in the spaces provided, identify the "Employer" and the presumptive "Position Title", and check one or more of the appropriate boxes identifying the specialty/disciplinary area(s) being nominated as a shortage situation. This is a broad nomination category comprising many types of specialized veterinary training and employment areas relating to food supply veterinary

workforce capacity and capability. These positions are typically located in city, county, State and Federal Government, and institutions of higher education. Examples of positions within the public practice sector include university faculty and staff, veterinary laboratory diagnostician, County Public Health Officer, State Veterinarian, State Public Health Veterinarian, State Epidemiologist, FSIS meat inspector, Animal and Plant Health Inspection Service (APHIS) Area Veterinarian in Charge (AVIC), and Federal Veterinary Medical Officer (VMO).

Veterinary shortage situations such as those listed above are eligible for consideration under Type III nomination. However, nominators should be aware that Congress has stipulated that the VMLRP must emphasize private food animal practice shortage situations. Accordingly, NIFA anticipates that loan repayments for the Public Practice sector will be limited to approximately 10 percent of total nominations and/or available funds.

The minimum time commitment serving under a Type III shortage nomination is 49 percent. The nominator will specify the minimum percent time (between 49 percent and 100 percent) a veterinarian must commit in order to satisfactorily fill the specific nominated situation. NIFA understands that some public practice employment opportunities that are shortage situations may be part-time positions. For example, a veterinarian pursuing an advanced degree (in a shortage discipline area) on a part-time basis may also be employed by the university for the balance of the veterinarian's time to provide part-time professional veterinary service(s) such as teaching, clinical service, or laboratory animal care that may or may not also qualify as veterinary shortage situations. The 49 percent minimum therefore provides flexibility to nominators wishing to certify public practice shortage situations that would be ineligible under more stringent minimum percent time requirements.

7. Specifying a Different Service Time Requirement (Optional)

Minimum percent FTE service obligated under the VMLRP is specified for each of the three shortage types. However, the nominator may indicate, in the box provided on page 2 of the nomination form, a greater percent FTE than the specified minimum, according to the following guidelines. For a Type I shortage, the minimum FTE obligation is 80 percent, but the nominator may specify up to 100 percent (100 percent FTE corresponds to 40 hours/week). The

minimum FTE obligation is 30 percent for Type II shortage situation, but the nominator may specify up to 79 percent. Higher percentages should be submitted as Type I shortages. The minimum FTE obligation is 49 percent for Type III (public practice) shortage situations, but the nominator may specify up to 100 percent. An entry should be made in the box for specification of percent FTE if the percentage specified is other than the default minimum. Otherwise the box should be left blank. In assigning a percentage FTE, SAHOs should be cognizant of the impact this has on an eventual awardee. If the percentage is too high for an awardee to achieve, he or she could fall into breach status under the program and owe any distributed funds back to NIFA. NIFA requires formal quarterly certification that minimum service time was worked before each quarterly loan repayment is paid to the awardee's lender(s). Accordingly, NIFA advises that a nomination be submitted only if the SAHO is confident that an awardee can meet the default, or optionally specified, minimum FTE percentage each and every one of the 12 quarters (i.e., twelve 3-month periods) constituting the 3-year duration of service under the program.

8. Written Response Sections

a. Importance and Objectives of a Veterinarian Meeting This Shortage Situation

Within the allowed word limit the nominator should clearly state overarching objectives the State hopes to achieve by placing a veterinarian in the nominated situation and measure(s) awardees and NIFA could use to assess success. Include the minimum percent time commitment (within the range of the shortage type selected) the awardee is expected to devote to filling the specific food supply veterinary shortage situation.

b. Activities of a Veterinarian Meeting This Shortage Situation

Within the allowed word limit the nominator should clearly state the principal day-to-day professional activities that would have to be conducted in order to achieve the objectives described in a. above.

c. Past Efforts To Recruit and Retain a Veterinarian in the Shortage Situation

Within the allowed word limit the nominator should explain any prior efforts to mitigate this veterinary service shortage and prospects for recruiting veterinarian(s) in the future.

d. Risk of This Veterinarian Position Not Being Secured or Retained

Within the allowed word limit the nominator should explain the consequences of not addressing this veterinary shortage situation.

e. Affirmation Checkboxes

SAHOs submitting shortage nominations should check both "affirmation" boxes on the last page of the nomination form. These two affirmations provide assurance that submitting SAHOs understand the shortage nomination process and the importance of the SAHO having reasonable confidence that the nomination submitted describes a bona fide shortage area. The second assurance is particularly important to help avoid the placement of a VMLRP awardee where veterinary coverage already exists, and where undue competition could lead to insufficient clientele demand to support either the awardee or the veterinary practice originally serving the area.

C. NIFA Review of Shortage Situation Nominations

1. Review Panel Composition and Process

NIFA will convene a panel of food supply veterinary medicine experts from Federal and state agencies, as well as institutions receiving Animal Health and Disease Research Program funds under section 1433 of NARETPA, who will review the nominations and make recommendations to the NIFA Program Manager. NIFA explored the possibility of including experts from non-governmental professional organizations and sectors for this process, but under NARETPA section 1409A(e), panelists for the purposes of this process are limited to Federal and State agencies and cooperating state institutions (*i.e.*, NARETPA section 1433 recipients), and other postsecondary educational institutions.

NIFA will review the panel recommendations and designate the VMLRP shortage situations. The list of shortage situations will be made available on the VMLRP Web site at www.nifa.usda.gov/vmlrp.

2. Review Criteria

Criteria used by the shortage situation nomination review panel and NIFA for certifying a veterinary shortage situation will be consistent with the information requested in the shortage situations nomination form. NIFA understands that defining the risk landscape associated with shortages of veterinary services throughout a state is a process

that may require consideration of many qualitative and quantitative factors. In addition, each shortage situation will be characterized by a different array of subjective and objective supportive information that must be developed into a cogent case identifying, characterizing, and justifying a given geographic or disciplinary area as deficient in certain types of veterinary capacity or service. To accommodate the uniqueness of each shortage situation, the nomination form provides opportunities to present a case using both supportive metrics and narrative explanations to define and explain the proposed need. At the same time, the elements of the nomination form provide a common structure for the information collection process which will in turn facilitate fair comparison of the relative merits of each nomination by the evaluation panel.

While NIFA anticipates some arguments made in support of a given shortage situation will be qualitative, respondents are encouraged to present verifiable quantitative and qualitative evidentiary information wherever possible. Absence of quantitative data such as animal and veterinarian census data for the proposed shortage area(s) may lead the panel to recommend not approving the shortage nomination.

The maximum point value review panelists may award for each element is as follows:

20 points: Describe the objectives of a veterinarian meeting this shortage situation as well as being located in the community, area, state/insular area, or position requested above.

20 points: Describe the activities of a veterinarian meeting this shortage situation and being located in the community, area, state/insular area, or position requested above.

5 points: Describe any past efforts to recruit and retain a veterinarian in the shortage situation identified above.

35 points: Describe the risk of this veterinarian position not being secured or retained. Include the risk(s) to the production of a safe and wholesome food supply and/or to animal, human, and environmental health not only in the community but in the region, state/insular area, nation, and/or international community.

An additional 20 points will be used to evaluate overall merit/quality of the case made for each nomination.

Prior to the panel being convened, shortage situation nominations will be evaluated and scored according to the established scoring system by a primary reviewer. When the panel convenes, the primary reviewer will present each nomination orally in summary form.

After each presentation, panelists will have an opportunity, if necessary, to discuss the nomination, with the primary reviewer leading the discussion and recording comments. After the panel discussion is complete, any scoring revisions will be made by and at the discretion of the primary reviewer. The panel is then polled to recommend, or not recommend, the shortage situation for designation. Nominations scoring 70 or higher by the primary reviewer (on a scale of 0 to 100), and receiving a simple majority vote in support of designation as a shortage situation will be "recommended for designation as a shortage situation." Nominations scoring below 70 by the primary reviewer, and failure to achieve a simple majority vote in support of designation will be "not recommended for designation as a shortage situation." In the event of a discrepancy between the primary reviewer's scoring and the panel poll results, the VMLRP program manager will be authorized to make the final determination on the nomination's designation.

Done in Washington, DC, this 1st day of December 2015.

Meryl Broussard,

Associate Director for Programs, National Institute of Food and Agriculture.

[FR Doc. 2015-30717 Filed 12-4-15; 8:45 am]

BILLING CODE 3410-22-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Business Meeting.

DATES: *Date and Time:* Friday, December 11, 2015; 2:00 p.m. EST.

ADDRESSES: *Place:* 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8591.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376-8105 or at signlanguage@usccr.gov at least seven business days before the scheduled date of the meeting.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

- This meeting is open to the public.
- I. Approval of Agenda
- II. Program Planning
 - Discussion and vote on part B

findings and recommendations for Peaceful Coexistence report

- Presentation of town hall budget estimates for the environmental justice report
- Discussion and vote on town hall meeting plan
- Discussion on plan for revision of Native American “Quiet Crisis” and the report on the Effect of Undocumented Immigrants on African American Employment

III. Management and Operations

- Mississippi SAC Chair Report
- Staff Director Report

IV. Adjourn Meeting

Dated: December 3, 2015.

David Mussatt,

Regional Programs Unit Chief, U.S. Commission on Civil Rights.

[FR Doc. 2015-30857 Filed 12-3-15; 11:15 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness Charter Renewal

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Services Administration, renewed the Charter for the Advisory Committee on Supply Chain Competitiveness on November 17, 2015.

DATES: The Charter for the Advisory Committee on Supply Chain Competitiveness was renewed on November 17, 2015.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Supply Chain Team, Room 11014, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; phone 202-482-1135; email: richard.boll@trade.gov.

SUPPLEMENTARY INFORMATION: The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Services Administration, renewed the Charter for the Advisory Committee on Supply Chain Competitiveness on November 17, 2015. This Notice is published in accordance with the Federal Advisory Committee Act (FACA) (Title 5, United States Code, Appendix 2, § 9). It has been determined that the Committee is necessary and in the public interest. The Committee was established pursuant to

Commerce’s authority under 15 U.S.C. 1512, established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., and with the concurrence of the General Services Administration. The Committee provides advice to the Secretary on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and to provide advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The total number of members that may serve on the Committee is a maximum of 45.

Dated: December 1, 2015.

David Long,

Director, Office of Supply Chain and Professional & Business Services.

[FR Doc. 2015-30757 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-849]

Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 11, 2015, the Department of Commerce (the “Department”) published the *Preliminary Results* of the administrative review (“AR”) of the antidumping duty order on certain cut-to-length carbon steel plate (“CTL plate”) from the People’s Republic of China (“PRC”).¹ The period of review (“POR”) is November 1, 2013, through October 31, 2014. The Department invited interested parties to comment on the *Preliminary Results*. Only Nucor Corporation (“Petitioner”) submitted comments to the Department. After considering the comments received, the Department made no changes to the

¹ See *Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments; 2013–2014*, 80 FR 48073 (August 11, 2015) (“*Preliminary Results*”).

Preliminary Results in these final results of review.

DATES: *Effective Date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Patrick O’Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0989.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2015, the Department published the *Preliminary Results* of the AR of the antidumping duty order on CTL plate from the PRC covering the period November 1, 2013, through October 31, 2014, in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (“the Act”). The AR covers six PRC companies. The Department invited interested parties to comment on the *Preliminary Results*. On September 10, 2015, the Department received comments from the Petitioner. No other party submitted comments on the *Preliminary Results*.

Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the PRC.² This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7212.40.5000, and 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of the Comments Received

The issue raised in Petitioner’s case brief is addressed in the Issues and Decision Memorandum which is dated concurrently with, and hereby adopted by, this notice. A list of the sections in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Services System (“ACCESS”). ACCESS is available to

² See *Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Issue and Decision Memorandum for the Final Results of the 2013–2014 Administrative Review*, dated concurrently with this notice, for a complete description of the scope of the order (“Issue and Decision Memorandum”).

registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit of the main Department building, room B8024. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

Companies That Did Not Demonstrate Separate Rate Eligibility

In the *Preliminary Results*, the Department determined that five companies did not establish their eligibility for separate rate status and, thus, are part of the PRC-wide entity.³ In its comments on the *Preliminary Results*, Petitioner states that the Department correctly denied Hunan Valin Xiangtan Iron & Steel Co., Ltd. (“Hunan Valin”) separate rate status. In these final results, we are continuing to treat Hebei Iron, Hunan Valin, Jiangyin Plastic, Jiangyin Steel, and Xiamen Paper as part of the PRC-wide entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity’s rate is not subject to change.⁴

Final Determination of No Shipments

In the *Preliminary Results*, we determined that Wuyang Iron & Steel Co, Ltd. (“Wuyang Iron”) did not have any reviewable transactions during the POR.⁵ We did not receive any comments concerning our finding of no shipments by Wuyang Iron. In these final results, we continue to determine that Wuyang Iron had no reviewable transactions of subject merchandise during the POR.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), the Department has determined, and CBP shall assess, antidumping duties on all

³ See *Preliminary Results* at 80 FR 48074. The five companies that did not establish their eligibility for a separate rate are: Hebei Iron & Steel Co., Ltd. (“Hebei Iron”); Hunan Valin; Jiangyin Xingcheng Plastic Chemical Co., Ltd. (“Jiangyin Plastic”); Jiangyin Xingcheng Special Steel Works Co., Ltd. (“Jiangyin Steel”); and Xiamen C&D Paper & Pulp Co., Ltd. (“Xiamen Paper”). See also Comment 1 of the Issues and Decision Memorandum.

⁴ See *Preliminary Results*. See also *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013). Under this practice, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity.

⁵ See *Preliminary Results* and accompanying Decision Memorandum at 4.

appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of this review. The Department intends to instruct CBP to liquidate any entries of subject merchandise from Hebei Iron, Hunan Valin; Jiangyin Plastic, Jiangyin Steel, and Xiamen Paper, at 128.59 percent (the PRC-wide rate).

Additionally, pursuant to the Department’s practice, because we determined that Wuyang Iron had no shipments of subject merchandise during the POR, we intend to instruct CBP to liquidate any suspended entries of subject merchandise from Wuyang Iron at the PRC-wide rate.⁶

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including Hebei Iron; Hunan Valin; Jiangyin Plastic; Jiangyin Steel; and Xiamen Paper, the cash deposit rate will be the PRC-wide rate of 128.59 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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

⁶ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

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 in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 which is subject to sanction.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: November 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Summary
Background
Scope of the Order
Discussion of the Issues
Comment 1: Whether Hunan Valin Xiangtan Iron & Steel Co. Ltd. (“Hunan Valin”) has Demonstrated Eligibility for Separate Rate Status
Recommendation

[FR Doc. 2015–30789 Filed 12–4–15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) finds that revocation of the countervailing duty order (CVD) order on narrow woven ribbons with woven selvedge (ribbons) from the People’s Republic of China (PRC) would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the “Final Results of Review” section of this notice.

DATES: *Effective Date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT:

Toby Vandall, Office I, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1664.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2015, the Department initiated a sunset review of the *CVD Order*¹ on ribbons from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On August 14, 2015, the Department received a notice of intent to participate in the review on behalf of Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, LLC (collectively, Berwick Offray) within the deadline specified in 19 CFR 351.218(d)(1)(i). Berwick Offray claimed interested party status under section 771(9)(C) of the Act, as domestic producers of the domestic like product.

The Department received adequate substantive responses from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from the Government of the PRC or any respondent interested party to the proceeding. Because the Department received no response from the respondent interested parties, the Department conducted an expedited review of this *CVD Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise subject to the order is narrow woven ribbons with woven selvage, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), metal threads and/or metalized yarns, or any combination thereof. The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also

¹ See *Narrow Woven Ribbons with Woven Selvage from the People's Republic of China: Countervailing Duty Order*, 75 FR 53642 (September 1, 2010) (*CVD Order*).

² See *Initiation of Five-Year ("Sunset") Review*, 80 FR 45945 (August 3, 2015).

may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under the order is dispositive.³

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. Parties can find a complete discussion of all issues raised in this expedited sunset review and the corresponding recommendations in this public memorandum, which is on file electronically *via* the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and 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 on the Internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the *CVD Order* on ribbons from the PRC would be likely to lead to continuation or recurrence of a net countervailable subsidy at the rates listed below:

³ A full description of the scope of the order is contained in the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Narrow Woven Ribbons with Woven Selvage from the People's Republic of China" (Issues and Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

| Manufacturers/exporters | Net countervailable subsidy rate (percent) |
|---|--|
| Changtai Rongshu Textile Co., Ltd | 117.95 |
| Yama Ribbons and Bows Co., Ltd | 1.56 |
| All Others | 1.56 |

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/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.

The Department is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 1, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015-30790 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2013-2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") is conducting the fourth administrative review of the antidumping duty order on seamless refined copper pipe and tube from the People's Republic of China ("PRC"), covering the period November 1, 2013, through October 31, 2014. The Department preliminarily determines that, during the period of review ("POR"), respondent Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. and eight affiliated producers that comprise the GD Single

Entity¹ have made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT:

Drew Jackson, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 482-4406.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is seamless refined copper pipe and tube. The product is currently classified under Harmonized Tariff Schedule of the United States (“HTSUS”) item numbers 7411.10.1030 and 7411.10.1090. Products subject to this order may also enter under HTSUS item numbers 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive.²

Extension of Deadlines for Preliminary Results

On July 15, 2015, the Department extended the time period for issuing the preliminary results of this review until November 30, 2015.³

¹ The GD Single Entity includes the following companies: (1) Golden Dragon Precise Copper Tube Group, Inc.; (2) Golden Dragon Holding (Hong Kong) International, Ltd.; (3) Hong Kong GD Trading Co., Ltd.; (4) Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; (5) Jiangsu Canghuan Copper Industry Co., Ltd.; (6) Guangdong Longfeng Precise Copper Tube Co., Ltd.; (7) Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; (8) Longkou Longpeng Precise Copper Tube Co., Ltd.; (9) Xinxiang Longxiang Precise Copper Tube Co., Ltd.; (10) Coaxian Ailun Metal Processing Co., Ltd.; and (11) Chongqing Longyu Precise Copper Tube Co., Ltd. (the “GD Single Entity”) See section entitled, “Preliminary Affiliation and Single Entity Determination,” below.

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Decision Memorandum for the Preliminary Results of the 2013–2014 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People’s Republic of China,” dated November 30, 2015, for a complete description of the scope of the order (“Preliminary Decision Memorandum”).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Abdelali Elouaradia, Office Director, Antidumping and Countervailing Duty Operations, Office 4, regarding “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Extension of Deadline

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated this review on December 23, 2014.⁴ On March 23, 2015, interested parties timely withdrew all review requests for the following companies: (1) Shanghai Hailiang Copper Co., Ltd.; (2) Zhejiang Hailiang Co., Ltd.; (3) China Hailiang Metal Trading; (4) Foshan Hua Hong Copper Tube Co., Ltd.; (5) Guilin Lijia Metals Co., Ltd.; (6) Hong Kong Hailiang Metal; (7) Ningbo Jintian Copper Tube Co., Ltd.; (8) Shanghai Hailiang Metal Trading Limited; (9) Sinochem Ningbo Ltd.; (10) Sinochem Ningbo Import & Export Co., Ltd.; (11) Taicang City Jinxin Copper Tube Co., Ltd.; (12) Zhejiang Jiahe Pipes Inc.; and (13) Zhejiang Naile Copper Co., Ltd. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to these 13 companies. The Golden Dragon Group Companies⁵ did not withdraw their request for administrative review; therefore we are not rescinding the review of the GD Single Entity.

Preliminary Affiliation and Single Entity Determination

Based on record evidence, the Department preliminarily finds that the following companies are affiliated pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (“the Act”): (1) Golden Dragon Precise Copper Tube Group, Inc.; (2) Golden Dragon Holding (Hong Kong) International, Ltd.; (3) Hong Kong GD Trading Co., Ltd.; (4) Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; (5) Jiangsu Canghuan Copper Industry Co., Ltd.; (6) Guangdong Longfeng Precise Copper Tube Co., Ltd.; (7) Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; (8) Longkou Longpeng Precise Copper Tube Co., Ltd.; (9) Xinxiang Longxiang Precise Copper Tube Co., Ltd.; (10) Coaxian Ailun Metal

for Preliminary Results of Antidumping Duty Administrative Review” (July 15, 2015).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 76956 (December 23, 2014).

⁵ Respondent’s submissions in this administrative review are filed on behalf of Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD, Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd., and GD Copper (U.S.A.) (“Golden Dragon Group Companies”).

Processing Co., Ltd.; and (11) Chongqing Longyu Precise Copper Tube Co., Ltd.

In addition, based on the information presented in this review, we preliminarily find that these companies should be treated as a single entity for the purposes of this review pursuant to 19 CFR 351.401(f). For additional information, see the Preliminary Decision Memorandum.⁶

Verification

As provided in section 782(i) of the Act, the Department verified constructed export price (“CEP”) sales information provided by the Golden Dragon Group Companies. The Department conducted the verification using standard verification procedures including the examination of relevant sales and financial records and the selection and review of original documentation containing relevant information. Further, after the issuance of these preliminary results of review, the Department will verify the remaining sales and production information submitted by the Golden Dragon Group Companies, in the PRC.

The verification reports will be on file electronically *via* Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <https://access.trade.gov>, and is available to all parties in the Department’s Central Records Unit, located in room B8024 of the main Department of Commerce building.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. The Department calculated export prices and constructed export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy country, within the meaning of section 771(18) of the Act, the Department calculated normal value in accordance with section 773(c) of the Act.

⁶ See also Memorandum to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations, through Robert Bolling, Program Manager, AD/CVD Operations Office IV, regarding “Affiliation and Single Entity Status of Golden Dragon Precise Copper Tube Group, Inc.; Golden Dragon Holding (Hong Kong) International Co., Ltd.; Hong Kong GD Trading Co., Ltd.; Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd.; Jiangsu Canghuan Copper Industry Co., Ltd.; Guangdong Longfeng Precise Copper Tube Co., Ltd.; Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd.; Longkou Longpeng Precise Copper Tube Co., Ltd.; Xinxiang Longxiang Precise Copper Tube Co., Ltd.; Coaxian Ailun Metal Processing Co., Ltd.; and Chongqing Longyu Precise Copper Tube Co., Ltd.,” dated concurrently with this memorandum, for a full discussion of the proprietary details of the Department’s single-entity analysis.

For a full description of the methodology underlying the preliminary results of this review, see the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made

available to the public via ACCESS. In addition, a complete version of the Preliminary Decision Memorandum can be found at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the POR:

| Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Golden Dragon Precise Copper Tube Group, Inc./Golden Dragon Holding (Hong Kong) International Co., Ltd./Hong Kong GD Trading Co., Ltd./Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd./Jiangsu Canghuan Copper Industry Co., Ltd./Guangdong Longfeng Precise Copper Tube Co., Ltd./Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd./Longkou Longpeng Precise Copper Tube Co., Ltd./Xinxiang Longxiang Precise Copper Tube Co., Ltd./Coaxian Ailun Metal Processing Co., Ltd./Chongqing Longyu Precise Copper Tube Co., Ltd. | 5.89 |

Disclosure and Public Comment

The Department intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than seven days after the date on which the final verification report is issued in this proceeding.⁷ Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.⁸ A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes.

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, within 30 days after the date of publication of this notice.⁹ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. 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 date and time to be determined.¹⁰ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.¹¹ An electronically filed

document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.¹²

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries covered by this review.¹³ The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In the event that the weighted-average dumping margin calculated for the GD Single Entity (the only individually examined respondent in this segment of the proceeding) in the final results of review is above *de minimis* (*i.e.*, greater than or equal to 0.5 percent), the Department intends to calculate importer- (or customer)-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).¹⁴ Where the

respondent reported reliable entered values, the Department intends to calculate importer- (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to the importer- (or customer) and dividing this amount by the total entered value of the sales to the importer- (or customer).¹⁵ Where the Department calculates an importer- (or customer)-specific weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to the importer- (or customer) by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer- (or customer)-specific assessment rates based on the resulting per-unit rates.¹⁶ Where an importer- (or customer)-specific *ad valorem* or per-unit rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis*, or an importer (or customer)-specific *ad valorem* or per-unit rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁷

On October 24, 2011, the Department announced a refinement to its assessment practice in NME antidumping duty cases.¹⁸ Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, pursuant

⁷ See 19 CFR 351.309(c); see also 19 CFR 351.303 (for general filing requirements).

⁸ See 19 CFR 351.309(d).

⁹ See 19 CFR 351.310(c).

¹⁰ See 19 CFR 351.310(d).

¹¹ See generally 19 CFR 351.303.

¹² See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

¹³ See 19 CFR 351.212(b)(1).

¹⁴ See *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification*").

¹⁵ See 19 CFR 351.212(b)(1).

¹⁶ *Id.*

¹⁷ See *Final Modification* at 8103.

¹⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

to this refinement, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis*, then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: November 30, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Administrative Review
- V. Discussion of the Methodology
 - A. Non-Market Economy Country Status
 - B. Separate Rate
 - C. Surrogate Country
 - D. Date of Sale
 - E. Fair Value Comparisons
 - F. Determination of Comparison Method
 - G. Export Price
 - H. Constructed Export Price
 - I. Normal Value
 - J. Factor Valuations
 - K. Currency Conversion
- VI. Recommendation

[FR Doc. 2015-30792 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) finds that revocation of the countervailing duty (CVD) order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: *Effective Date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-5255.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2010, the Department published the *CVD Order* on MCBs from the PRC.¹ On August 3, 2015, the Department published a notice of initiation of the first sunset review of the *CVD Order* on MCBs from the PRC pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended (the Act).² On August 18, 2015, the Magnesia Carbon Bricks Fair Trade Committee (the Committee) filed a notice of intent to participate in the review.³ The Committee claimed interested party status pursuant to section 771(9)(C) of the Act.

The Department received an adequate substantive response from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a response from the Government of the PRC (GOC) or any respondent interested party to the proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2), the Department conducted an expedited review of this *CVD Order* on MCBs.

Scope of the Order

The merchandise subject to this *CVD Order* includes certain chemically-bonded (resin or pitch), magnesia carbon bricks. Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the order.⁴

¹ See *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order*, 75 FR 57442 (September 21, 2010) (*CVD Order*).

² See *Initiation of Five-Year "Sunset" Reviews*, 80 FR 45945 (August 3, 2015).

³ See Letter to the Department, "First Five-Year ("Sunset") Review of Countervailing Duty Order on Magnesia Carbon Bricks From The People's Republic of China: Domestic Industry's Notice of Intent to Participate In Sunset Review," (August 18, 2015). The Committee is an *ad hoc* association of three U.S. producers of MCBs: Resco Products, Inc., Magnesita Refractories Company, and Harbison Walker International, Inc.

⁴ See Department Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China," dated concurrently with this notice.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The Issues and 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 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 at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy

rate likely to prevail if the *CVD Order* were revoked, and the nature of the subsidies.

Final Results of Sunset Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the *CVD Order* on MCBs from the PRC would be likely to lead to continuation or recurrence of a net countervailable subsidy at the rates listed below:

| Manufacturers/exporters/producers | Net countervailable subsidy (percent) |
|--|---------------------------------------|
| RHI Refractories Liaoning Co., Ltd. (RHIL), RHI Refractories (Dalian) Co., Ltd. (RHID) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHJ) (collectively, RHI) | 24.24 |
| Liaoning Mayerton Refractories (LMR) and Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, Mayerton) | 253.87 |
| All Others | 24.24 |

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 1, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–30794 Filed 12–4–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People’s Republic of China: Preliminary Results, Preliminary Intent To Rescind, and Partial Rescission of the 20th Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting the 20th administrative review of the antidumping duty order on fresh garlic from the People’s Republic of China (PRC) covering the period of review (POR) November 1, 2013, through October 31, 2014.¹ This review covers 161 manufacturers/exporters of subject merchandise.² We preliminarily find that mandatory respondent Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) made sales of subject merchandise at less than normal value (NV). In addition, the Department preliminarily finds that the other mandatory respondents, Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Qingdao Tiantaixing Foods Co., Ltd. (QTF), are part of the PRC-wide entity. We invite interested parties to comment on these preliminary results.

DATES: *Effective date:* December 7, 2015.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Arrowsmith or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–4956.

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the

United States (HTSUS) 0703.20.0010, 0703.20.0020, and 0703.20.0090. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see “III. Scope of the Order” in the accompanying Preliminary Decision Memorandum.³

Partial Rescission of Administrative Review and Preliminary Intent To Rescind the Review

On December 23, 2014, the Department initiated a review of 161 companies in this proceeding.⁴ Between January 16 and March 17, 2015, withdrawal requests were timely filed for 81 companies.⁵ The Department is, therefore, partially rescinding this review with respect to the companies listed in Appendix I, in accordance with 19 CFR 351.213(d)(1). In addition, we

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Decision Memorandum for the Preliminary Results of the 2013–2014 Antidumping Duty Administrative Review: Fresh Garlic from the People’s Republic of China” (dated concurrently with this notice) (Preliminary Decision Memorandum).

⁴ *Id.*

⁵ See letter from Petitioners, “20th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China—Petitioners’ Withdrawal of Certain Requests for Administrative Review,” at 2–4 (January 16, 2015); letter from El Bosque Garlic Farm, “Fresh Garlic from the People’s Republic of China—Withdrawal of Review Request in 20th Administrative Review filed on behalf of El Bosque Garlic Farm,” at 1 (March 17, 2015); and letter from Zhengzhou Harmoni Spice Co., Ltd., “Harmoni Withdrawal of Review Request: Twentieth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A–570–831),” at 1 (January 16, 2015).

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 76956 (December 23, 2014) (*Initiation Notice*).

² *Id.* at 79 FR 76956, 76958–76961.

preliminarily intend to rescind this administrative review with respect to Jinxiang Kaihua Imp & Exp Co. Ltd. (Kaihua), because we found its POR sales to not be *bona fide* in the concurrent new shipper review.⁶

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export prices were calculated in accordance with section 772(a) of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c). We relied, in part, on the facts available, with adverse inferences, for our preliminary determination, in accordance with section 776 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

PRC-Wide Entity

The Department’s change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.⁷ Under this

policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity’s rate (*i.e.*, \$4.71/kg) is not subject to change. Aside from the no shipments companies discussed below, and the companies for which the review is being rescinded, the Department considers all other companies for which a review was requested and which did not preliminarily qualify for a separate rate to be part of the PRC-wide entity. For additional information, see the Preliminary Decision Memorandum.

Preliminary Determination of Separate Rates for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it determined that it would not be practicable to examine individually all companies for which a review request was made. There were 12 exporters of subject merchandise from the PRC that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These 12 exporters are listed in Appendix II.

Neither the Act nor the Department’s regulations address the establishment of the rate applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department’s practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs the Department to use rates established for individually

investigated producers and exporters, excluding any rates that are zero, *de minimis*, or based entirely on facts available in investigations. In this review, we calculated a preliminary weighted-average dumping margin for Xinboda, while Golden Bird and QTF were considered part of the PRC-wide entity based on the application of total facts available with adverse inferences. Therefore for the preliminary results, the Department has preliminarily determined to assign the non-selected separate rate companies Xinboda’s rate.

Preliminary Determination of No Shipments

The companies listed in Appendix III timely filed “no shipment” certifications stating that they had no entries of subject merchandise during the POR. Consistent with its practice, the Department asked CBP to conduct a query of potential shipments made by these companies. CBP did not provide evidence that contradicted the parties’ no shipment claims. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its refinement to its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part in these circumstances but to complete the review with respect to these 10 companies and issue appropriate instructions to CBP based on the final results of the review.⁸

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period November 1, 2013, through October 31, 2014:

| Exporter | Weighted-average margin (dollars per kilogram) |
|--|--|
| Shenzhen Xinboda Industrial Co., Ltd | 2.72 |
| Jinan Farmlady Trading Co., Ltd | 2.72 |
| Jining Maycarrier Import & Export Co., Ltd | 2.72 |
| Jining Shunchang Import & Export Co., Ltd | 2.72 |
| Jinxiang Feiteng Import & Export Co., Ltd | 2.72 |
| Jinxiang Guihua Food Co., Ltd | 2.72 |

⁶ See *Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011–2012*, 79 FR 36721 (June 30, 2014) and accompanying Issues and Decision Memorandum at Comment 18.

⁷ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694–95 (October 24, 2011); see also “Assessment Rates” section below.

| Exporter | Weighted-average margin (dollars per kilogram) |
|---|--|
| Jinxiang Hejia Co., Ltd | 2.72 |
| Jining Yongjia Trade Co., Ltd | 2.72 |
| Shenzhen Yuting Foodstuff Co., Ltd | 2.72 |
| Jining Shengtai Vegetables & Fruits Co., Ltd | 2.72 |
| Shenzhen Bainong Co., Ltd | 2.72 |
| Weifang Hongqiao International Logistics Co., Ltd | 2.72 |
| Yantai Jinyan Trading Inc | 2.72 |
| PRC-Wide Rate | 4.71 |

Disclosure, Public Comment and Opportunity To Request a Hearing

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication of these preliminary results of review and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.⁹ Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.¹⁰

Any interested party may request a hearing within 30 days of publication of this notice.¹¹ Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs.¹² If a party requests a hearing, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.¹³ For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit 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).¹⁴ The Department will direct CBP to assess rates based on the per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.*, at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.¹⁵

¹³ See 19 CFR 351.212(b).

¹⁴ If our determination in the final results is to rescind this administrative review with respect to Kaihua, then we will not issue liquidation instructions for Kaihua unless the preliminary injunction entered on October 22, 2015, in Court of International Trade case number 15-00289 has lifted.

¹⁵ For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 4.71 U.S. dollars per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act,

⁹ See 19 CFR 351.309(c)(1)(ii) and (d)(1).

¹⁰ See 19 CFR 351.309(c)(2), (d)(2).

¹¹ See 19 CFR 351.310(c).

¹² *Id.*

and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: November 30, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Companies for Which Reviews Have Been Rescinded

1. American Pioneer Shipping
2. Anhui Dongqian Foods Ltd.
3. Anqiu Haoshun Trade Co., Ltd.
4. APM Global Logistics (Shanghai) Co., Ltd.
5. APS Qingdao
6. Chiping Shengkang Foodstuff Co., Ltd.
7. CMEC Engineering Machinery Import & Export Co., Ltd.
8. Dongying Shunyifa Chemical Co., Ltd.
9. Dynalink Systems Logistics (Qingdao) Inc.
10. Eimskip Logistics Inc.
11. Feicheng Acid Chemicals Co., Ltd.
12. Frog World Co., Ltd.
13. Golden Bridge International, Inc.
14. Hangzhou Guanyu Foods Co., Ltd.
15. Hongqiao International Logistics Co.
16. Intecs Logistics Service Co., Ltd.
17. IT Logistics Qingdao Branch
18. Jinan Solar Summit International Co., Ltd.
19. Jining De-Rain Trading Co., Ltd.
20. Jining Highton Trading Co., Ltd.
21. Jining Jiulong International Trading Co., Ltd.
22. Jining Tiankuang Trade Co., Ltd.
23. Jinxiang County Huaguang Food Import & Export Co., Ltd.
24. Jinxiang Fengsheng Import & Export Co., Ltd.
25. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
26. Jinxiang Shenglong Trade Co., Ltd.
27. Jinxiang Tianheng Trade Co., Ltd.
28. Kingwin Industrial Co., Ltd.
29. Laiwu Fukai Foodstuff Co., Ltd.
30. Laizhou Xubin Fruits and Vegetables
31. Linshu Dading Private Agricultural Products Co., Ltd.
32. Linyi City Hedong District Jiuli Foodstuff Co.
33. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
34. Linyi Katayama Foodstuffs Co., Ltd.
35. Linyi Tianqin Foodstuff Co., Ltd.
36. Ningjin Ruifeng Foodstuff Co., Ltd.
37. Qingdao Apex Shipping Co., Ltd.
38. Qingdao BNP Co., Ltd.
39. Qingdao Cherry Leather Garment Co., Ltd.
40. Qingdao Chongzhi International Transportation Co., Ltd.
41. Qingdao Saturn International Trade Co., Ltd.
42. Qingdao Sino-World International Trading Co., Ltd.
43. Qingdao Winner Foods Co., Ltd.
44. Qingdao Yuan Kang International
45. Qufu Dongbao Import & Export Trade Co., Ltd.
46. Rizhao Huasai Foodstuff Co., Ltd.
47. Samyoung America (Shanghai) Inc.
48. Shandong Chengshun Farm Produce Trading Co., Ltd.
49. Shandong China Bridge Imports
50. Shandong Dongsheng Eastsun Foods Co.,

- Ltd.
51. Shandong Garlic Company
52. Shandong Sanxing Food Co., Ltd.
53. Shandong Wonderland Organic Food Co., Ltd.
54. Shandong Xingda Foodstuffs Group Co., Ltd.
55. Shandong Yipin Agro (Group) Co., Ltd.
56. Shanghai Ever Rich Trade Company
57. Shanghai Goldenbridge International Co., Ltd.
58. Shanghai Great Harvest International Co., Ltd.
59. Shanghai Medicines & Health Products Import/Export Co., Ltd.
60. Shanghai Yijia International Transportation Co., Ltd.
61. Shenzhen Fanhui Import & Export Co., Ltd.
62. Shenzhen Greening Trading Co., Ltd.
63. T&S International, LLC.
64. Taian Eastsun Foods Co., Ltd.
65. Taian Fook Huat Tong Kee Pte. Ltd.
66. Taian Solar Summit Food Co., Ltd.
67. Taiyan Ziyang Food Co., Ltd.
68. Tianjin Spiceshi Co., Ltd.
69. U.S. United Logistics (Ningbo) Inc.
70. V.T. Impex (Shandong) Limited
71. Weifang Jinbao Agricultural Equipment Co., Ltd.
72. Weihai Textile Group Import & Export Co., Ltd.
73. WSSF Corporation (Weifang)
74. Xiamen Huamin Import Export Company
75. Xiamen Keep Top Imp. and Exp. Co., Ltd.
76. Xinjiang Top Agricultural Products Co., Ltd.
77. Yishui Hengshun Food Co., Ltd.
78. You Shi Li International Trading Co., Ltd.
79. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.
80. Zhengzhou Harmoni Spice Co., Ltd.
81. Zhengzhou Xiwannian Food Co., Ltd.

Appendix II

Separate Rate Companies

1. Jinan Farmlady Trading Co., Ltd.
2. Jining Maycarrier Import & Export Co., Ltd.
3. Jining Shengtai Vegetables & Fruits Co., Ltd.
4. Jining Shunchang Import & Export Co., Ltd.
5. Jining Yongjia Trade Co., Ltd.
6. Jinxiang Feiteng Import & Export Co., Ltd.
7. Jinxiang Guihua Food Co., Ltd.
8. Jinxiang Hejia Co., Ltd.
9. Shenzhen Bainong Co., Ltd.
10. Shenzhen Yuting Foodstuff Co., Ltd.
11. Weifang Hongqiao International Logistics Co., Ltd.
12. Yantai Jinyan Trading Inc.

Appendix III

Companies That Have Certified No Shipments

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
3. Jinxiang Yuanxin Import & Export Co., Ltd.
4. Lanling Qingshui Vegetable Foods Co., Ltd.
5. Qingdao Lianghe International Trade Co., Ltd.
6. Qingdao Sea-line International Trading Co.
7. Qingdao Xiangtiangfeng Foods Co., Ltd.

8. Shandong Chenhe International Trading Co., Ltd.
9. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
10. Shijazhuang Goodman Trading Co., Ltd.

[FR Doc. 2015-30791 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE325

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 January, February, and March of 2016. 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 January 14, February 11, and March 17, 2016.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on January 15, January 27, February 2, February 16, March 1, and March 16, 2016.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Norfolk, VA; Kenner, LA; and Fort Pierce, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Key Largo, FL; Portsmouth, NH; Kitty Hawk, NC; Palm Coast, FL; Manahawkin, NJ; and Houston, TX.

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/compliance/workshops/index.html>.

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 116 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. January 14, 2016, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 1387 North Military Highway, Norfolk, VA 23502.

2. February 11, 2016, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 2610 Williams Boulevard, Kenner, LA 70062.

3. March 17, 2016, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 2655 Crossroads Parkway, Fort Pierce, FL 34945.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at ericssharkguide@yahoo.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 220 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. January 15, 2016, 9 a.m.–5 p.m., Holiday Inn, 99701 Overseas Highway, Key Largo, FL 33037.

2. January 27, 2016, 9 a.m.–5 p.m., Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801.

3. February 2, 2016, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.

4. February 16, 2016, 9 a.m.–5 p.m., Hilton Garden Inn, 55 Town Center Boulevard, Palm Coast, FL 32164.

5. March 1, 2016, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72, Manahawkin, NJ 08020.

6. March 16, 2016, 9 a.m.–5 p.m., Holiday Inn Express, 8080 Main Street, Houston, TX 77025.

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: December 2, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015-30770 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Recreational Landings and Bluefin Tuna Catch Reports

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 February 5, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margo Schulze-Haugen, (301) 427-8503 or Margo.Schulze-Haugen@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Catch reporting from recreational and commercial hand-gear fisheries provides important data used to monitor catches of Atlantic highly migratory species (HMS) and supplements other existing data collection programs. Data collected through this program are used for both domestic and international fisheries management and stock assessment purposes.

Atlantic bluefin tuna (BFT) catch reporting provides real-time catch information used to monitor the BFT fishery. Under the Atlantic Tunas Convention Act of 1975 (ATCA, 16 U.S.C. 971), the United States is required to adopt regulations, as necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), including recommendations on a specified BFT quota. BFT catch reporting helps the U.S. monitor this quota and supports scientific research consistent with ATCA and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*). Recreational anglers and commercial hand-gear fishermen are required to report specific information regarding their catch of BFT.

Atlantic billfish and swordfish are managed internationally by ICCAT and nationally under ATCA and the Magnuson-Stevens Act. This collection provides information needed to monitor the recreational catch of Atlantic blue and white marlin, which is applied to the recreational limit established by ICCAT, and the recreational catch of North Atlantic swordfish, which is applied to the U.S. quota established by ICCAT. This collection also provides information on recreational landings of West Atlantic sailfish which is unavailable from other established

monitoring programs. Collection of sailfish catch information is authorized under the Magnuson-Stevens Act for purposes of stock management.

II. Method of Collection

Respondents reporting BFT catch in states (and the United States Virgin Islands and Puerto Rico) other than Maryland and North Carolina may use either an internet Web site or a toll-free telephone number. Respondents reporting Atlantic marlin, West Atlantic sailfish, or North Atlantic swordfish in states (and the United States Virgin Islands and Puerto Rico) other than Maryland or North Carolina may use either an internet Web site or a toll-free telephone number to report landings information. In Maryland and North Carolina, a paper reporting system is used for all of the aforementioned species. Under state law, respondents in Maryland and North Carolina must submit a landing card at a state-operated reporting station. States that participate in a landing card program must submit weekly reports and one annual report to NOAA to summarize landings and results to date.

III. Data

OMB Control Number: 0648-0328.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Businesses or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

Estimated Number of Respondents: 20,527.

Estimated Time per Response: 5 minutes for an initial call-in or internet report; 5 minutes for a confirmation call; 10 minutes for a landing card; 1 hour for a weekly state report; and 4 hours for an annual state report.

Estimated Total Annual Burden Hours: 2,190.

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: December 1, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015-30692 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE271

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Bravo Wharf Recapitalization Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a wharf recapitalization project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to the Navy to incidentally take marine mammals, by Level B harassment only, during the specified activity.

DATES: Comments and information must be received no later than January 6, 2016.

ADDRESSES: Comments on this proposal should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.mccue@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-

megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Laura McCue, 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. In case of problems accessing these documents, please call the contact listed above.

National Environmental Policy Act

The Navy has prepared a draft Environmental Assessment (*Wharf Bravo Recapitalization at Naval Station Mayport, Jacksonville, FL*) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. It is posted at the aforementioned site. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the incidental take authorization request.

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 by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain

findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, 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]."

Summary of Request

On July 21, 2015, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals, incidental to pile driving in association with the

Bravo Wharf recapitalization project at Naval Station Mayport, Florida (NSM). That request was modified on November 4 and November 10, and a final version, which we deemed adequate and complete, was submitted on November 17. In-water work associated with the project is expected to be completed within the one-year timeframe of the proposed IHA (October 15, 2016 through September 30, 2017).

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. One species of marine mammal has the potential to be affected by the specified activities: bottlenose dolphin (*Tursiops truncatus truncatus*). This species may occur year-round in the action area.

Similar wharf construction and pile driving activities in Naval Station Mayport have been authorized by NMFS in the past. The first authorization was effective between September 1, 2014 through August 31, 2015, and the second authorization, which is currently ongoing, is effective from September 8, 2015 through September 7, 2016.

Description of the Specified Activity

Overview

Bravo Wharf is a medium draft, general purpose berthing wharf that was constructed in 1970 and lies at the western edge of the NSM turning basin. Bravo Wharf is approximately 2,000 ft long, 125 ft wide, and has a berthing depth of 50 ft mean lower low water. The wharf is one of two primary deep draft berths at the basin and is capable of berthing ships up to and including large amphibious ships; it is one of three primary ordnance handling berths at the basin. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling and asphalt paved deck. The wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection. This structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of this project is to complete necessary repairs to Bravo Wharf. Please refer to the Navy's application for a schematic of the project plan.

Dates and Duration

The total project is expected to require a maximum of 130 days of in-water pile driving. The project may require up to 24 months for completion; in-water activities are limited to a maximum of 130 days, separated into

two phases. If in-water work will extend beyond the effective dates of the IHA, a second IHA application will be submitted by the Navy. There will be a maximum of 110 days for vibratory pile driving (seventy three days in phase I and thirty seven days in phase II), and a contingent 20 days of impact pile driving. The specified activities are expected to occur between October 1, 2016 and September 30, 2017.

Specific Geographic Region

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figures 2–1 and 2–2 of the Navy's application). The St. Johns River is the longest river in Florida, with the final 35 mi flowing through the city of Jacksonville. This portion of the river is significant for commercial shipping and military use. At the mouth of the river, near the action area, the Atlantic Ocean is the dominant influence and typical salinities are above 30 ppm. Outside the river mouth, in nearshore waters, moderate oceanic currents tend to flow southward parallel to the coast. Sea surface temperatures range from around 16 °C in winter to 28 °C in summer.

The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft containing ship berthing facilities at sixteen locations along wharves around the basin perimeter. The basin was constructed during the early 1940s by dredging the eastern part of Ribault Bay (at the mouth of the St. Johns River), with dredge material from the basin used to fill parts of the bay and other low-lying areas in order to elevate the land surface. The basin is currently maintained through regular dredging at a depth of 50 ft, with depths at the berths ranging from 30–50 ft. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Bravo Wharf is located in the western corner of the Mayport turning basin.

Detailed Description of Activities

In order to rehabilitate Bravo Wharf, the Navy proposes to install a new steel sheet pile bulkhead at Bravo Wharf. The project consists of installing a total of approximately 880 single sheet piles (Phase I—berths B–2 and B–3: 590; Phase II—berth B–1: 290). The wall will be anchored at the top and fill consisting of clean gravel and flowable concrete fill will be placed behind the

wall. A concrete cap will be formed along the top and outside face of the wall to tie the entire structure together and provide a berthing surface for vessels. The new bulkhead will be designed for a fifty-year service life.

All piles would be driven by vibratory hammer, although impact pile driving may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. In the unlikely event that impact driving is required, either impact or vibratory driving could occur on a given day, but concurrent use of vibratory and impact drivers would not occur. The Navy estimates that a total of 130 in-water work days may be required to complete pile driving activity, which includes twenty days for contingency impact driving, if necessary.

Description of Marine Mammals in the Area of the Specified Activity

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin, Atlantic spotted dolphin (*Stenella frontalis*), North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple additional cetacean species occur in South Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NSM 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. 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 Charleston/Jacksonville Operating Area, which documents and describes the marine resources that occur in Navy operating areas of the Southeast (DoN, 2008). The document is publicly available at www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html (accessed November 2, 2015).

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and

describe any information regarding local occurrence. Multiple stocks of bottlenose dolphins may be present in the action area, either seasonally or year-round, and are described further below. We first address the three other species that may occur in the action area.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

| 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; season of occurrence |
|--|---|---|--|------------------|--------------------------|---|
| Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) | | | | | | |
| Family Balaenidae | | | | | | |
| North Atlantic right whale. | Western North Atlantic ⁵ | E/D; Y | 476 (0; 476; 2013) | 1 | 4.3 | Rare inshore, regular near/offshore; Nov–Apr. |
| Humpback whale | Gulf of Maine | E/D; Y | 823 (0; 823; 2008) | 2.7 | 7.6 | Rare; Fall–Spring. |
| Superfamily Odontoceti (toothed whales, dolphins, and porpoises) | | | | | | |
| Family Delphinidae | | | | | | |
| Atlantic spotted dolphin | Western North Atlantic .. | -; N | 44,715 (0.43; 31,610; 2011). | 316 | 0 | Rare; year-round. |
| Common bottlenose dolphin. | Western North Atlantic Offshore. | -; N | 77,532 (0.4; 56,053; 2011). | 561 | 43.9 | Rare; year-round. |
| | Western North Atlantic Coastal, Southern Migratory. | -/D; Y | 9,173 (0.46; 6,326; 2010–11). | 63 | 0–12 | Possibly common; ⁸ Jan–Mar. |
| | Western North Atlantic Coastal, Northern Florida. | -/D; Y | 1,219 (0.67; 730; 2010–11). | 7 | 0.4 | Possibly common; ⁸ year-round. |
| | Jacksonville Estuarine System ⁶ . | -; Y | 412 ⁷ (0.06; unk; 1994–97). | undet. | 1.2 | Possibly common; ⁸ 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 certain stocks, abundance estimates are actual counts of animals and there is no associated CV. 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. All values presented here are from the draft 2015 SARs (www.nmfs.noaa.gov/pr/sars/draft.htm).

⁵ Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2015 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2015 SARs. However, we consider this information to be the best available for use in this document.

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 This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

⁸ Bottlenose dolphins in general are common in the project area, but it is not possible to readily identify them to stock. Therefore, these three stocks are listed as possibly common as we have no information about which stock commonly only occurs.

Northern Right whales occur in sub-polar to temperate waters in all major ocean basins in the world with a clear migratory pattern, occurring in high latitudes in summer (feeding) and lower latitudes in winter (breeding). North Atlantic right whales exhibit extensive migratory patterns, traveling along the eastern seaboard from calving grounds off Georgia and northern Florida to northern feeding areas off of the northeast U.S. and Canada in March/ April and returning in November/ December. Migrations are typically within 30 nmi of the coastline and in waters less than 50 m deep. Although

this migratory pattern is well known, winter distribution for most of the population—the non-calving portion—is poorly known, as many whales are not observed on the calving grounds. It is unknown where these animals spend the winter, although they may occur further offshore or may remain on foraging grounds during winter (Morano *et al.*, 2012). During the winter calving period, right whales occur regularly in offshore waters of northeastern Florida. Critical habitat for right whales in the southeast (as identified under the ESA) is designated to protect calving grounds, and encompasses waters from the coast

out to 15 nmi offshore from Mayport. More rarely, right whales have been observed entering the mouth of the St. Johns River for brief periods of time (Schweitzer and Zoodsma, 2011). Right whales are not present in the region outside of the winter calving season.

Humpback whales are a cosmopolitan species that migrate seasonally between warm-water (tropical or sub-tropical) breeding and calving areas in winter months and cool-water (temperate to sub-Arctic/Antarctic) feeding areas in summer months (Gendron and Urban, 1993). They tend to occupy shallow, coastal waters, although migrations are

undertaken through deep, pelagic waters. In the North Atlantic, humpback whales are known to aggregate in six summer feeding areas representing relatively discrete subpopulations (Clapham and Mayo, 1987), which share common wintering grounds in the Caribbean (and to a lesser extent off of West Africa) (Winn *et al.*, 1975; Mattila *et al.*, 1994; Palsbøll *et al.*, 1997; Smith *et al.*, 1999; Stevick *et al.*, 2003; Cerchio *et al.*, 2010). These populations or aggregations range from the Gulf of Maine in the west to Norway in the east, and the migratory range includes the east coast of the U.S. and Canada. The only managed stock in U.S. waters is the Gulf of Maine feeding aggregation, although other stocks occur in Canadian waters (*e.g.*, Gulf of St. Lawrence feeding aggregation), and it is possible that whales from other stocks could occur in U.S. waters. Significant numbers of whales do remain in mid- to high-latitude waters during the winter months (Clapham *et al.*, 1993; Swingle *et al.*, 1993), and there have been a number of humpback sightings in coastal waters of the southeastern U.S. during the winter (Wiley *et al.*, 1995; Laerm *et al.*, 1997; Waring *et al.*, 2014). According to Waring *et al.* (2014), it is unclear whether the increased numbers of sightings represent a distributional change, or are simply due to an increase in sighting effort and/or whale abundance. These factors aside, the humpback whale remains relatively rare in U.S. coastal waters south of the mid-Atlantic region, and is considered rare to extralimital in the action area. Any occurrences in the region would be expected in fall, winter, and spring during migration, as whales are unlikely to occur so far south during the summer feeding season.

Neither the humpback whale nor the right whale would occur within the turning basin, and only the right whale has been observed to occur as far inshore as the mouth of the St. Johns River. Therefore, the potential for interaction with these species is unlikely. When considering frequency of occurrence, size of ensouffled area (less than one square kilometer during both vibratory (approximately 0.61 km²) and impact driving (0.51 km²)), and duration (seventy three days in phase I, and thirty seven days in phase II), we consider the possibility for harassment of humpback and right whales to be discountable. Therefore, the humpback whale and right whale are excluded from further analysis and are not discussed further in this document.

Atlantic spotted dolphins are distributed in tropical and warm temperate waters of the western North

Atlantic predominantly over the continental shelf and upper slope, from southern New England through the Gulf of Mexico (Leatherwood *et al.*, 1976). Spotted dolphins in the Atlantic Ocean and Gulf of Mexico are managed as separate stocks. The Atlantic spotted dolphin occurs in two forms which may be distinct sub-species (Perrin *et al.*, 1987; Rice, 1998); a larger, more heavily spotted form inhabits the continental shelf inside or near the 200-m isobath and is the only form that would be expected to occur in the action area. Although typically observed in deeper waters, spotted dolphins of the western North Atlantic stock do occur regularly in nearshore waters south of the Chesapeake Bay (Mullin and Fulling, 2003). Specific data regarding seasonal occurrence in the region of activity is lacking, but higher numbers of individuals have been reported to occur in nearshore waters of the Gulf of Mexico from November to May, suggesting seasonal migration patterns (Griffin and Griffin, 2003).

From recent observation reports from the Navy from previous construction activity at Naval Station Mayport, no spotted dolphins were observed. Similarly, dolphin research studies that have been conducted in the area also reported zero observed spotted dolphins in the project area (Gibson, pers. comm.). We consider the likelihood of Atlantic spotted dolphins being impacted by the construction activities to be discountable based on this information, combined with the zero estimated exposures (density: 0.005240/km²). Therefore, spotted dolphins are also excluded from further analysis and are not discussed further in this document.

The following summarizes the population status and abundance of the remaining species.

Bottlenose Dolphin

Bottlenose dolphins are found worldwide in tropical to temperate waters and can be found in all depths from estuarine inshore to deep offshore waters. Temperature appears to limit the range of the species, either directly, or indirectly, for example, through distribution of prey. Off North American coasts, common bottlenose dolphins are found where surface water temperatures range from about 10 °C to 32 °C. In many regions, including the southeastern U.S., separate coastal and offshore populations are known. There is significant genetic, morphological, and hematological differentiation evident between the two ecotypes (*e.g.*, Walker, 1981; Duffield *et al.*, 1983; Duffield, 1987; Hoelzel *et al.*, 1998), which

correspond to shallow, warm water and deep, cold water. Both ecotypes have been shown to inhabit the western North Atlantic (Hersh and Duffield, 1990; Mead and Potter, 1995), where the deep-water ecotype tends to be larger and darker. In addition, several lines of evidence, including photo-identification and genetic studies, support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of bays, sounds and estuaries. This complex differentiation of bottlenose dolphin populations is observed throughout the Atlantic and Gulf of Mexico coasts where bottlenose dolphins are found, although estuarine populations have not been fully defined.

In the Mayport area, four stocks of bottlenose dolphins are currently managed, none of which are protected under the ESA. Of the four stocks—offshore, southern migratory coastal, northern Florida coastal, and Jacksonville estuarine system—only the latter three are likely to occur in the action area. Bottlenose dolphins typically occur in groups of 2–15 individuals (Shane *et al.*, 1986; Kerr *et al.*, 2005). Although significantly larger groups have also been reported, smaller groups are typical of shallow, confined waters. In addition, such waters typically support some degree of regional site fidelity and limited movement patterns (Shane *et al.*, 1986; Wells *et al.*, 1987). Observations made during marine mammal surveys conducted during 2012–2013 in the Mayport turning basin show bottlenose dolphins typically occurring individually or in pairs, or less frequently in larger groups. The maximum observed group size during these surveys is six, while the mode is one. Navy observations indicate that bottlenose dolphins rarely linger in a particular area in the turning basin, but rather appear to move purposefully through the basin and then leave, which likely reflects a lack of biological importance for these dolphins in the basin. Based on currently available information, it is not possible to determine the stock to which the dolphins occurring in the action area may belong. These stocks are described in greater detail below.

Western North Atlantic Offshore—This stock, consisting of the deep-water ecotype or offshore form of bottlenose dolphin in the western North Atlantic, is distributed primarily along the outer continental shelf and continental slope, but has been documented to occur relatively close to shore (Waring *et al.*, 2014). The separation between offshore and coastal morphotypes varies

depending on location and season, with the ranges overlapping to some degree south of Cape Hatteras. Based on genetic analysis, Torres *et al.* (2003) found a distributional break at 34 km from shore, with the offshore form found exclusively seaward of 34 km and in waters deeper than 34 m. Within 7.5 km of shore, all animals were of the coastal morphotype. More recently, coastwide, systematic biopsy collection surveys were conducted during the summer and winter to evaluate the degree of spatial overlap between the two morphotypes. South of Cape Hatteras, spatial overlap was found although the probability of a sampled group being from the offshore morphotype increased with increasing depth, and the closest distance for offshore animals was 7.3 km from shore, in water depths of 13 m just south of Cape Lookout (Garrison *et al.*, 2003). The maximum radial distance for the largest ZOI is approximately 1.2 km (Table 3); therefore, it is unlikely that any individuals of the offshore morphotype would be affected by project activities. In terms of water depth, the affected area is generally in the range of the shallower depth reported for offshore dolphins by Garrison *et al.* (2003), but is far shallower than the depths reported by Torres *et al.* (2003). South of Cape Lookout, the zone of spatial overlap between offshore and coastal ecotypes is generally considered to occur in water depths between 20–100 m (Waring *et al.*, 2014), which is generally deeper than waters in the action area. This stock is thus excluded from further analysis.

Western North Atlantic Coastal, Southern Migratory—The coastal morphotype of bottlenose dolphin is continuously distributed from the Gulf of Mexico to the Atlantic and north approximately to Long Island (Waring *et al.*, 2014). On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal stock, citing stranding patterns during a high mortality event in 1987–88 and observed density patterns. More recent studies demonstrate that there is instead a complex mosaic of stocks (Zolman, 2002; McLellan *et al.*, 2002; Rosel *et al.*, 2009). The coastal morphotype was managed by NMFS as a single stock until 2009, when it was split into five separate stocks, including northern and southern migratory stocks. The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. Therefore, all coastal

stocks of bottlenose dolphins are listed as depleted under the MMPA, and are also considered strategic stocks.

According to the Scott *et al.* (1988) hypothesis, a single stock was thought to migrate seasonally between New Jersey (summer) and central Florida (winter). Instead, it was more recently determined that a mix of resident and migratory stocks exists, with the migratory movements and spatial distribution of the southern migratory stock the most poorly understood of these. Stable isotope analysis and telemetry studies provide evidence for seasonal movements of dolphins between North Carolina and northern Florida (Knoff, 2004; Waring *et al.*, 2014), and genetic analyses and tagging studies support differentiation of northern and southern migratory stocks (Rosel *et al.*, 2009; Waring *et al.*, 2014). Although there is significant uncertainty regarding the southern migratory stock's spatial movements, telemetry data indicates that the stock occupies waters of southern North Carolina (south of Cape Lookout) during the fall (October–December). In winter months (January–March), the stock moves as far south as northern Florida where it overlaps spatially with the northern Florida coastal and Jacksonville estuarine system stocks. In spring (April–June), the stock returns north to waters of North Carolina, and is presumed to remain north of Cape Lookout during the summer months. Therefore, the potential exists for harassment of southern migratory dolphins, most likely during the winter only.

Bottlenose dolphins are ubiquitous in coastal waters from the mid-Atlantic through the Gulf of Mexico, and therefore interact with multiple coastal fisheries, including gillnet, trawl, and trap/pot fisheries. Stock-specific total fishery-related mortality and serious injury cannot be directly estimated because of the spatial overlap among stocks of bottlenose dolphins, as well as because of unobserved fisheries. The primary known source of fishery mortality for the southern migratory stock is the mid-Atlantic gillnet fishery (Waring *et al.*, 2014). Between 2004 and 2008, 588 bottlenose dolphins stranded along the Atlantic coast between Florida and Maryland that could potentially be assigned to the southern migratory stock, although the assignment of animals to a particular stock is impossible in some seasons and regions due to spatial overlap amongst stocks (Waring *et al.*, 2014). Many of these animals exhibited some evidence of human interaction, such as line/net marks, gunshot wounds, or vessel strike. In addition, nearshore and estuarine

habitats occupied by the coastal morphotype are adjacent to areas of high human population and some are highly industrialized. It should also be noted that stranding data underestimate the extent of fishery-related mortality and serious injury because not all of the marine mammals that die or are seriously injured in fishery interactions are discovered, reported or investigated, nor will all of those that are found necessarily show signs of entanglement or other fishery interaction. The level of technical expertise among stranding network personnel varies widely as does the ability to recognize signs of fishery interactions. Finally, multiple resident populations of bottlenose dolphins have been shown to have high concentrations of organic pollutants (*e.g.*, Kuehl *et al.*, 1991) and, despite little study of contaminant loads in migrating coastal dolphins, exposure to environmental pollutants and subsequent effects on population health is an area of concern and active research.

Western North Atlantic Coastal, Northern Florida—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks. The northern Florida coastal stock is one of five stocks of coastal dolphins and one of three known resident stocks (other resident stocks include South Carolina/Georgia and central Florida dolphins). The spatial extent of these stocks, their potential seasonal movements, and their relationships with estuarine stocks are poorly understood. During summer months, when the migratory stocks are known to be in North Carolina waters and further north, bottlenose dolphins are still seen in coastal waters of South Carolina, Georgia and Florida, indicating the presence of additional stocks of coastal animals. Speakman *et al.* (2006) documented dolphins in coastal waters off Charleston, South Carolina, that are not known resident members of the estuarine stock, and genetic analyses indicate significant differences between coastal dolphins from northern Florida, Georgia and central South Carolina (NMFS, 2001; Rosel *et al.*, 2009). The northern Florida stock is thought to be present from approximately the Georgia-Florida border south to 29.4° N. (Waring *et al.*, 2014).

The northern Florida coastal stock ventures into the St. Johns River in large numbers, but rarely moves past Naval Station Mayport. The mouth of the St. Johns River may serve as a foraging area for this stock and the Jacksonville estuarine stock (Gibson, pers. comm).

The northern Florida coastal stock is susceptible to interactions with similar fisheries as those described above for the southern migratory stock, including gillnet, trawl, and trap/pot fisheries. From 2004–08, 78 stranded dolphins were recovered in northern Florida waters, although it was not possible to determine whether there was evidence of human interaction for the majority of these (Waring *et al.*, 2014). The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for southern migratory dolphins, pollutant loading is a concern.

Jacksonville Estuarine System—Please see above for description of the differences between coastal and offshore ecotypes and the delineation of coastal dolphins into management stocks primarily inhabiting nearshore waters. The coastal morphotype of bottlenose dolphin is also resident to certain inshore estuarine waters (Caldwell, 2001; Gubbins, 2002; Zolman, 2002; Gubbins *et al.*, 2003). Multiple lines of evidence support demographic separation between coastal dolphins found in nearshore waters and those in estuarine waters, as well as between dolphins residing within estuaries along the Atlantic and Gulf coasts (*e.g.*, Wells *et al.*, 1987; Scott *et al.*, 1990; Wells *et al.*, 1996; Cortese, 2000; Zolman, 2002; Speakman, *et al.* 2006; Stolen *et al.*, 2007; Balmer *et al.*, 2008; Mazzoil *et al.*, 2008). In particular, a study conducted near Jacksonville demonstrated significant genetic differences between coastal and estuarine dolphins (Caldwell, 2001; Rosel *et al.*, 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-identification studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (*e.g.*, Speakman *et al.*, 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood (Waring *et al.*, 2014).

The Jacksonville estuarine system (JES) stock has been defined as separate primarily by the results of photo-identification and genetic studies. The stock range is considered to be bounded in the north by the Georgia-Florida border at Cumberland Sound, extending south to approximately Jacksonville Beach, Florida. This encompasses an area defined during a photo-identification study of bottlenose dolphin residency patterns in the area (Caldwell, 2001), and the borders are subject to change upon further study of

dolphin residency patterns in estuarine waters of southern Georgia and northern/central Florida. The habitat is comprised of several large brackish rivers, including the St. Johns River, as well as tidal marshes and shallow riverine systems. Three behaviorally different communities were identified during Caldwell's (2001) study: The estuarine waters north (Northern) and south (Southern) of the St. Johns River and the coastal area, all of which differed in density, habitat fidelity and social affiliation patterns. The coastal dolphins are believed to be members of a coastal stock, however (Waring *et al.*, 2014). Although Northern and Southern members of the JES stock show strong site fidelity, members of both groups have been observed outside their preferred areas. Dolphins residing within estuaries south of Jacksonville Beach down to the northern boundary of the Indian River Lagoon Estuarine System (IRLES) stock are currently not included in any stock, as there are insufficient data to determine whether animals in this area exhibit affiliation to the JES stock, the IRLES stock, or are simply transient animals associated with coastal stocks. Further research is needed to establish affinities of dolphins in the area between the ranges, as currently understood, of the JES and IRLES stocks.

The JES stock is susceptible to similar fisheries interactions as those described above for coastal stocks, although only trap/pot fisheries are likely to occur in estuarine waters frequented by the stock. Only one dolphin carcass bearing evidence of fisheries interaction was recovered during 2003–07 in the JES area, and an additional sixteen stranded dolphins were recovered during this time, but no determinations regarding human interactions could be made for the majority (Waring *et al.*, 2014). Nineteen bottlenose dolphins died in the St. Johns River (SJR), Florida between May 24 and November 7, 2010, all of which came from the JES stock. The cause of these deaths was undetermined. The same concerns discussed above regarding underestimation of mortality hold for this stock and, as for stocks discussed above, pollutant loading is a concern. Although no contaminant analyses have yet been conducted in this area, the JES stock inhabits areas with significant drainage from industrial and urban sources, and as such is exposed to contaminants in runoff from these. In other estuarine areas where such analyses have been conducted, exposure to anthropogenic contaminants has been found to likely have an effect (Hansen

et al. 2004; Schwacke *et al.*, 2004; Reif *et al.*, 2008).

The original, single stock of coastal dolphins recognized from 1995–2001 was listed as depleted under the MMPA as a result of a 1987–88 mortality event. That designation was retained when the single stock was split into multiple coastal stocks. However, Scott *et al.* (1988) suggested that dolphins residing in the bays, sounds and estuaries adjacent to these coastal waters were not affected by the mortality event and these animals were explicitly excluded from the depleted listing (Waring *et al.*, 2014). Gubbins *et al.* (2003), using data from Caldwell (2001), estimated the stock size to be 412 (CV = 0.06). However, NMFS considers abundance unknown because this estimate likely includes an unknown number of non-resident and seasonally-resident dolphins. It nevertheless represents the best available information regarding stock size. Because the stock size is likely small, and relatively few mortalities and serious injuries would exceed PBR, the stock is considered to be a strategic stock (Waring *et al.*, 2014).

An unusual mortality event (UME) occurred between 2013 and 2015 spanning the Atlantic coast, which impacted all stocks of bottlenose dolphins in the area. Over 1,800 dolphins stranded in this time period. The preliminary conclusion of the cause of this UME was morbillivirus. The bottlenose dolphin stocks in this area (SJR and coastal areas) may be considered vulnerable to impacts from future activities due to this recent event.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.*, sound produced by pile driving) may impact marine mammals and their habitat. The Estimated Take by Incidental Harassment section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis section will include an analysis of how this specific activity will impact marine mammals and will consider the content of this section, the Estimated Take by Incidental Harassment section and the Proposed Mitigation section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on

sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by vibratory and impact pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa .

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater

sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.

- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.

- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly

(Richardson *et al.*, 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The underwater acoustic environment in the Mayport turning basin is likely to be dominated by noise from day-to-day port and vessel activities. The basin is sheltered from most wave noise, but is a high-use area for naval ships, tugboats, and security vessels. When underway, these sources can create noise between 20 Hz and 16 kHz (Lesage *et al.*, 1999), with broadband noise levels up to 180 dB. While there are no current measurements of ambient noise levels in the turning basin, it is likely that levels within the basin periodically exceed the 120 dB threshold and, therefore, that the high levels of anthropogenic activity in the basin create an environment far different from quieter habitats where behavioral reactions to sounds around the 120 dB threshold have been observed (*e.g.*, Malme *et al.*, 1984, 1988).

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see

Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine

mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (extended from 22 kHz; Watkins, 1986; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus*; now considered to include two members of the genus *Lagenorhynchus* on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.* 2009, 2010; Tougaard *et al.* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 40 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

One cetacean species is expected to potentially be affected by the specified activity. Bottlenose dolphins are classified as mid-frequency cetaceans.

Acoustic Effects, Underwater

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.*, sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.*, rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.*, 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity

at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Marine mammals depend on acoustic cues for vital biological functions, (e.g., orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury (direct auditory tissue effects), but TTS does not (Southall *et al.*, 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 $\mu\text{Pa}^2\text{-s}$ (i.e., 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

The above TTS information for odontocetes is derived from studies on

the bottlenose dolphin and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.*, 2009). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source might incur TTS, there has been further speculation about the possibility that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.*, 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu\text{Pa}^2\text{-s}$ (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB rms. Although no marine mammals have been shown to experience TTS or

PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.*, 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.*, 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 $\mu\text{Pa}^2\text{-s}$) in the aforementioned experiment (Finneran *et al.*, 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.*, 2003; Wartzok *et al.*, 2003; Nowacek *et al.*, 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke

slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the

sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the

short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Habitat

The proposed activities at NSM would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area; however the surrounding areas may be foraging habitat for the dolphins. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.*, fish) within NSM and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities may produce both pulsed (*i.e.*, impact pile driving) and continuous (*i.e.*, vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving (or other types of sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB re 1 μ Pa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish

from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in nearshore and estuarine waters in the region. Avoidance by potential prey (*i.e.*, fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, 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. Therefore, pile driving is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area. The Mayport turning basin itself is a man-made basin with significant levels of industrial activity and regular dredging, 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.

Proposed 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 NSM. 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 would 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 would 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 190 dB rms acoustic injury criteria. 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, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 3. However, a minimum shutdown zone of 15 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. For impact driving of steel piles, if necessary, the radial distance of the shutdown would be established at 40 m.

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 Proposed Monitoring and Reporting). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed within the turning basin) would be observed.

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 would 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 would 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 (www.nmfs.noaa.gov/pr/permits/incidental/construction.htm), developed by the Navy in agreement 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 typically 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;
- 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 would 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.

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." 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 impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily 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 preliminarily 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.

Proposed 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's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

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 (MMOs) 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 would 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 would 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.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The 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 incidences 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 if possible, the correlation to SPLs;
- 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 would be submitted to NMFS within 90 days of the completion

of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, 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.

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 proposed 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 discountable. 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 turning basin is not considered important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The surrounding waters may be an important foraging habitat for the dolphins; however the small area of ensonification does not extend outside of the turning basin and into this foraging habitat (see Figure 6–1 in the Navy’s application). 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 that may venture near the turning basin, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. The Navy has requested authorization for the incidental taking of small numbers of bottlenose dolphins in the Mayport turning basin that may result from pile driving during construction activities associated with the project described previously in this document.

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 first provide information on applicable sound thresholds for determining effects to marine mammals before 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.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds (Table 2) are used to estimate when harassment may occur (i.e., when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is working to revise these acoustic guidelines; for more information on that process, please visit www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA

| Criterion | Definition | Threshold |
|-------------------------------------|--|---|
| Level A harassment (underwater) ... | Injury (PTS—any level above that which is known to cause TTS). | 180 dB (cetaceans)/190 dB (pinnipeds) (rms). |
| Level B harassment (underwater) ... | Behavioral disruption | 160 dB (impulsive source)/120 dB (continuous source) (rms). |
| Level B harassment (airborne) | Behavioral disruption | 90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted). |

Distance to Sound Thresholds

Underwater Sound Propagation

Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

Where:

- R₁ = the distance of the modeled SPL from the driven pile, and
- R₂ = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source

(20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as at the NSM turning basin, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles. Vibratory driving of steel sheet piles was monitored during the first year of construction at the nearby Wharf C–2 at Naval Station Mayport during 2015. Measurements were conducted from a small boat in the turning basin and from the construction barge itself. Details are

available in DoN (2015). Source levels averaged 151 dB re 1 μPa rms (DoN, 2015). No impact driving was measured at this location; therefore, proxy levels for impact driving have been calculated from other available source levels.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from impact pile driving at NSM, we considered existing measurements from similar physical environments (sandy sediments and water depths greater than 15 ft) for impact and vibratory driving of 24-in steel pipe piles and for steel sheet piles. These studies, largely conducted by the Washington State Department of Transportation and the California Department of Transportation, show typical values around 160 dB for vibratory driving of 24-in pipe piles and sheet piles, and around 185–195 dB for impact driving of similar pipe piles (all measured at 10 m; e.g., Laughlin, 2005a, 2005b; Ilingworth and Rodkin, 2010, 2012, 2013; CalTrans, 2012). For impact driving of sheet piles a proxy source value of 189 dB (CalTrans, 2012) was selected for use in acoustic modeling based on similarity to the physical environment at NSM and because of the measurement location in mid-water column. All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 3.

TABLE 3—DISTANCES TO RELEVANT UNDERWATER SOUND THRESHOLDS AND AREAS OF ENSONIFICATION

| Pile type | Method | Threshold | Distance (m) ¹ | Area (sq km ²) |
|-------------------------|-----------------|-----------------------------------|---------------------------|----------------------------|
| Steel sheet piles | Vibratory | Level A harassment (180 dB) | 0 | 0 |
| | | Level B harassment (120 dB) | 1,166 | 0.614439 |
| | Impact | Level A harassment (180 dB) | 40 | 0.002 |
| | | Level B harassment (160 dB) | 858 | 0.51 |

¹ Areas presented take into account attenuation and/or shadowing by land. Calculated distances to relevant thresholds cannot be reached in most directions from source piles. Please see Figures 6–1 and 6–2 in the Navy’s application.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 3 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 and 6–2 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.

Marine Mammal Densities

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. Density for bottlenose dolphins is derived from site-specific surveys conducted by the Navy (see Appendix C of the Navy’s application for more information); it is not currently possible to identify observed individuals to stock. This survey effort consists of 24 half-day observation periods covering mornings and afternoons during four seasons (December 10–13, 2012, March 4–7, 2013, June 3–6, 2013, and September 9–12, 2013). During each observation

period, two observers (a primary observer at an elevated observation point and a secondary observer at ground level) monitored for the presence of marine mammals in the turning basin (0.712 km²) and an additional grid east of the basin entrance. Observers tracked marine mammal movements and behavior within the observation area, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7:00–11:30 and afternoon sessions from 1:00 to 5:30.

Most observations of bottlenose dolphins were of individuals or pairs, although larger groups were

occasionally observed (median number of dolphins observed ranged from 1–3.5 across seasons). Densities were calculated using observational data from the primary observer supplemented with data from the secondary observer for grids not visible by the primary observer. Season-specific density was then adjusted by applying a correction factor for observer error (*i.e.*, perception bias). The seasonal densities range from 1.98603 (winter) to 4.15366 (summer) dolphins/km². We conservatively use the largest density value to assess take, as the Navy does not have specific information about when in-water work may occur during the proposed period of validity.

Description of Take Calculation

The following assumptions are made when estimating potential incidents of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period; and,
- There will be 110 total days of vibratory driving (seventy three days in phase I and thirty seven days in phase II) and twenty days of impact pile driving.

- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

$$\text{Exposure estimate} = (n * \text{ZOI}) * \text{days of total activity}$$

Where:

- n = density estimate used for each species/season
- ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated
- n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is estimated using the relevant distances in Table 3, taking into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds are not generally reached.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that

available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative.

The quantitative exercise described above indicates that no incidents of Level A harassment would be expected, independent of the implementation of required mitigation measures. See Table 4 for total estimated incidents of take.

TABLE 4—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

| Species | n (animals/km ²) | Activity | n * ZOI ¹ | Proposed authorized takes ² |
|--------------------------------------|------------------------------|-------------------|----------------------|--|
| Phase I (73 days) | | | | |
| Bottlenose dolphin ³ | 4.15366 | Vibratory driving | 3 | 219 |
| Phase II (37 days) | | | | |
| Bottlenose dolphin ³ | 4.15366 | Vibratory driving | 3 | 111 |
| Contingency impact driving (20 days) | | | | |
| Bottlenose dolphin ³ | 4.15366 | Impact driving | 1 | 40 |
| Total exposures | | | | 370 |

¹ See Table 3 for relevant ZOIs. The product of this calculation is rounded to the nearest whole number.

² The product of n * ZOI is multiplied by the total number of activity-specific days to estimate the number of takes.

³ It is impossible to estimate from available information which stock these takes may accrue to.

Analyses and Preliminary 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 wharf construction 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 activities 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 installation (impact driving is included only as a contingency and is not expected to be required), and this activity 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. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, 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 it becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

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, Inc., 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. These activities are also nearly identical to the pile driving activities that took place at Wharf C-2 at NSM, which also reported zero

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 turning basin 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 incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the proposed 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, although coastal bottlenose dolphins are designated as 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 proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the Navy's wharf construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

As described previously, of the 370 incidents of behavioral harassment predicted to occur for bottlenose

dolphin, we have no information allowing us to parse those predicted incidents amongst the three stocks of bottlenose dolphin that may occur in the project area. Therefore, we assessed the total number of predicted incidents of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For one of the bottlenose dolphin stocks, the total predicted number of incidents of take authorized would be considered small—approximately four percent for the southern migratory stock— even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for bottlenose dolphins in estuarine and nearshore waters, there is likely to be some overlap in individuals present day-to-day.

The total number of authorized takes proposed for bottlenose dolphins, if assumed to accrue solely to new individuals of the JES or northern Florida coastal stocks, is higher relative to the total stock abundance, which is currently considered unknown for the JES stock and is 1,219 for the northern Florida coastal stock. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of these bottlenose dolphins would be harassed by project activities.

JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Palm Coast, Florida, an area spanning over 120 linear km of coastline and including habitat consisting of complex inshore and estuarine waterways. JES dolphins, divided by Caldwell (2001) into Northern and Southern groups, show strong site fidelity and, although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities.

In the western North Atlantic, the Northern Florida Coastal Stock is present in coastal Atlantic waters from the Georgia/Florida border south to 29.4° N. (Waring *et al.*, 2014), a span of more than 90 miles. There is no obvious boundary defining the offshore extent of this stock. They occur in waters less than 20 m deep; however, they may also occur in lower densities over the continental shelf (waters between 20 m and 100 m depth) and overlap spatially with the offshore morphotype (Waring *et al.*, 2014).

In summary, JES dolphins are known to form two groups and exhibit strong site fidelity (*i.e.*, individuals do not

generally range throughout the recognized overall JES stock range); and neither stock is expected to occur at all in a significant portion of the larger ZOI, which is almost entirely confined within NSM. Given that the specified activity will be stationary within an enclosed basin not recognized as an area of any special significance that would serve to attract or aggregate dolphins, we therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidents of take represent small numbers of bottlenose dolphins.

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 preliminarily 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 section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

The Navy has prepared a Draft Environmental Assessment (EA; Environmental Assessment for the Wharf Bravo Recapitalization at Naval Station Mayport, Jacksonville, FL) in accordance with NEPA and the regulations published by the Council on Environmental Quality. We have posted it on the NMFS Web site (see **SUPPLEMENTARY INFORMATION**) concurrently with the publication of this proposed IHA. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of the Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of the IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the IHA request. The

2015 NEPA documents are available for review at www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.

Proposed Authorization

As a result of these preliminary determinations, we propose to authorize the take of marine mammals incidental to the Navy's Bravo wharf recapitalization project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Specific language from the proposed IHA is provided next.

This section contains a draft of the IHA. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for one year from the date of issuance.

2. This IHA is valid only for pile driving activities associated with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking is the bottlenose dolphin (*Tursiops truncatus*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

| Species | Authorized take | | |
|--------------------------|-----------------|----------|----------------------------|
| | Phase I | Phase II | Contingency impact driving |
| Bottlenose dolphin | 219 | 111 | 40 |

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall 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.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease. For impact driving of steel piles, the minimum shutdown zone shall be of 40 m radius.

(b) The Navy shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (see www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

i. For all pile driving activities, a minimum of two observers shall be deployed, with one positioned to

achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean. If practicable, the second observer should be deployed to an elevated position, preferably opposite Bravo Wharf and with clear sight lines to the wharf and out the entrance channel.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the turning basin shall be distinguished from those in the entrance channel and nearshore waters of the Atlantic Ocean.

iii. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (*e.g.*, those necessary to effect activity delay or shutdown).

(c) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for fifteen minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

(d) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume 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.

(e) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(f) The Navy shall use soft start techniques recommended by NMFS for

impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at NSM, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see www.nmfs.noaa.gov/pr/permits/incidental/construction.htm), and shall also include:

i. 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.

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

iii. An estimated total take estimate extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

- A. Time and date of the incident;
- B. Description of the incident;
- C. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- D. Description of all marine mammal observations in the 24 hours preceding the incident;
- E. Species identification or description of the animal(s) involved;
- F. Fate of the animal(s); and
- G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHAs for Navy's wharf construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy's request for an MMPA authorization.

Dated: December 2, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015-30745 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE341

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

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

ACTION: Notice; receipt of application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources has received a request from the NMFS Pacific Islands Fisheries Science Center (PIFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the PIFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the PIFSC's application and request.

DATES: Comments and information must be received no later than January 6, 2016.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and

Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Laws@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at www.nmfs.noaa.gov/pr/permits/incidental/research.htm without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the PIFSC's application may be obtained by visiting the Internet at: www.nmfs.noaa.gov/pr/permits/incidental/research.htm. The PIFSC is concurrently releasing a draft Environmental Assessment, prepared pursuant to requirements of the National Environmental Policy Act, for the conduct of their fisheries research. A copy of the draft EA, which would also support our proposed rulemaking under the MMPA, is available at the same Web site.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the

mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On November 30, 2015, NMFS received an adequate and complete application from the PIFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by the PIFSC. The requested regulations would be valid for five years from the date of issuance. The PIFSC plans to conduct fisheries research surveys in multiple geographic regions within the Pacific Ocean, including Hawaii, Samoa, the Marianas, and the western and central Pacific broadly (including the Pacific Remote Island Area). It is possible that marine mammals may interact with fishing gear (e.g., trawls nets, longlines) used in PIFSC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, the PIFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, the PIFSC requests authorization to take multiple species of marine mammal that may occur in these areas.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that

responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The PIFSC is the research arm of NMFS in the Pacific Islands.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The PIFSC proposes to administer and conduct these survey programs over the five-year period.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the PIFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the PIFSC, if appropriate.

Dated: December 2, 2015.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2015-30760 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request Under the U.S.-Morocco Free Trade Agreement

December 7, 2015.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for 100% rayon woven fabric.

SUMMARY: On November 16, 2015, the Government of the United States received a request from American Eagle Outfitters (AEO) to initiate consultations with the Government of Morocco under Article 4.3.3 of the USMFTA. AEO is requesting that the United States and Morocco consider revising the rules of origin for women's and girls' woven garments to address availability of supply of 100% rayon woven fabric in the territories of the Parties. The President may proclaim a modification to the USMFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Morocco on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether 100% rayon woven fabric of Harmonized Tariff Schedule of the United States (HTSUS) subheading 5408 can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 6, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-1550.

SUPPLEMENTARY INFORMATION:

Authority: Section 203 (j)(2)(B)(i) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

Background: Under the USMFTA, except as otherwise provided in the USMFTA, the Parties are required to progressively eliminate customs duties on originating goods in accordance with their schedules. *See* Article 2.3.2. The USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. *See* Article 4.3.3 of the USMFTA. In the consultations, each Party must consider data presented by the other Party showing substantial production in its territory of a particular fiber, yarn, or fabric. Substantial production has been shown if domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner. *See* Article 4.3.4 of the USMFTA.

The USMFTA Implementation Act provides the President with the

authority to proclaim as part of the HTSUS, modifications to the USMFTA rules of origin set out in Annex 4-A of the USMFTA as are necessary to implement the USMFTA after complying with the consultation and layover requirements of Section 104 of the USMFTA Implementation Act. *See* Section 203(j)(2)(B)(i) of the USMFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On November 16, 2015, the Government of the United States received a request from AEO, alleging that 100% rayon woven fabric cannot be supplied by the domestic or Moroccan industry in commercial quantities in a timely manner and requesting that the United States consider whether the USMFTA rule of origin for women's and girls' woven garments, classified under HTSUS chapter 62, should be modified to allow the use of non-U.S. and non-Moroccan 100% woven rayon fabric classified in subheading 5408 of the HTSUS.

CITA is soliciting public comments regarding this request, particularly with respect to whether 100% rayon woven fabric described above can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be received no later than January 6, 2016. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

Joshua Teitelbaum,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2015-30756 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DR-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request Under the U.S.-Morocco Free Trade Agreement

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for certain printed and piece-dyed warp knit fabrics of polyester or nylon fibers.

SUMMARY: On November 16, 2015, the Government of the United States received a request from Swimsuit Commission Corporation (SCC) to initiate consultations with the Government of Morocco under Article 4.3.3 of the USMFTA. SCC is requesting that the United States and Morocco consider revising the rules of origin for certain women's and girls' swimwear to address availability of supply of certain printed and piece-dyed warp knit fabrics of polyester or nylon fibers in the territories of the Parties. The President may proclaim a modification to the USMFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Morocco on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain printed and piece-dyed warp knit fabrics of polyester or nylon fibers classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 6004.10 containing between 3 percent and 41 percent elastomeric yarns, in which the elastomeric yarns were engineered for chlorine resistance, can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 6, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482-1550.

SUPPLEMENTARY INFORMATION:

Authority: Section 203 (j)(2)(B)(i) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

Background

Under the USMFTA, except as otherwise provided in the USMFTA, the Parties are required to progressively eliminate customs duties on originating goods in accordance with their schedules. *See* Article 2.3.2. The USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. *See* Article 4.3.3 of the USMFTA. In the consultations, each Party must consider data presented by the other Party showing substantial production in its territory of a particular fiber, yarn, or fabric. Substantial production has been shown if domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner. *See* Article 4.3.4 of the USMFTA.

The USMFTA Implementation Act provides the President with the authority to proclaim as part of the HTSUS, modifications to the USMFTA rules of origin set out in Annex 4-A of the USMFTA as are necessary to implement the USMFTA after complying with the consultation and layover requirements of Section 104 of the USMFTA Implementation Act. *See* Section 203(j)(2)(B)(i) of the USMFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On November 16, 2015, the Government of the United States received a request from SCC, alleging that certain printed and piece-dyed warp knit fabrics of polyester or nylon fibers classified under HTSUS subheading 6004.10 containing between 3 percent and 41 percent elastomeric yarns, in which the elastomeric yarns were engineered for chlorine resistance, cannot be supplied by the domestic or Moroccan industry in commercial

quantities in a timely manner and requesting that the United States consider whether the USMFTA rule of origin for certain women's and girls' swimwear, classified under HTSUS subheading 6112.41, should be modified to allow the use of certain non-U.S. and non-Moroccan printed and piece-dyed warp knit fabrics of polyester or nylon fiber, classified under HTSUS subheading 6004.10 containing between 3 percent and 41 percent elastomeric yarns, in which the elastomeric yarns are engineered for chlorine resistance. CITA is soliciting public comments regarding this request, particularly with respect to whether certain printed and piece-dyed warp knit fabrics of polyester or nylon fibers described above can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be received no later than January 6, 2016. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Joshua Teitelbaum,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2015-30766 Filed 12-4-15; 8:45 am]

BILLING CODE 3510-DR-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No CFPB-2015-0052]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting

to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Consumer Attitudes, Understanding, and Behaviors with Respect to Financial Services and Products."

DATES: Written comments are encouraged and must be received on or before February 5, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

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

- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435-9575, or email: PRA@cfpb.gov. *Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Attitudes, Understanding, and Behaviors with Respect to Financial Services and Products.

OMB Control Number: 3170-0034.

Type of Review: Extension with change of a currently approved collation.

Affected Public: Individuals or households.

Estimated Number of Respondents: 55,000.

Estimated Total Annual Burden Hours: 6,500.

Abstract: This information collection helps the Bureau establish a public opinion survey to measure and track consumer attitudes, beliefs, and behaviors as they navigate financial decisions. In this regard, it helps the Bureau target its efforts and those of its

partners to those areas that will have the most impact on both consumers and financial markets.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on 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. All comments will become a matter of public record.

Dated: December 1, 2015.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015-30780 Filed 12-4-15; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Gulf Regional Airspace Strategic Initiative, Landscape Initiative Eglin Air Force Base, Florida

ACTION: Notice of Availability (NOA) Record of Decision (ROD).

SUMMARY: On November 18, 2015, the United States Air Force signed the ROD for the Gulf Regional Airspace Strategic Initiative, Landscape Initiative Eglin Air Force Base, Florida Final Environmental Impact Statement (EIS). This ROD states the Air Force decision is to select Subalternative 1. The decision means that the Air Force will request a more limited set of specific training and emitter activities from its GRASI partner agencies. The selection of Subalternative 1 reduces the amount of training, frequencies, and geographic extent of training that will be requested of partner organizations to reduce the potential for recreational conflicts identified by the public and the potential for environmental impacts. Training and emitter activities, if approved by GRASI GLI partners, would occur in Blackwater River and Tate's Hell State Forests and other select locations in Northwest Florida.

The decision was based on matters discussed in the Final EIS; inputs from the public, Native American tribes, and Federal, State and local units of government, and regulatory agencies; and other relevant factors. The Final EIS was made available to the public on June 5, 2015, through a NOA in the **Federal Register** (Volume 80, Number 108, Page 32114) with a post-filing waiting period that ended on July 6, 2015. This ROD documents only the Air Force decision on the proposed actions analyzed in the Final EIS.

Authority: This NOA is published pursuant to the regulations (40 CFR Sec. 1506.6) implementing the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (32 CFR Secs. 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT:

Mike Akerman, AFCEC/CZN 2261 Hughes Ave., Ste. 155, JBSA Lackland, TX 78236, (210) 925-2741.

Henry Williams,

Acting Air Force Federal Register Liaison Officer, Civ, DAF.

[FR Doc. 2015-30768 Filed 12-4-15; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice To Extend Public Comment Period for the Revised Draft Environmental Impact Statement for Divert Activities and Exercises, Commonwealth of The Northern Mariana Islands

AGENCY: Department of the Air Force.

ACTION: Notification of extension of public comment period.

SUMMARY: The U.S. Air Force is issuing this notice to advise the public of an extension to the public comment period on the revised draft Environmental Impact Statement. The initial Notice of Availability was published in the **Federal Register** on October 16, 2015 (Vol. 80, No. 200/Notices/62526), and established a public comment period from October 16, 2015 through November 30, 2015. The Air Force has extended the deadline for submitting public comments to December 14, 2015. All substantive comments received by December 14, 2015 will be addressed fully considered and made a part of Final EIS and administrative record.

Point of Contact: Please direct any written comments or requests for information to Mr. Mark Petersen, 25 E Street, Suite C-130, Joint Base Pearl

Harbor-Hickam, HI 96853, ATTN:
PACAF Divert Marianas EIS.

Henry Williams,

*Acting Air Force Federal Register Liaison
Officer, Civ, DAF.*

[FR Doc. 2015-30767 Filed 12-4-15; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2015-0026]

**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 January 6, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: U.S. Army Corps of Engineers, Instrument(s) for Navigation Improvement Survey(s), OMB Control Number 0710-XXXX.

Type of Request: New Collection.

Number of Respondents: 700.

Responses per Respondent: 1.

Annual Responses: 700.

Average Burden per Response: 40 Minutes.

Annual Burden Hours: 470 Hours.

Needs and Uses: The Corps of Engineers uses public surveys for collecting data for planning, formulation, and evaluation of projects. These projects include the construction, operation and maintenance of much of the nation's inland navigation infrastructure of locks, dams and channels as well as navigation channels at the nation's major ports. In addition, the Corps plans and builds small shallow draft harbors used by commercial fishermen and other users. As part of its planning and evaluation of these projects, the Corps surveys users of these systems to assess project benefits and impacts.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; state, local, or tribal governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Stuart Levenbach.

Comments and recommendations on the proposed information collection

should be emailed to Mr. Stuart Levenbach, 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: December 1, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-30743 Filed 12-4-15; 8:45 am]

BILLING CODE 5001-06-P

**DEFENSE NUCLEAR FACILITIES
SAFETY BOARD**

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), and the Defense Nuclear Facilities Safety Board's (Board) regulations implementing the Government in the Sunshine Act, notice is hereby given of the Board's closed meeting described below.

DATES: 10:00 a.m.-1:00 p.m., December 11, 2015.

ADDRESSES: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Boardroom, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700,

Washington, DC 20004-2901, (800) 788-4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public. No participation from the public will be considered during the meeting.

Status

Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemption to close a meeting described in 5 U.S.C. 552b(c)(3) and 10 CFR 1704.4(c). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public Web site at www.dnfsb.gov. Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

Dated: December 2, 2015.

Joyce L. Connery,

Chairman.

[FR Doc. 2015-30832 Filed 12-3-15; 11:15 am]

BILLING CODE 3670-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2015-ICCD-0135]

**Agency Information Collection
Activities; Comment Request; Student
Assistance General Provisions—
Financial Assistance for Students With
Intellectual Disabilities**

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 5, 2016.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2015-ICCD-0135. 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 2E103, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202-377-4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Financial Assistance for Students with Intellectual Disabilities.

OMB Control Number: 1845-0099.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 235.

Total Estimated Number of Annual Burden Hours: 74.

Abstract: As provided by the Higher Education Act of 1965, as amended, (HEA) these regulations allow students with intellectual disabilities, who enroll in an eligible comprehensive transition program to receive Title IV, HEA program assistance under the Federal Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), and the Federal Work Study (FWS) programs.

This request is for an extension of the current record-keeping requirements contained in the regulations at 34 CFR 668.232 and 668.233, related to the administrative requirement of the financial assistance for students with intellectual disabilities program.

Dated: December 1, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015-30713 Filed 12-4-15; 8:45 am]

BILLING CODE 4000-01-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: EC16-42-000.

Applicants: The Williams Companies, Inc., Energy Transfer Equity, L.P.

Description: Application For Authorization Under Section 203 of The Federal Power Act To Merge Jurisdictional Facilities And Requests For Expedited Treatment, Shortened Comment Period, And Waivers of The Williams Companies, Inc., *et al.*

Filed Date: 11/25/15.

Accession Number: 20151125-5426.

Comments Due: 5 p.m. ET 12/16/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2331-031; ER14-630-008; ER10-2326-029; ER10-2330-030.

Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C.

Description: Supplement to June 23, 2015 Updated market power analysis for

the Central Region of the JPMorgan Sellers.

Filed Date: 11/25/15.

Accession Number: 20151125-5425.

Comments Due: 5 p.m. ET 12/16/15.

Docket Numbers: ER15-303-001.

Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated.

Description: Compliance filing: ATSI compliance filing per 10/29/15 Order revising Attachment H-21A and H-21B to be effective 1/1/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5173.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER15-1883-001; ER15-2601-001; ER15-2101-002; ER15-1925-001; ER15-1418-001; ER14-2707-005; ER14-2138-003; ER13-752-007; ER13-712-009; ER13-2112-003; ER13-1992-005; ER13-1991-005; ER12-569-009; ER12-2227-008; ER12-2226-006; ER12-2225-006; ER12-1228-010; ER11-3635-007; ER11-2642-008; ER11-26-008; ER11-2160-007; ER11-2037-008; ER10-2551-007; ER10-2006-009; ER10-2005-008; ER10-1966-007; ER10-1965-008; ER10-1964-008; ER10-1963-007; ER10-1962-007; ER10-1961-008; ER10-1952-008; ER10-1950-008; ER10-1935-007; ER10-1932-007; ER10-1931-007; ER10-1930-006; ER10-1928-010; ER10-1927-008; ER10-1925-008; ER10-1920-010; ER10-1918-008; ER10-1915-007; ER10-1907-008; ER10-1906-006; ER10-1905-008; ER10-1903-008; ER10-1902-008; ER10-1899-008; ER10-1897-008; ER10-1890-007; ER10-1887-008; ER10-1857-007; ER10-1856-007; ER10-1855-007; ER10-1852-012; ER10-1851-006; ER10-1849-008; ER10-1847-007; ER10-1846-007; ER10-1845-008; ER10-1844-008; ER10-1843-008; ER10-1841-008; ER10-1838-008; ER10-1836-008.

Applicants: Adelanto Solar, LLC, Adelanto Solar, LLC, Adelanto Solar II, LLC, Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Breckinridge Wind Project, LLC, Butler Ridge Wind Energy Center, LLC, Cimarron Wind Energy, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, Diablo Winds, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Burleigh

County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C., FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Garden Wind, LLC, Genesis Solar, LLC, Golden West Power Partners, LLC, Gray County Wind Energy, LLC, Green Mountain Storage, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Logan Wind Energy LLC, Mammoth Plains Wind Project, LLC.

Description: Supplement to October 28, 2015 Notice of Change in Status of the NextEra Energy Companies [Part 1 of 2].

Filed Date: 11/25/15.

Accession Number: 20151125-5220.

Comments Due: 5 p.m. ET 12/16/15.

Docket Numbers: ER16-414-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised Service Agreement No. 1135; Queue K4 (ISA—Assignment Agreement) to be effective 6/4/2004.

Filed Date: 11/30/15.

Accession Number: 20151130-5047.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-415-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised Service Agreement No. 1791; Queue R74 (WMPA—Assignment Agreement) to be effective 10/30/2007.

Filed Date: 11/30/15.

Accession Number: 20151130-5057.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-416-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4312; Queue No. AA2-058 to be effective 10/29/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5083.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-417-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Distribution Service Agreement Mirasol Development, LLC Ivanhoe Land 1A Project to be effective 1/30/2016.

Filed Date: 11/30/15.

Accession Number: 20151130-5092.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-418-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Distribution Service Agreement Mirasol Development, LLC Ivanhoe Land 1B Project to be effective 1/30/2016.

Filed Date: 11/30/15.

Accession Number: 20151130-5093.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-419-000.

Applicants: Dominion Energy Marketing, Inc.

Description: Compliance filing: Compliance Filing—DEMI Removal of Affiliate Waiver to be effective 11/1/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5124.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-420-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3103 Plains and Eastern Clean Line Oklahoma & SPS Inter Agr to be effective 11/6/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5152.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-421-000.

Applicants: Dominion Nuclear Connecticut, Inc.

Description: Compliance filing: Compliance Filing—DNCI Removal of Affiliate Waiver to be effective 11/1/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5153.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-422-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4300; Queue No. Z1-079 to be effective 10/30/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5163.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-423-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised Service Agreement No.

2775; Queue No. Y3-045/Y3-052/Y3-107 to be effective 10/29/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5172.

Comments Due: 5 p.m. ET 12/21/15.

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: November 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30705 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15-490-001]

Delfin LNG LLC; Notice of Amendment to Application

Take notice that on November 19, 2015 Delfin LNG LLC (Delfin LNG), 1100 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP15-490-001, an amendment to its May 8, 2015 application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to reactivate, construct, own, operate and maintain certain pipeline and compression facilities that comprise the onshore portion of Delfin LNG's proposed Deepwater Port (DWP), an offshore liquefied natural gas facility located off the coast of Louisiana in the Gulf of Mexico. The Amendment increases the amount of compression and capacity previously proposed, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in

the docket number field to access the document. For assistance, please contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this Application should be directed to Daniel P. Werner, Delfin LNG LLC, 1100 Louisiana Street, Suite 3550, Houston, Texas 77002; phone: 346-240-2574, or J. Patrick Nevins, Hogan Lovells US LLP, 555 Thirteenth Street NW., Washington, DC 20004; phone: 202-637-6441.

Delfin LNG's onshore facilities will connect with the DWP facilities that are subject to jurisdiction of the Maritime Authority (MARAD) and the United States Coast Guard (USCG).

Additionally, as part of Delfin LNG's DWP, Delfin LNG proposes to utilize a segment of pipeline abandoned by High Island Offshore System, LLC (HIOS) that extends from the terminus of the UTOS pipeline offshore. HIOS filed to abandon certain pipeline facilities on November 19, 2015 in Docket No. CP16-20-000.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the

Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: December 22, 2015.

Dated: December 1, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30736 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

| | |
|---|--------------|
| Wiley Battery Utility, LLC | EG15-108-000 |
| Little Elk Wind Project, LLC | EG15-109-000 |
| Patriot Wind Farm, LLC .. | EG15-110-000 |
| Chapman Ranch Wind I, LLC | EG15-111-000 |
| Silver State Solar Power South, LLC | EG15-112-000 |
| RE Garland LLC | EG15-113-000 |
| RE Garland A LLC | EG15-114-000 |
| Latigo Wind Park, LLC | EG15-116-000 |
| Parrey, LLC | EG15-117-000 |
| South Plains Wind Energy, LLC | EG15-118-000 |
| PHR Holdings LLC | EG15-119-000 |
| Golden West Power Partners, LLC | EG15-120-000 |

Take notice that during the month of October 2015, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30699 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the South Carolina Regional Planning (SCRTP) Stakeholder Group. South Carolina Regional Transmission Planning Meeting, December 9, 2015 (10:00 a.m.-1:00 p.m.)

The above-referenced meeting will be held at:

Hilton Garden Inn—Charleston Airport, Cypress I Room, 5265 International Blvd., North Charleston, SC 29418. (843) 308-9330

The meeting is open to the public.

For more information, contact Mike Lee, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502-8658 or Michael.Lee@ferc.gov.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30701 Filed 12-4-15; 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 corporate filings:

Docket Numbers: EC16-44-000.

Applicants: American Illuminating Company, LLC.

Description: Application for Authorization under Section 203 of American Illuminating Company.

Filed Date: 11/30/15.

Accession Number: 20151130-5478.

Comments Due: 5 p.m. ET 12/21/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11-3697-000.

Applicants: Southern California Edison Company.

Description: Informational Filing of Notice of Revision to Formula Transmission Rate Annual Update of Southern California Edison Company.

Filed Date: 12/1/15.

Accession Number: 20151201-5254.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER15-2640-001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance two-week notice of activation of CTS with ISO-NE to be effective 12/15/2015.

Filed Date: 12/1/15.

Accession Number: 20151201-5193.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER16-440-000.

Applicants: Tampa Electric Company.

Description: Notice of Cancellation of Tampa Electric Company Rate Schedule FERC No. 79.

Filed Date: 11/30/15.

Accession Number: 20151130-5480.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-441-000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2015-12-1 Peoples Structure Sharing 0.0.0—Filing to be effective 12/15/2015.

Filed Date: 12/1/15.

Accession Number: 20151201-5164.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER16-442-000.

Applicants: Northern Indiana Public Service Company.

Description: § 205(d) Rate Filing: Supplemental Filing to Docket No. ER15-2426-00 of Rate Schedule 2 to be effective 1/1/2016.

Filed Date: 12/1/15.

Accession Number: 20151201-5167.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER16-443-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SGIA Pearblossom Solar Project Solar Star and CDWR to be effective 12/2/2015.

Filed Date: 12/1/15.

Accession Number: 20151201-5208.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER16-444-000.

Applicants: Wabash Valley Power Association, Inc.

Description: Baseline eTariff Filing: FERC Electric Tariff Volume 4—Reactive Tariff to be effective 2/1/2016.

Filed Date: 12/1/15.

Accession Number: 20151201-5221.

Comments Due: 5 p.m. ET 12/22/15.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR16-1-000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Amendments to Exhibit B to the Delegation Agreement with Southwest Power Pool, Inc.—Amendments to Southwest Power Pool, Inc.'s Bylaws.

Filed Date: 11/30/15.

Accession Number: 20151130-5488.

Comments Due: 5 p.m. ET 12/21/15.

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 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: December 1, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30737 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15-1022-000.

Applicants: Alliance Pipeline L.P.

Description: Cost and Revenue Study Filing of Alliance Pipeline L.P.

Filed Date: 9/14/15.

Accession Number: 20150914-5269.

Comments Due: 5 p.m. ET 12/1/15.

Docket Numbers: RP16-205-000.

Applicants: Equitrans, L.P.

Description: Motion for Extension of Time to Comply with the Requirements of Order No. 587-W of Equitrans, L.P.

Filed Date: 11/18/15.

Accession Number: 20151118-5151.

Comments Due: 5 p.m. ET 11/30/15.

Docket Numbers: RP16-206-000.

Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2016 Leap Year Rates to be effective 1/1/2016.

Filed Date: 11/19/15.

Accession Number: 20151119-5069.

Comments Due: 5 p.m. ET 12/1/15.

Docket Numbers: RP16-207-000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Compliance filing IDLS Revenue Sharing Report 2015.

Filed Date: 11/19/15.

Accession Number: 20151119-5071.

Comments Due: 5 p.m. ET 12/1/15.

Docket Numbers: RP16-208-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco) to be effective 11/20/2015.

Filed Date: 11/19/15.

Accession Number: 20151119-5176.

Comments Due: 5 p.m. ET 12/1/15.

Docket Numbers: RP16-209-000.

Applicants: Gas Transmission Northwest LLC.

Description: Compliance filing GTN RP15-904 Rate Case Settlement Compliance to be effective 1/1/2016.

Filed Date: 11/20/15.
Accession Number: 20151120–5054.
Comments Due: 5 p.m. ET 12/2/15.
Docket Numbers: RP16–210–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: NWP 2016 Leap Year Rates Filing to be effective 1/1/2016.

Filed Date: 11/20/15.
Accession Number: 20151120–5082.
Comments Due: 5 p.m. ET 12/2/15.
Docket Numbers: RP16–211–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Non-conforming and Negotiated Rate—Chesapeake 911268 to be effective 11/20/2015.

Filed Date: 11/20/15.
Accession Number: 20151120–5121.
Comments Due: 5 p.m. ET 12/2/15.
Docket Numbers: RP16–212–000.
Applicants: Paiute Pipeline Company.

Description: § 4(d) Rate Filing: Associated Imbalance Trading—CP14–509 to be effective 12/21/2015.

Filed Date: 11/20/15.
Accession Number: 20151120–5237.
Comments Due: 5 p.m. ET 12/2/15.
Docket Numbers: RP16–213–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Neg Rate Agmts with Noble Americas and Antero to be effective 12/1/2015.

Filed Date: 11/20/15.
Accession Number: 20151120–5241.
Comments Due: 5 p.m. ET 12/2/15.
Docket Numbers: RP16–214–000.
Applicants: Range Resources—Appalachia LLC, Range Resources—Pine Mountain, Inc., EnerVest Energy Institutional Fund XIV.

Description: Joint Application for Waivers and Request for Expedited Action and Shortened Comment Period of Range Resources—Appalachia LLC, *et al.*

Filed Date: 11/20/15.
Accession Number: 20151120–5316.
Comments Due: 5 p.m. ET 11/27/15.
Docket Numbers: RP16–215–000.
Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Plymouth Rock 790846 to be effective 12/1/2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5112.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16–216–000.
Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing TSCA for 2016—Informational Filing.
Filed Date: 11/23/15.

Accession Number: 20151123–5131.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–217–000.
Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—BP Energy 790853 to be effective 12/1/2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5134.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–218–000.
Applicants: Mojave Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Annual Fuel Filing effective January 1, 2016 to be effective 1/1/2016.

Filed Date: 11/23/15.
Accession Number: 20151123–5139.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16–219–000.
Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing Annual Operational Flow Order Report 2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5154.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–220–000.
Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: SCRM Filing to be effective 1/1/2016.

Filed Date: 11/23/15.
Accession Number: 20151123–5157.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–221–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: FL&U to be effective 1/1/16 to be effective 1/1/2016.

Filed Date: 11/23/15.
Accession Number: 20151123–5158.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–222–000.
Applicants: Cameron Interstate Pipeline, LLC.

Description: § 4(d) Rate Filing: Cameron Interstate Pipeline Annual Adjustment of Fuel Retainage Percentage to be effective 1/1/2016.

Filed Date: 11/23/15.
Accession Number: 20151123–5183.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–223–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: § 4(d) Rate Filing: Remove Terminated Agreement to be effective 11/23/2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5196.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–224–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Compliance filing Cashout Report Plan 2014–2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5208.
Comments Due: 5 p.m. ET 12/7/15

Docket Numbers: RP16–225–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: Operational Purchases and Sales Report of Sierrita Gas Pipeline LLC.

Filed Date: 11/23/15.
Accession Number: 20151123–5243.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–226–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates eff 12–22–2015 for UGI Central Penn Gas to be effective 12/22/2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5245.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–227–000.
Applicants: Gas Transmission Northwest LLC.

Description: Annual Fuel Charge Adjustment of Gas Transmission Northwest LLC.

Filed Date: 11/23/15.
Accession Number: 20151123–5273.
Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16–228–000.
Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate Amend MFN Ultra 2015–11–20 to be effective 12/1/2015.

Filed Date: 11/23/15.
Accession Number: 20151123–5301.
Comments Due: 5 p.m. ET 12/7/15.

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: November 24, 2015.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2015–30707 Filed 12–4–15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Staff Attendance at the Illinois Commerce Commission's "Solutions to Resource Adequacy in MISO Zone 4" Policy Session**

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the above meeting of the Illinois Commerce Commission (ICC). Their attendance is part of the Commission's ongoing outreach efforts.

The meeting will be held on December 10, 2015 from 9:00 a.m. to 3:00 p.m. in the Main Hearing Room at the ICC's Chicago office, 160 North LaSalle, Suite C-800, Chicago, IL 60601.

The discussions may address matters at issue in the following proceedings:

- Docket No. ER11-4081, *Midwest Independent System Operator, Inc.*
- Docket No. EL12-54, *Viridity Energy, Inc. v. PJM Interconnection, L.L.C.*
- Docket No. ER13-535, *PJM Interconnection, L.L.C.*
- Docket No. ER13-2108, *PJM Interconnection, L.L.C.*
- Docket No. ER14-504, *PJM Interconnection, L.L.C.*
- Docket No. ER14-822, *PJM Interconnection, L.L.C.*
- Docket Nos. ER14-1461 and EL14-48, *PJM Interconnection, L.L.C.*
- Docket No. ER14-2940, *PJM Interconnection, L.L.C.*
- Docket No. ER15-135, *PJM Interconnection, L.L.C.*
- Docket Nos. ER15-623 and EL15-29, *PJM Interconnection, L.L.C.*
- Docket No. EL14-20, *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*
- Docket Nos. EL14-94 and EL14-36, *FirstEnergy Solutions Corp. and PJM Interconnection, L.L.C.*
- Docket No. EL14-55, *FirstEnergy Service Company v. PJM Interconnection, L.L.C.*
- Docket No. EL15-41, *Essential Power Rock Springs, L.L.C. et al. v. PJM Interconnection, L.L.C.*
- Docket No. EL15-46, *Champion Energy Marketing L.L.C. v. PJM Interconnection, L.L.C.*
- Docket No. EL15-80, *Advanced Energy Management Alliance Coalition v. PJM Interconnection, L.L.C.*
- Docket No. EL15-83, *National Resources Defense Council, et al., v. PJM Interconnection, L.L.C.*
- Docket No. EL15-70, *Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.*
- Docket No. EL15-71, *People of the State of Illinois v. Midcontinent Independent System Operator, Inc.*

Docket No. EL15-72, *Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc.*

Docket No. EL15-82, *Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc.*

The meeting is open to the public. For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249-5937 or patrick.clarey@ferc.gov.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30700 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RM15-23-000]

Collection of Connected Entity Data From Regional Transmission Organizations and Independent System Operators**Supplemental Notice of Technical Conference**

As announced in the Notice of Technical Conference issued on November 13, 2015, Commission staff will hold a technical conference on Tuesday, December 8, 2015, from 10:00 a.m. to 1:00 p.m. to discuss issues relating to the Notice of Proposed Rulemaking on the Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators (NOPR) that the Commission issued on September 17, 2015. The agenda for this conference is attached. One or more of the Commissioners may attend the conference. All interested persons are invited to attend.

As noted in the initial Notice, staff will be accepting written questions related to the NOPR prior to technical conference. Any questions should be emailed to CENOPR@ferc.gov no later than December 1, 2015.

The technical conference will be webcast, but will not be transcribed. The free webcast will allow persons to listen to the technical conference, but not participate. Anyone with internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at www.ferc.gov and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The

Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit www.CapitolConnection.org or call 703-993-3100. The webcast will be available on the Calendar of Events on the Commission's Web site www.ferc.gov for three months after the conference.

The conference is open to the public. Pre-registration through the Commission's Web site (<https://www.ferc.gov/whats-new/registration/12-08-15-form.asp>) is encouraged but not required. Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY); or send a fax to 202-208-2106 with the required accommodations.

For more information about this technical conference, please contact Kathryn Kuhlen, 202-502-6855, Kathryn.Kuhlen@ferc.gov; Jamie Marcos, 202-502-6628, Jamie.Marcos@ferc.gov; or David Pierce, 202-502-6454, David.Pierce@ferc.gov. For logistical information about this technical conference, please contact Sarah McKinley, 202-502-8368, sarah.mckinley@ferc.gov.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30708 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP16-20-000]

High Island Offshore System, L.L.C.; Notice of Application

Take notice that on November 19, 2015, High Island Offshore System, L.L.C. (HIOS), 919 Milam, Suite 2100, Houston, Texas 77002, filed in Docket No. CP16-20-000, an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's regulations requesting authorization to abandon certain offshore facilities in the Gulf of Mexico, including its 66-mile, 42-inch-diameter mainline, a 42-inch pig launcher at High Island Block 264 and its platform at West Cameron Block 167 (HIOS Repurposed Facilities), all as more fully set forth in the application which is on file with the Commission and open to

public inspection. This filing may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

In a related docket, Delfin LNG LLC (Delfin LNG) proposes in Docket No. CP15-490-000, as amended, to reactive, construct and operate certain onshore facilities as part of its Deepwater Port project. Delfin LNG proposes to utilize the HIOS Repurposed Facilities as a part of its proposed Deepwater Port project for the export of liquefied natural gas. Delfin LNG's onshore facilities will connect with the Deepwater Port facilities that are subject to jurisdiction of the Maritime Authority (MARAD) and the United States Coast Guard (USCG).

Any questions regarding this Application should be directed to William S. Goloway, Vice President, High Island Offshore System, L.L.C., 919 Milam, Suite 2100, Houston, Texas 77002, or call (832) 280-3112, or via eMail: bill.goloway@genlp.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: 5:00 p.m. Eastern Time on December 22, 2015.

Dated: December 1, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30738 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently

received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference

Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For

assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

| Docket No. | File date | Presenter or requester |
|---|------------|--|
| <i>Prohibited:</i> | | |
| 1. CP14-554-000, CP15-16-000, CP15-17-000 | 11-18-2015 | Susan VanBrunt. |
| 2. CP14-115-000, CP14-493-000 | 11-19-2015 | International Paper. |
| 3. EL15-18-000, EL15-67-000 | 11-19-2015 | FERC Staff. ¹ |
| 4. CP15-138-000 | 11-23-2015 | Michael Demarco and Elaine Pongratz. |
| 5. CP15-521-000 | 11-25-2015 | FERC Staff. ² |
| <i>Exempt:</i> | | |
| 1. CP15-138-000 | 11-5-2015 | U.S. Representative Lou Barletta. |
| 2. CP15-115-000 | 11-16-2015 | State of New York Assemblyman Raymond W. Walter. |
| 3. CP13-483-000, CP13-492-000 | 11-17-2015 | FERC Staff. ³ |
| 4. CP16-10-000, CP16-13-000 | 11-18-2015 | FERC Staff. ⁴ |
| 5. CP15-517-000 | 11-19-2015 | FERC Staff. ⁵ |
| 6. CP15-554-000, CP16-10-000 | 11-20-2015 | State of Virginia Senator A. Donald McEachin. |
| 7. CP15-517-000 | 11-20-2015 | FERC Staff. ⁶ |
| 8. CP15-517-000 | 11-20-2015 | FERC Staff. ⁷ |
| 9. CP15-554-000 | 11-23-2015 | U.S. Representative Ranking Member Raul M. Grijalva. |

¹ Email dated November 19, 2015.

² Meeting Summary from November 16, 2015 call between FERC and applicant regarding Gulf LNG Liquefaction Project.

³ Memo forwarding letter dated November 13, 2015 from Advisory Council on Historic Preservation.

⁴ Meeting Summary from November 17, 2015 call with cooperating agencies regarding Mountain Valley Pipeline Project and Equitrans Expansion Project.

⁵ Minutes from November 17, 2015 conference call between FERC, ICF, Gulf South, and Perennial regarding Coastal Bend Header Project.

⁶ Email dated November 20, 2015.

⁷ Email dated November 20, 2015.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30704 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

| | Project No. |
|--------------------------------------|-------------|
| Lock+™ Hydro Friends Fund XXIX | 14691-000 |
| Energy Resources USA Inc. | 14709-000 |

On July 6, 2015, and September 2, 2015, Lock+™ Hydro Friends Fund XXIX and Energy Resources USA Inc. respectively, filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act proposing to study the feasibility of a hydropower project, to be located at the U.S. Army Corps of Engineers' (Corps) Columbia Lock and Dam on the Ouachita River, near the city of Columbia in Caldwell County, Louisiana. The sole purpose of

a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

Lock+™ Hydro Friends Fund XXIX's proposed project would consist of: (1) Three 109-foot-wide Large Frame Modules, each containing eight generating units, with a total capacity of 8 megawatts; (2) a 150-foot-long tailrace at the end of each Large Frame Module; (3) a 2.5-mile-long, 69-kilovolt transmission line; and (4) a new switchyard. The project would have an estimated annual generation of 45,500 megawatt-hours.

Applicant Contact: Mr. Wayne Krouse, P.O. Box 43796, Birmingham, AL 35243; (877) 556-6566, extension 709.

Energy Resources USA Inc.'s proposed project would consist of: (1) A 770-foot-long; 300-foot-wide intake area with a 40-foot-long retaining wall; (2) a 140-foot-wide; 90-foot-long reinforced concrete powerhouse containing two generating units with a total capacity of 9 megawatts; (3) a 1,000-foot-long; 220-foot-wide tailrace with a 40-foot-long retaining wall; (4) a 4.16/69 kilo-Volt (kV) substation; (5) a 3-mile-long, 69 kV

transmission line. The project would have an estimated annual generation of 59,600 megawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, 2655 Le June Road, Suite 804, Coral Gables, FL 33134; +34 93 252 3840.

FERC Contact: Chris Casey, (202) 502-8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14691-000 or P-14709-000.

More information about this project, including a copy of either application can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14691 or P-14709) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30703 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 487-120 and 1881-087]

Holtwood, LLC and BIF III Holtwood LLC; Notice of Application for Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

On November 6, 2015, Holtwood, LLC (transferor) and BIF III Holtwood LLC (transferee) filed an application for transfer of licenses of the Wallenpaupack Hydroelectric Project No. 487 located on Wallenpaupack Creek and the Lackawaxen River in Wayne and Pike counties, Pennsylvania and the Holtwood Project No. 1881 located on the Susquehanna River in York and Lancaster counties, Pennsylvania. The projects do not occupy any federal lands.

Applicant Contacts: For transferor: David B. Kinnard, Associate General Counsel, Talen Energy, 303 North Broadway, Suite 400, Billings, MT 59101, Phone: (406) 237-6903, Email: David.Kinnard@talenenergy.com. For transferee: Joshua Stayn, Director, Legal, Services, BIF III Holtwood LLC, 75 State Street, Suite 2701, Boston, MA 02109, Phone: (857) 313-7696, Email: joshua.stayn@brookfieldrenewable.com.

FERC Contact: Patricia W. Gillis, (202) 502-8735.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000

characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket numbers P-487-120 or P-1881-087.

Dated: December 1, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30739 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP16-24-000.

Applicants: DTE Gas Company.

Description: Abbreviated Application of DTE Gas Company for Issuance of Limited Certificate to Lease Pipeline Capacity to NEXUS Gas Transmission, LLC for use to transport Natural Gas in Interstate Commerce.

Filed Date: 11/24/15.

Accession Number: 20151124-5261.

Comments Due: 5 p.m. ET 12/8/15.

Docket Numbers: PR16-4-000.

Applicants: American Midstream Onshore Pipelines, LLC.

Description: Tariff filing per 284.123(e)/.224: Cancellation of Tariff to be effective 11/25/2015; Filing Type: 800.

Filed Date: 11/24/15.

Accession Number: 20151124-5125.

Comments/Protests Due: 5 p.m. ET 12/15/15.

Docket Numbers: RP11-1591-000.

Applicants: Golden Pass Pipeline LLC.

Description: Report Filing: 2015 Annual Report of Penalty Revenue and Cost of Golden Pass Pipeline LLC.

Filed Date: 11/30/15.

Accession Number: 20151130-5162.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: RP16-229-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Annual Fuel Filing effective 1/1/16 to be effective 1/1/2016.

Filed Date: 11/24/15.

Accession Number: 20151124-5119.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-230-000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: FL&U to be effective 1/1/16 to be effective 1/1/2016.

Filed Date: 11/24/15.

Accession Number: 20151124-5135.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-231-000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: § 4(d) Rate Filing: Out of Time Fuel Filing to be effective 1/1/2016.

Filed Date: 11/24/15.

Accession Number: 20151124-5164.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-232-000.

Applicants: Algonquin Gas

Transmission, LLC.

Description: § 4(d) Rate Filing:

Negotiated Rate Filing—BBPC 790861 eff 12-1-2015 to be effective 12/1/2015.

Filed Date: 11/24/15.

Accession Number: 20151124-5169

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-233-000.

Applicants: SG Resources Mississippi, L.L.C.

Description: § 4(d) Rate Filing: SG Resources Mississippi, L.L.C.—Modifications to FERC Gas Tariff to be effective 12/31/2015.

Filed Date: 11/24/15.

Accession Number: 20151124-5174.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-234-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (NMG) to be effective 1/1/2016.

Filed Date: 11/25/15.

Accession Number: 20151125-5031.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-235-000.

Applicants: Gas Transmission Northwest LLC.

Description: § 4(d) Rate Filing: Leap Year Rates to be effective 1/1/2016.

Filed Date: 11/25/15.

Accession Number: 20151125-5089.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP16-236-000.

Applicants: Young Gas Storage Company, Ltd.

Description: § 4(d) Rate Filing: Annual Fuel Reimbursement Percentage Update Filing effective 1/1/16 to be effective 1/1/2016.

- Filed Date:* 11/25/15.
Accession Number: 20151125-5170.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16-237-000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Article 11.2(a) Inflation Adjustment Filing effective January 1, 2016 to be effective 1/1/2016.
- Filed Date:* 11/25/15.
Accession Number: 20151125-5188.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16-238-000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Dec 2015 to be effective 12/1/2015.
- Filed Date:* 11/25/15.
Accession Number: 20151125-5282.
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16-239-000.
Applicants: Questar Pipeline Company.
Description: § 4(d) Rate Filing: Annual FGRP Report for 2016 of Questar Pipeline Company to be effective 1/1/2016.
- Filed Date:* 11/25/15.
Accession Number: 20151125-5293
Comments Due: 5 p.m. ET 12/7/15.
Docket Numbers: RP16-240-000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Filing NSO (1) to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5000.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-241-000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: Increase/Decrease of Transportation Demand to be effective 1/1/2016.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5050.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-242-000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Increase/Decrease of Transportation Demand to be effective 1/1/2016.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5053.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-243-000.
Applicants: TC Offshore LLC.
Description: Compliance filing Compliance to CP15-519-000. Abandon X-64 Agreement to be effective 1/1/2016.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5060.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-244-000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: S-2 Tracker Filing Effective 12-01-2015 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5096.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-245-000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Revision to Exhibit A of FT-A Form of Service Agreement to be effective 1/4/2016.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5126.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-246-000.
Applicants: KPC Pipeline, LLC.
Description: Request for Waiver of Tariff Provision Requiring the Filing of an Annual Interruptible Transportation Revenue Crediting Report of KPC Pipeline, LLC.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5142.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-247-000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—eff 12-1-2015 Chevron TEAM2014 Releases to Sequent Energy Mgmt to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5170.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-248-000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Con Ed Release eff 12-1-2015 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5191.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-249-000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Keyspan Ramapo Release eff 12-1-2015 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5193.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-250-000.
Applicants: Algonquin Gas Transmission, LLC
Description: § 4(d) Rate Filing: Negotiated Rates—Con Ed Ramapo Releases eff 12-1-2015 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5196.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-251-000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Non-conforming and Negotiated Rate—Total 911252 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5197.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-252-000.
Applicants: Questar Pipeline Company.
Description: § 4(d) Rate Filing: Non-Conforming TSAs Version 7.0.0, remove expired Contract No. 2419 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5278.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-253-000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Hess Contract Amendment to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5277.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-254-000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Filing NSO(1) Revised to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5275.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-255-000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates for 12-1-2015 Ramapo Releases to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5274.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-256-000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Service Agreement—Spotlight to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5347.
Comments Due: 5 p.m. ET 12/14/15.
Docket Numbers: RP16-257-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 11/30/15. Negotiated Rates—MMGS, Inc. (RTS) 7625-02 & -03 Amd 1 to be effective 12/1/2015.
- Filed Date:* 11/30/15.
Accession Number: 20151130-5348.
Comments Due: 5 p.m. ET 12/14/15.
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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15-55-002.

Applicants: Columbia Gulf

Transmission, LLC.

Description: Compliance filing Negotiated & Non-Conforming Service Agmt—West Side Compliance Filing to be effective 11/1/2014.

Filed Date: 12/1/15.

Accession Number: 20151201-5002.

Comments Due: 5 p.m. ET 12/14/15.

Docket Numbers: RP15-1277-001.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing Pro Forma OBA—RP15-1277 Compliance Filing to be effective 11/1/2015.

Filed Date: 11/25/15.

Accession Number: 20151125-5161.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP15-1278-001.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Compliance filing Pro Forma OBA—RP15-1278 Compliance Filing to be effective 11/1/2015.

Filed Date: 11/25/15.

Accession Number: 20151125-5169.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP15-1279-001.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing Pro Forma OBA—RP15-1279 Compliance Filing to be effective 11/1/2015.

Filed Date: 11/25/15.

Accession Number: 20151125-5171.

Comments Due: 5 p.m. ET 12/7/15.

Docket Numbers: RP15-1322-001.

Applicants: Sabine Pipe Line LLC.

Description: Compliance filing Sabine Pipe Line November 30 Compliance to be effective 12/31/9998.

Filed Date: 11/30/15.

Accession Number: 20151130-5271.

Comments Due: 5 p.m. ET 12/14/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated December 1, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-30747 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16-17-000; PF-15-23-000]

Millennium Pipeline Company, L.L.C.; Notice of Application

Take notice that on November 13, 2015, Millennium Pipeline Company, L.L.C. (Millennium) One Blue Hill Plaza, Pearl River, New York 10965, filed in Docket No. CP16-17-000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct and operate its Valley Lateral Project to provide approximately 130,000 dekatherms per day (Dth/d) of firm transportation service to CPV Valley, LLC to serve a new natural gas combined-cycle electric generator in the Town of Wawayanda, New York (CPV Valley Energy Center). Specifically, Millennium seeks to construct an approximately 7.8-mile, 16-inch diameter lateral pipeline from Millennium's existing mainline in Orange County, New York to the CPV Valley Energy Center, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Gary A. Kruse, One Blue Hill Plaza, Pearl River, New York 10965, phone: (845) 620-1300, or email: kruse@millenniumpipeline.com.

On April 30, 2015, the Commission staff granted Millennium's request to utilize the Pre-Filing Process and assigned Docket No. PF15-23-000 to staff activities involved in the Valley Lateral Project. Now, as of the

November 13, 2015 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP16-17-000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) for this proposal. The issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on December 21, 2015.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30709 Filed 12-4-15; 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: ER15-58-003; ER15-30-003; ER15-2602-001; ER15-2243-001; ER15-2134-001; ER15-1375-001; ER15-1016-001; ER14-2710-005; ER14-2709-005; ER14-2708-006; ER14-21-004; ER14-1630-005; ER13-

2474-004; ER13-2461-003; ER13-2458-002; ER12-895-008; ER12-676-007; ER12-631-008; ER12-2444-007; ER12-1880-009; ER12-1660-008; ER11-4678-008; ER11-4677-008; ER11-4462-013; ER11-4428-010; ER11-2365-007; ER11-2192-008; ER10-2720-010; ER10-2078-009; ER10-1995-007; ER10-1994-007; ER10-1993-008; ER10-1991-008; ER10-1990-008; ER10-1989-007; ER10-1986-008; ER10-1985-007; ER10-1984-008; ER10-1983-008; ER10-1976-007; ER10-1975-018; ER10-1974-017; ER10-1973-007; ER10-1972-008; ER10-1971-022; ER10-1970-008; ER10-1968-008; ER10-1967-008; ER10-1951-010.

Applicants: Mantua Creek Solar, LLC, McCoy Solar, LLC, Meyersdale Storage, LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Mountain View Solar, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Red Mesa Wind, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Sky River LLC, Sky River Asset Holdings, LLC, Somerset Windpower, LLC, Steele Flats Wind Project, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: Supplement to October 280, 2015 Notice of Change in Status of the NextEra Energy Companies [Part 2 of 2].

Filed Date: 11/25/15.

Accession Number: 20151125-5335.

Comments Due: 5 p.m. ET 12/16/15.

Docket Numbers: ER15-2565-001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2015-11-30 Compliance Filing-EIM Transition Period to be effective 11/1/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5248.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-424-000.

Applicants: Dominion Energy

Manchester Street, Inc.

Description: Compliance filing: Compliance Filing—DEMS Removal of Affiliate Waiver to be effective 11/1/2015.

Filed Date: 11/30/15.

Accession Number: 20151130-5215.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER16-425-000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 filing tariff revision re: scarcity pricing to be effective 12/31/9998.

Filed Date: 11/30/15.

Accession Number: 20151130-5216.

Comments Due: 5 p.m. ET 12/21/15.

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: November 30, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-30706 Filed 12-4-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-20-110]

Pacificorp; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Application Type*: Amendment of license.

b. *Project No.*: 20–110.

c. *Date Filed*: November 12, 2015.

d. *Applicant*: PacifiCorp.

e. *Name of Project*: Bear River Hydroelectric Project.

f. *Location*: Bear River in Caribou and Franklin counties, Idaho.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact*: Mr. Mark Stenberg, Managing Director, Hydro Resources, PacifiCorp, 825 NE Multnomah, Portland, OR 97232, mark.stenberg@pacificcorp.com, 208–547–7305.

i. *FERC Contact*: Anumzziatta Purchiaroni, (202) 502–6191, anumzziatta.purchiaroni@ferc.gov.

j. *Deadline for filing motions to intervene and protests*: December 30, 2015.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–20–110.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The licensee is proposing to revise the project boundary to include land changes at the Soda, Grace, and Oneida developments.

Changes to Soda Development include adding a gaging station and access road below the dam within the project boundary and adjusting the

project boundary to better fit shoreline buffers and conservation lands.

Changes to Grace Development include minor revisions to the project boundary around the powerhouse to reflect the recently updated U.S. Bureau of Land Management (BLM) permit, identifying lands under the Federal Land Policy and Management Act of 1976, providing a more accurate description of project lands along the Grace flowline, adding conservation lands identified in the Grace/Last Chance Site plan, expanded the project boundary to the headwater to include all lands necessary for project operations, included two additional structures necessary for maintain the operating elevation of the reservoir, and identifying private lands under the reservoir.

Changes to Oneida Development include adding an access road on BLM land, identifying two areas of private lands under the reservoir, correctly identifying lands owned by BLM or Bureau of Reclamation, and adding conservation lands managed under the revised Oneida Site Plan.

1. *Locations of the Application*: A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field (P–20) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in

accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. All comments, motions to intervene, or protests should relate to project boundary changes, which are the subject of the license amendment. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–30702 Filed 12–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1196–003.

Applicants: Nevada Power Company, Sierra Pacific Power Company.

Description: Supplement to July 13, 2015 Compliance Filing of Nevada Power Company and Sierra Pacific Power Company.

Filed Date: 11/30/15.

Accession Number: 20151130–5460.

Comments Due: 5 p.m. ET 12/21/15.

Docket Numbers: ER15–2641–001.

Applicants: ISO New England Inc.

Description: Compliance filing: Notice of Effective Date for CTS, Compliance and Conforming Filing to be effective 12/15/2015.

Filed Date: 12/1/15.

Accession Number: 20151201–5105.

Comments Due: 5 p.m. ET 12/22/15.

Docket Numbers: ER16–426–000.

Applicants: Fairless Energy, LLC.
Description: Compliance filing:
 Compliance Filing—Removal of
 Affiliate Waiver to be effective 11/1/
 2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5285.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–427–000.
Applicants: Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing:
 EGSL–SRMPA 5th Extension of Interim
 Agreement to be effective 12/1/2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5284.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–428–000.
Applicants: New England Power Pool
 Participants Committee.
Description: § 205(d) Rate Filing: Nov
 30 2015 Membership Filing to be
 effective 11/1/2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5273.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–429–000.
Applicants: PJM Interconnection,
 L.L.C.
Description: § 205(d) Rate Filing:
 Original Designated Entity Agreement,
 SA No. 4310 among PJM and Northeast
 to be effective 10/29/2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5272.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–430–000.
Applicants: Southwest Power Pool,
 Inc.
Description: § 205(d) Rate Filing:
 Bylaws 9.7 Revisions to Expand
 Regional Entity Trustees to be effective
 1/29/2016.
Filed Date: 11/30/15.
Accession Number: 20151130–5268.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–431–000.
Applicants: Virginia Electric and
 Power Company.
Description: Compliance filing:
 Compliance Filing—VEPCO Removal of
 Affiliate Waiver to be effective 11/1/
 2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5307.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–432–000.
Applicants: Midcontinent
 Independent System Operator, Inc.
Description: § 205(d) Rate Filing:
 2015–11–30 RPU RTO Adder Filing to
 be effective 2/1/2016.
Filed Date: 11/30/15.
Accession Number: 20151130–5328.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–433–000.
Applicants: Virginia Electric and
 Power Company.

Description: Compliance filing:
 Compliance Filing—Removal of
 Affiliate Waiver to be effective 11/1/
 2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5344.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–434–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate
 Schedule No. 142 Dynamic Scheduling
 Agreement Amendment—Transfer to be
 effective 12/1/2015.
Filed Date: 11/30/15.
Accession Number: 20151130–5345.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–435–000.
Applicants: Wabash Valley Power
 Association, Inc.
Description: Baseline eTariff Filing:
 Wabash Valley Power Association—
 MISO Reactive Tariff to be effective 2/
 1/2016.
Filed Date: 11/30/15.
Accession Number: 20151130–5351.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–436–000.
Applicants: Old Dominion Electric
 Cooperative, Inc.
Description: Request of Old Dominion
 Electric Cooperative for Waiver of
 Notice Requirement.
Filed Date: 11/30/15.
Accession Number: 20151130–5362.
Comments Due: 5 p.m. ET 12/21/15.
Docket Numbers: ER16–437–000.
Applicants: Midcontinent
 Independent System Operator, Inc.
Description: § 205(d) Rate Filing:
 2015–12–01_SA 2874 ATC
 Transmission Capacity Exchange
 Agreement to be effective 10/30/2015.
Filed Date: 12/1/15.
Accession Number: 20151201–5112.
Comments Due: 5 p.m. ET 12/22/15.
Docket Numbers: ER16–438–000.
Applicants: Marshall Wind Energy
 LLC.
Description: Baseline eTariff Filing:
 Marshall Wind MBRA Filing to be
 effective 1/30/2016.
Filed Date: 12/1/15.
Accession Number: 20151201–5114.
Comments Due: 5 p.m. ET 12/22/15.
Docket Numbers: ER16–439–000.
Applicants: Midcontinent
 Independent System Operator, Inc.
Description: § 205(d) Rate Filing:
 2015–12–01_SA 2875 ATC Operations
 and Maintenance Agreement to be
 effective 10/30/2015.
Filed Date: 12/1/15.
Accession Number: 20151201–5116.
Comments Due: 5 p.m. ET 12/22/15.
 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: December 1, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015–30735 Filed 12–4–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0008; FRL–9939–
 70–OSWER]

Proposed Information Collection Request; Comment Request; Consolidated Superfund Information Collection Request (Renewal)

AGENCY: Environmental Protection
 Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection
 Agency (EPA) is planning to submit an
 information collection request (ICR),
 “Consolidated Superfund Information
 Collection Request (Renewal)” (EPA ICR
 No. 1487.13, OMB Control No. 2050–
 0179) to the Office of Management and
 Budget (OMB) for review and approval
 in accordance with the Paperwork
 Reduction Act (PRA) (44 U.S.C. 3501 *et*
seq.). Before doing so, EPA is soliciting
 public comments on specific aspects of
 the proposed information collection as
 described below. This notice is a
 proposed extension of the ICR, which is
 currently approved through April 30,
 2016. This ICR is a continuing
 consolidation of the following previous
 ICRs: OMB Control Number 2050–0179
 (Cooperative Agreements and
 Superfund State Contracts for
 Superfund Response Actions), OMB
 Control Number 2050–0095 (Superfund
 Site Evaluation and Hazard Ranking
 System (HRS)), and OMB Control
 Number 2050–0096 (National Oil and
 Hazardous Substances Pollution
 Contingency Plan (NCP)). An Agency
 may not conduct or sponsor and a

person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 5, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-2004-0008, online using www.regulations.gov (our preferred method), by email to superfund.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Laura Knudsen, Office of Solid Waste and Emergency Response, Assessment and Remediation Division, (5204P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703-603-8861; fax number: 703-603-9102; email address: knudsen.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will collect are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers the following: The collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for state, federally-recognized Indian tribal governments, and political subdivision response actions; the application of the Hazard Ranking System (HRS) by states as outlined by section 105 of CERCLA (1980 and 1986) that amends the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites; and the remedial portion of the Superfund program as specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). For Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, the information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how federal funds are being utilized. EPA requires this information to meet its federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and under 40 CFR part 35, "State and Local Assistance." For the Superfund Site Evaluation and Hazard Ranking System, the states will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions. For the NCP information collection, some community involvement activities

covered by this ICR are not required at every site (e.g., Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members, and include the community's perspective on the potential future reuse of Superfund NPL sites. Community involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and beneficial reuse of the sites.

Form Numbers: None.

Respondents/affected entities: State, Local or Tribal Governments; Communities; US Territories.

Respondent's obligation to respond: Required to obtain benefits (for the Cooperative Agreements and Superfund State Contracts under 40 CFR part 35); Required to Obtain Benefits (for the Superfund Site Evaluation and Hazard Ranking System ICR under section 105 of the CERCLA, 1980 and 1986); and Required to Obtain Benefits (for the National Oil and Hazardous Substances Pollution Contingency Plan under CERCLA).

Estimated number of respondents: 12,131 (total).

Frequency of response: On occasion.

Total estimated burden: 308,458 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$481,661.59 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no anticipated change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The estimates are expected to substantially stay the same because there have been no significant changes in respondents and the scope of the activities listed under this ICR remains unchanged.

Dated: November 24, 2015.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2015-30799 Filed 12-4-15; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

[Public Notice: 2015-3018]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 00–02 Annual Competitiveness Report Survey of Exporters and Bankers.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Ex-Im Bank will use this information to fulfill the statutory mandate (Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress on its competitiveness relative to the world's other major export credit agencies. As part of this report, the statutory mandate requires Ex-Im Bank to conduct an annual survey of exporters and lenders who used Export-Import Bank's support during the prior calendar year. Ex-Im Bank will use the responses to develop an analysis of the Bank's competitiveness.

The survey can be reviewed at: http://www.exim.gov/sites/default/files/pub/pending/EXIM_Competitiveness_Report_Survey.pdf.

DATES: Comments should be received on or before January 6, 2016.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–14–01.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 00–02 Annual Competitiveness Report Survey of Exporters and Bankers.

OMB Number: 3048–0004.

Type of Review: Renewal.

Need and Use: This information will be used to fulfill the statutory mandate (Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

The number of respondents: 150.

Estimated time per respondents: 90 minutes.

The frequency of response: Annually.

Annual hour burden: 225 total hours.

Government Expenses:

Reviewing time per response: 45 minutes.

Responses per year: 150.

Reviewing time per year: 112.5 hours.

Average Wages per hour: \$42.50.

*Average cost per year: (time * wages)* \$4,781.25.

Benefits and overhead: 20%.

Total Government Cost: \$5737.5.

Bonita Jones-McNeil,

Program Analyst, Records Management Division.

[FR Doc. 2015–30801 Filed 12–4–15; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meeting Schedule for 2016

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the U.S. Government Accountability Office (GAO) Building (441 G St. NW., Washington, DC) unless otherwise noted:

—Wednesday and Thursday, February 24 and 25, 2016

—Wednesday and Thursday, April 27 and 28, 2016

—Wednesday and Thursday, June 29 and 30, 2016

—Wednesday and Thursday, August 24 and 25, 2016

—Wednesday and Thursday, October 19 and 20, 2016

—Wednesday and Thursday, December 19 and 20, 2016

The purpose of the meetings is to discuss issues related to:

—Leases.

—Public-Private Partnerships,

—Reporting Model,

—Risk Assumed,

—Tax Expenditures, and

—Any other topics as needed.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at

least two days prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at 202–512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: December 1, 2015.

Wendy Payne,

Executive Director, Federal Accounting Standards Advisory Board.

[FR Doc. 2015–30782 Filed 12–4–15; 8:45 am]

BILLING CODE 1610–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Candidates

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) is currently seeking candidates (candidates must not currently be federal employees) to serve as non-federal members of the FASAB. FASAB is the body designated to establish generally accepted accounting principles for federal government entities. Generally, non-federal Board members are selected from the general financial community, the accounting and auditing community, or the academic community. Specifically, FASAB is particularly interested in candidates who have experience as:

- Analysts of financial information,
- Economists or forecasters,
- Academics,
- Auditors,
- Preparers of financial information, or
- Those otherwise knowledgeable regarding the use of financial information in decision-making.

The FASAB meets in Washington, DC, for two days every other month.

Members are compensated based on current federal executive salaries. The member designated as chairperson of the board is typically compensated for 40 hours during each two-week pay period. Other members are typically compensated for 24 days per year. Travel expenses are reimbursed in accordance with federal travel regulations.

Responses may be submitted by email to paynew@fasab.gov or by fax to 202–512–7366. Responses may also be sent

to: Ms. Wendy Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., (Mailstop 6K17V), Washington, DC 20548.

Please submit your resume by January 6, 2016. Additional information about the FASAB can be obtained from its Web site at <http://www.fasab.gov>.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at 202-512-7350.

Authority: Federal Advisory Committee Act, Pub. L. 92-463.

Dated: December 1, 2015.

Wendy Payne,

Executive Director, Federal Accounting Standards Advisory Board.

[FR Doc. 2015-30781 Filed 12-4-15; 8:45 am]

BILLING CODE 1610-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1034]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 5, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1034.

Title: Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service; Digital Notification Form, FCC Form 335.

Form Number: FCC Form 335.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and responses: 250 respondents, 250 responses.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Estimated Time per Response: 1 hour-8 hours.

Total Annual Burden: 450 hours.

Total Annual Costs: \$192,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 29, 2010, the Commission released the Order, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service (Order), DA 10-208, MM Docket 99-325. The Order allowed: (1) Eligible authorized FM stations to commence operation of FM digital facilities with digital effective radiated power (ERP) up to -14 dBc upon notice to the Commission on Form 335 (the licensee of a super-powered FM station must file an informal request for any increase in the station's FM Digital ERP). (2) Licensees to submit an application to the Media Bureau, in the

form of an informal request, for any increase in FM Digital ERP beyond 6 dB. (3) Licensees submitting such a request must use a simplified method set forth in the Order to determine the proponent station's maximum permissible FM Digital ERP. (4) In situations where the simplified method is not applicable due to unusual terrain or other environmental or technical considerations or when it produces anomalous FM Digital ERP results, the Bureau will accept applications for FM Digital ERP in excess of -14 dBc on a case-by-case basis when accompanied by a detailed showing containing a complete explanation of the prediction methodology used as well as data, maps and sample calculations. These information collection requirements have not changed since they were last approved by the Office of Management and Budget (OMB).

These information collection requirements are also a part of this collection and remain unchanged:

47 CFR 73.404(b) states in situations where interference to other stations is anticipated or actually occurs, AM licensees may, upon notification to the Commission, reduce the power of the primary Digital Audio Broadcasting (DAB) sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

47 CFR 73.404(e) states licensees (commercial and noncommercial AM and FM radio stations) must provide notification to the Commission in Washington, DC, within 10 days of commencing in-band, on channel (IBOC) digital operation. The notification must include the following information: (1) Call sign and facility identification number of the station; (2) date on which IBOC operation commenced; (3) certification that the IBOC DAB facilities conform to permissible hybrid specifications; (4) name and telephone number of a technical representative the Commission can call in the event of interference; (5) FM digital effective radiated power used and certification that the FM analog effective radiated power remains as authorized; (6) transmitter power output; if separate analog and digital transmitters are used, the power output for each transmitter; (7) if applicable, any reduction in an AM station's primary digital carriers; (8) if applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate

digital antenna; (9) if applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317; (10) a certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of the Commission's rules and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b). Any station that cannot certify compliance must submit an environmental assessment ("EA") pursuant to § 1.1311 and may not commence IBOC operation until such EA is ruled upon by the Commission.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015-30727 Filed 12-4-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1034]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 5, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1034.

Title: Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service; Digital Notification Form, FCC Form 335.

Form Number: FCC Form 335.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondent and responses: 250 respondents, 250 responses.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Estimated Time per Response: 1 hour-8 hours.

Total Annual Burden: 450 hours.

Total Annual Costs: \$192,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 29, 2010, the Commission released the Order, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service (Order), DA 10-208, MM Docket 99-325. The Order allowed: (1) Eligible authorized FM stations to commence operation of FM digital facilities with digital effective radiated

power (ERP) up to -14 dBc upon notice to the Commission on Form 335 (the licensee of a super-powered FM station must file an informal request for any increase in the station's FM Digital ERP). (2) Licensees to submit an application to the Media Bureau, in the form of an informal request, for any increase in FM Digital ERP beyond 6 dB. (3) Licensees submitting such a request must use a simplified method set forth in the Order to determine the proponent station's maximum permissible FM Digital ERP. (4) In situations where the simplified method is not applicable due to unusual terrain or other environmental or technical considerations or when it produces anomalous FM Digital ERP results, the Bureau will accept applications for FM Digital ERP in excess of -14 dBc on a case-by-case basis when accompanied by a detailed showing containing a complete explanation of the prediction methodology used as well as data, maps and sample calculations. These information collection requirements have not changed since they were last approved by the Office of Management and Budget (OMB).

These information collection requirements are also a part of this collection and remain unchanged:

47 CFR 73.404(b) states in situations where interference to other stations is anticipated or actually occurs, AM licensees may, upon notification to the Commission, reduce the power of the primary Digital Audio Broadcasting (DAB) sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

47 CFR 73.404(e) states licensees (commercial and noncommercial AM and FM radio stations) must provide notification to the Commission in Washington, DC, within 10 days of commencing in-band, on channel (IBOC) digital operation. The notification must include the following information: (1) Call sign and facility identification number of the station; (2) date on which IBOC operation commenced; (3) certification that the IBOC DAB facilities conform to permissible hybrid specifications; (4) name and telephone number of a technical representative the Commission can call in the event of interference; (5) FM digital effective radiated power used and certification that the FM analog effective radiated power remains as authorized; (6) transmitter power output; if separate analog and digital transmitters are used,

the power output for each transmitter; (7) if applicable, any reduction in an AM station's primary digital carriers; (8) if applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna; (9) if applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317; (10) a certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of the Commission's rules and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b). Any station that cannot certify compliance must submit an environmental assessment ("EA") pursuant to § 1.1311 and may not commence IBOC operation until such EA is ruled upon by the Commission.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015-30726 Filed 12-4-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269; DA 15-1357]

Wireless Telecommunications Bureau Releases Impairment File Formats for Forward Auction

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document provides information regarding data specifications for forward Auction 1002.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general forward auction questions: Sasha Javid at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 1002 Impairment Formats Specifications Public Notice*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, DA 15-1357, released on November 24, 2015. The complete text of the *Auction 1002 Impairment Formats Specifications Public Notice*, including the attachment is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through

Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at <http://wireless.fcc.gov>, or by using the search function on the ECFS Web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

I. General Information

1. The *Auction 1002 Impairment Formats Specifications Public Notice* provides specifications for impairment file formats so that prospective forward auction bidders in the broadcast incentive auction can begin familiarizing themselves with the file formats in which impairment information will be made available. Qualified bidders in the forward auction (Auction 1002) will have access to detailed impairment information upon receipt of their registration materials. The specifications released in the Public Notice include sample impairment data only.

Federal Communications Commission.

William Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2015-30817 Filed 12-4-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10069 Neighborhood Community Bank, Newnan, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10069 Neighborhood Community Bank, Newnan, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Neighborhood Community Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 2, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-30788 Filed 12-4-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10489, The Community's Bank Bridgeport, Connecticut

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10489, The Community's Bank, Bridgeport, CT (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of The Community's Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective December 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: December 2, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-30762 Filed 12-4-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10294, North County Bank, Arlington, Washington

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for North County Bank, Arlington, Washington ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of North County Bank on September 24, 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: December 2, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015-30744 Filed 12-4-15; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 10, 2015 at 10:00 a.m., Tuesday, December 15, 2015 at 10:00 a.m., and Thursday, December 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. Matters concerning participation in civil actions or proceeding, or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2015-30896 Filed 12-3-15; 4:15 pm]

BILLING CODE 6715-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0246; Docket 2015-0001; Sequence 16]

General Services Administration Regulation; Information Collection; Packing List Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for an extension of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause.

DATES: Submit comments on or before: February 5, 2016.

ADDRESSES: Submit comments identified by Information Collection 3090-0246, Packing List Clause, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0246, Packing List Clause". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0246, Packing List Clause" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090-0246, Packing List Clause.

Instructions: Please submit comments only and cite Information Collection 3090-0246, Packing List Clause, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Janet Fry, Procurement Analyst, at

telephone 703-605-3167 or via email at janet.fry@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211-77, Packing List, requires a contractor to include a packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term "Credit Card" is required.

B. Annual Reporting Burdens

Respondents: 7,387.

Responses per Respondent: 27.

Total Annual Responses: 199,449.

Hours per Response: .05.

Total Burden Hours: 9,972.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, at 202-501-4755. Please cite OMB Control No. 3090-0246, Packing List Clause, in all correspondence.

Dated: November 25, 2015.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015-30521 Filed 12-4-15; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of Domestic Human Trafficking Demonstration Projects.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing a data collection as part of the "Evaluation of Domestic Human Trafficking

Demonstration Projects” study. This notice addresses the cross-site process evaluation to be conducted with the FY 2015 domestic human trafficking demonstration sites funded by the Family and Youth Services Bureau (FYSB).

The objective of the process evaluation is to describe program operations and implementation experience, such as start-up efforts, service provision to a wide array of trafficking victims, collaboration development, training, and sustainability actions. Information from the evaluation will assist federal, state, and community policymakers and funders in laying the groundwork for the refinement of program models to

serve domestic victims of human trafficking, as well as evaluation strategies for future programs targeting trafficking victims.

The evaluation of domestic human trafficking demonstration projects will document and describe each site’s community and organizational capacity; partnership composition and functioning; comprehensive, victim-centered services; and survivor characteristics, experiences, and outcomes. Primary data for the evaluation will be collected via qualitative interviews, including key informant interviews, case narrative interviews and client interviews. Data will be collected in two waves, during 2016 and 2017. Only the case narrative

interviews will include follow up interviews. Interviews from multiple perspectives will enhance the government’s understanding of strategies by which grantees can identify, engage and serve diverse populations of victims of sever forms of human trafficking.

Respondents: Case managers at the three FY 2015 FYSB funded demonstration projects; staff (e.g., program managers and directors) from partner organizations that are working with the three FY 2015 FYSB-funded demonstration projects; and clients who have received services from the three FY 2015 FYSB-funded demonstration projects.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|----------------------------------|-----------------------------|------------------------------|------------------------------------|-----------------------------------|---------------------|
| Partner Interviews | 30 | 15 | 1 | 1.25 | 19 |
| Case Manger Interview | 30 | 15 | 1 | 1.25 | 19 |
| Case Narrative Interview | 30 | 15 | 1 | 1 | 15 |
| Client Interview | 30 | 15 | 1 | 1 | 15 |
| Project Director Interview | 6 | 3 | 1 | 2 | 6 |

Estimated Total Annual Burden Hours: 74.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. *Email address: OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,
ACF Certifying Officer.
[FR Doc. 2015–30742 Filed 12–4–15; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1286]

Moving Forward: Collaborative Approaches to Medical Device Cybersecurity; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled “Moving Forward: Collaborative Approaches to Medical Device Cybersecurity.” FDA, in collaboration with the National Health Information Sharing Analysis Center (NH–ISAC), the Department of Health and Human Services, and the Department of

Homeland Security, seek to bring together diverse stakeholders to discuss complex challenges in medical device cybersecurity that impact the medical device ecosystem. The purpose of this workshop is to highlight past collaborative efforts; increase awareness of existing maturity models (i.e. frameworks leveraged for benchmarking an organization’s processes) which are used to evaluate cybersecurity status, standards, and tools in development; and to engage the multi-stakeholder community in focused discussions on unresolved gaps and challenges that have hampered progress in advancing medical device cybersecurity.

DATES: The public workshop will be held January 20–21, 2016, from 9 a.m. to 5:30 p.m. Submit either electronic or written comments on the public workshop by February 22, 2016.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room, (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

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

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2014-N-1286 for "Moving Forward: Collaborative Approaches to Medical Device Cybersecurity." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

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

FOR FURTHER INFORMATION CONTACT: Suzanne Schwartz, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 5428, Silver Spring, MD 20993, 301-796-6937, Suzanne.Schwartz@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Effective medical device cybersecurity to assure device safety and functionality has become more important with the increasing use of wireless, Internet- and network-connected devices, and the frequent electronic exchange of medical device-related health information. As medical devices become more connected and interoperable, the potential for exploit of device vulnerabilities, whether intentional or not, increases. Rather than impacting a single device or single system, multiple devices or an entire hospital network may be compromised. In the past, the Healthcare and Public Health (HPH) sector has been the target of many

attempts at intrusion. Protecting the HPH critical infrastructure from attack by strengthening cybersecurity is a high priority for the Federal government. Cybersecurity is the subject of recent Executive Orders focused on enhancing the cybersecurity of critical infrastructure (E.O. 13636) (Ref. 1) and increasing cybersecurity information sharing (E.O. 13691) (Ref. 2). Furthermore, Presidential Policy Directive 21 tasks the Federal government to work together with the private sector in order to strengthen the security and resilience of critical infrastructure against physical and cyber threats (Ref. 3). This public workshop will bring together diverse stakeholders from the public and private sector to discuss the current state of medical device cybersecurity, including its evolution over the past 12 months. Moreover, the workshop plans to provide a vision for the desired state of medical device cybersecurity through ongoing collaboration and new partnerships over the next 12 months. Meeting participants are encouraged to formulate strategies and feasible action plans to address gaps, such as management of vulnerabilities in legacy devices. These diverse stakeholders include, but are not limited to: Medical device manufacturers; healthcare facilities and personnel (e.g., healthcare providers, biomedical engineers, IT system administrators); professional and trade organizations including medical device cybersecurity consortia; patient groups; insurance providers; cybersecurity researchers; local, State, and Federal Governments; and information security firms.

A voluntary, risk-based framework for achieving enhanced cybersecurity was developed by the National Institute of Standards and Technology (NIST) in collaboration with external public and private sector partners (Ref. 4). Since its release in February 2014, the "Framework for Improving Critical Infrastructure Cybersecurity" (Framework) has been leveraged by entities within the HPH sector to better manage and reduce cybersecurity risks. This workshop aims to highlight some of the ways that the Framework has been employed to better understand, manage, communicate, and mitigate medical device cybersecurity risks across the medical device total product lifecycle.

Medical device cybersecurity vulnerabilities, if exploited, may result in device malfunction, disruption of healthcare services including treatment interventions, inappropriate access to patient information, or compromised electronic health record data integrity.

Such outcomes could have a profound impact on patient care and safety. In the last few years, HPH sector stakeholders have been engaged in many collaborative activities that seek to strengthen medical device cybersecurity and, therefore, enhance patient safety. FDA has contributed to these efforts through guidance, multi-stakeholder engagement, outreach, and by hosting a 2014 public workshop on cybersecurity (Ref. 5). The 2016 public workshop announced in this **Federal Register** notice will build upon previous work by featuring some of the collaborative efforts that address medical device cybersecurity through education and training, information sharing, standards, risk assessment, and tools development.

Though progress is evident, key hurdles continue to impede maturation of the HPH community's cybersecurity posture. This workshop seeks to increase awareness among stakeholders and create a common understanding of potential threats and vulnerabilities, as well as to present proactive preventative measures that may be universally employed as best practices and good cyber hygiene. The workshop also aims to facilitate extensive dialogue and articulate paths forward in the critical areas of information sharing, coordinated vulnerability disclosure and vulnerability management, and the Common Vulnerability Scoring System (CVSS). Information sharing continues to be a challenge as stakeholders work to define processes to create a trusted environment. Coordinated vulnerability disclosure is an important component of information sharing. Proactively identifying, assessing, and managing medical device vulnerabilities before they are exploited is one way to protect against potential patient harm. Vulnerabilities may be identified by the device manufacturer as well as by external entities such as healthcare facilities, cybersecurity researchers, and other sectors of critical infrastructure. As described in International Organization for Standardization/International Electrotechnical Commission 29147:2014, "Coordinated disclosure, also known as *responsible* disclosure, is a vulnerability disclosure model in which all stakeholders agree to delay publishing vulnerability details for an agreed-upon period of time, generally after a patch to mitigate the vulnerability is available. The model includes steps that simplify the otherwise-complex, back-and-forth communications between the vulnerability finder and the affected manufacturer" (Ref. 6). Coordinated disclosure is just one aspect of

vulnerability management. Understanding how a vulnerability may affect device functionality, assessing the vulnerability impact across multiple product types, and identifying mitigations that may be employed until a permanent fix may be implemented are all critical components of vulnerability management that should be addressed throughout the medical device total product lifecycle. This workshop provides an opportunity for stakeholders to explore implementation of coordinated vulnerability disclosure and vulnerability management, including existing standards, models, best practices, and lessons learned in this area.

One of the tools that manufacturers or healthcare facilities may use to assess and manage the impact of vulnerability is CVSS. CVSS is a risk assessment tool that provides an open and standardized method for rating information technology vulnerabilities. However, incorporating CVSS into medical device vulnerability assessments has proven to be a challenge in that it does not directly incorporate patient risk and public health impact factors. This workshop encourages robust dialogue on how CVSS might be adapted for medical devices and how considerations of the use environment might be incorporated in a more standardized manner into medical device CVSS scores.

II. Topics for Discussion at the Public Workshop

The public workshop sessions are designed to incorporate the following general themes:

- Envisioning a roadmap for coordinated vulnerability disclosure and vulnerability management as part of the broader effort to create a trusted environment for information sharing.
 - How might the stakeholder community create incentives to encourage stakeholder participation?
 - What do individual stakeholders need to understand and be aware of regarding coordinated disclosure?
 - What current tools and models presently exist that may aid stakeholders in implementing disclosure and vulnerability management?
 - How can the security researcher community work in collaboration with HPH stakeholders to identify, assess, and mitigate vulnerabilities?
 - Sharing FDA's current thinking on the implementation of the Framework in the medical device total product lifecycle.
 - Adapting cybersecurity and/or risk assessment tools such as CVSS for the

medical device operational environment.

- Adapting and/or implementing existing cybersecurity standards for medical devices.
- Understanding the challenges that manufacturers face as they increase collaboration with external third parties (cybersecurity researchers, Information Sharing and Analysis Organizations (ISAOs), and end users), to resolve cybersecurity vulnerabilities that impact their devices. Note that an ISAO is a group created to gather, analyze, and disseminate critical infrastructure information (Ref. 7).
 - Gaining situational awareness of the current activities in the HPH sector to enhance medical device cybersecurity.
 - Identifying cybersecurity gaps and challenges that persist in the medical device ecosystem and begin crafting action plans to address them.

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by January 13, 2016, at 4 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Office of Communication and Education, 301-796-5661 or email: susan.monahan@fda.hhs.gov no later than January 7, 2016.

Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. The Webcast link will be available on the registration Web page after January 13, 2016. Please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. Select this meeting/public workshop from the posted events list. If you have never attended a Connect Pro event before, test your connection at https://collaboration.fda.gov/common/help/en/support/meeting_test.htm. To get a

quick overview of the Connect Pro program, visit http://www.adobe.com/go/connectpro_overview. FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). 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>. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list).

III. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <http://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Executive Order 13636, "Improving Critical Infrastructure Cybersecurity," February 19, 2013 (<http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf>).
2. Executive Order 13691, "Promoting Private Sector Cybersecurity Information Sharing," February 13, 2015 (<http://www.gpo.gov/fdsys/pkg/FR-2015-02-20/pdf/2015-03714.pdf>).
3. Presidential Policy Directive 21, "Critical Infrastructure Security and Resilience," February 12, 2013 (<http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>).
4. National Institute of Standards and Technology (NIST), "Framework for Improving Critical Infrastructure Cybersecurity," version 1, February 12, 2014 (<http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214-final.pdf>).
5. Food and Drug Administration, "Public Workshop—Collaborative Approaches for Medical Device and Healthcare Cybersecurity, October 21–22, 2014," October 11, 2015 (<http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm412979.htm>).

6. "ISO/IEC 29147:2014—Information Technology—Security Techniques—Vulnerability Disclosure," (http://www.iso.org/iso/catalogue_detail.htm?csnumber=45170).
7. Department of Homeland Security, "Frequently Asked Questions About Information Sharing and Analysis Organizations (ISAOs)," November 17, 2015 (<http://www.dhs.gov/isao-faq>).

Dated: December 2, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015–30772 Filed 12–4–15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the "Advisory Group"). This meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: <http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/index.html>.

DATES: The meeting will be held on December 22, 2015. The exact meeting time will be published closer to the meeting date at: <http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html>.

ADDRESSES: This meeting will be held via teleconference. Teleconference information and an exact meeting time will be published closer to the meeting date at: <http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/index.html>.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave. SW.; Washington, DC 20201; 202–205–9517; prevention.council@hhs.gov.

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary federal advisory committee that was initially established under Executive

Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council.

The Advisory Group was terminated on September 30, 2012, by Executive Order 13591, dated November 23, 2011. Authority for the Advisory Group to be re-established was given under Executive Order 13631, dated December 7, 2012. Authority for the Advisory Group to continue to operate until September 30, 2017, was given under Executive Order 13708, dated September 30, 2015.

It is authorized for the Advisory Group to consist of no more than 25 non-federal members. The Advisory Group currently has 21 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

A meeting description and relevant materials will be published closer to the meeting date at: <http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/>.

Members of the public have the opportunity to participate in the meeting and/or provide comments to the Advisory Group on December 22, 2015. Public comment will be limited to 3 minutes per speaker. Individuals who wish to participate in the meeting and/or provide comments must register by 12:00 p.m. EST on December 15, 2015. In order to register, individuals must send their full name and affiliation via email to prevention.council@hhs.gov. Individuals who need special assistance and/or accommodations, *i.e.*, TDD/VP or other reasonable accommodations, should indicate so when they register. Members of the public who wish to have materials distributed to the Advisory Group members at this scheduled meeting should submit those materials when they register.

Dated: November 20, 2015.

Melanie Ross,

CDR, USPHS, Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2015-30749 Filed 12-4-15; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee (AA-4).

Date: March 2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level, Room 508, Rockville, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2081, Rockville, MD 20852, 301-443-0800, bbuzas@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee (AA1).

Date: March 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level, Room 508, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2017, Bethesda, MD 20892, 301-443-2861, marmillotp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 30, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-30719 Filed 12-4-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications 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 Cancer Institute Special Emphasis Panel; NCI P01 Meeting II.

Date: February 2-3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892-9750, 240-276-6349, ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE I Review.

Date: February 3-4, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive,

Room 7W608, Bethesda, MD 20892-9750, 240-276-6458, lopacw@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Research in Cancer Nanotechnology (IRCIN).

Date: February 25, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892-9750, 240-276-5856, nkhann3@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 30, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-30718 Filed 12-4-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

Prospective Grant of Start-Up Exclusive Evaluation Option License Agreement: Development and Commercialization of Aza-Epoxy Guaiane Derivatives for Treatment of Renal Cancer

AGENCY: National Institutes of Health.
ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Cancer Institute (NCI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Evaluation Option License Agreement to ElexiMed LLC, a company having a place of business at 5003 Green Mountain Circle, Suite 4, Columbia, MD 21044, USA, to practice the inventions embodied in the following patent applications.

Intellectual Property—PCT Patent Application No. PCT/US2015/014601, entitled “Aza-Englerin Analogues—Novel Natural Product-Based Nitrogen-Containing Anti-Cancer Agents” filed February 5, 2015 (HHS Ref. No.: E-090-2014/2-PCT-01); US Provisional Patent

Application No. 62/018,381, entitled "Aza-epoxy-guaiane derivatives and treatment of cancer" filed June 27, 2014 (HHS Ref. No. E-090-2014/1-US-01); and US Provisional Patent Application No. 61/936,285, entitled "Aza-englerin analogues and use in cancer therapy" filed February 5, 2014 (HHS Ref. No. E-090-2014/0-US-01).

The patent rights in these inventions have been assigned to the Government of the United States of America and the University of Hawaii.

The territory of the prospective Start-Up Exclusive Evaluation Option License Agreement may be worldwide, and the field of use may be limited to "Development and commercialization of aza-epoxy guaiane derivatives for treatment of renal cancer."

Upon the expiration or termination of the Start-up Exclusive Evaluation Option License Agreement, Exelixis LLC will have the exclusive right to execute a Start-Up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Evaluation Option License Agreement, with no greater field of use and territory than granted in the Start-up Exclusive Evaluation Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center on or before December 22, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application(s), inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Evaluation Option License Agreement should be directed to: Rose Freel, Ph.D., Licensing and Patenting Manager, Technology Transfer Center, National Cancer Institute, Riverside 5, Suite 400, 8490 Progress Drive, Frederick, MD 21702; telephone: 301-624-1257; Facsimile: 301-631-3027; Email: rose.freel@nih.gov. A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology describes aza-englerins, synthetic analogues of the natural product Englerin A which displays potent and selective anti-cancer properties in several cancer cell lines. The aza-englerins were developed as novel cancer therapeutics and show significant bioavailability after oral administration in mice.

The prospective Start-Up Exclusive Evaluation Option License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective Start-Up Exclusive Evaluation Option License Agreement and a subsequent Start-Up Exclusive Patent License Agreement may be granted unless the NCI receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement. Comments and objections submitted 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: December 2, 2015.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2015-30752 Filed 12-4-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals and the

discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, NACBIB, January, 2016.

Date: January 21, 2016.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report from the Institute Director, other Institute Staff and Scientific Presentations.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: David George, Ph.D., Acting Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm>, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 2, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-30750 Filed 12-4-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council on Aging.

Date: January 19–20, 2016.

Closed: January 19, 2016, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: January 20, 2016, 8:00 a.m. to 1:30 p.m.

Agenda: Call to order and report from the Director; discussion of future meeting dates; consideration of minutes of last meeting; reports from Task Force on Minority Aging Research, Council of Councils, Working Group on Program; Council Speaker; Program Highlights; Intramural Program Report.

Place: National Institutes of Health, Building 31 C Wing 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: January 20, 2016, 1:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate the Intramural Research Program.

Place: National Institutes of Health, Building 31 C Wing 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, barr@nia.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nih.gov/nia/naca/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 2, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–30751 Filed 12–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–59]

30-Day Notice of Proposed Information Collection: Mortgagee's Certification of Fees and Escrow and Security Bond Against Defects

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:* January 6, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: 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 September 21, 2015 at 80 FR 57011.

A. Overview of Information Collection

Title of Information Collection: Mortgagee's Certification of Fees and Escrow and Security Bond Against Defects.

OMB Approval Number: 2502–0468.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–93259, HUD–2432.

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: 1,070.

Estimated Number of Respondents: 1,070.

Estimated Number of Responses: 2,000.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burdens: 1,050.

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: November 27, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–30796 Filed 12–4–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5838-N-09]

Notice of Proposed Information Collection for: Information Resource Center Customer Satisfaction Survey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, 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:* February 5, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202-402-4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

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: Information Resource Center Customer Satisfaction Survey.

OMB Approval Number: Pending OMB Approval.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: The information will be used by Public and Indian Housing to rate the customer satisfaction of the users of the Information Resource Center. Collection of this information is needed to ensure that the customers using the IRC are receiving the correct and useful information that addresses their concerns when they call in for information. The Information Resource Center provides technical assistance, primarily in the form of general information, to provide access to resources of federal, public, Indian and assisted housing programs of the Department of Housing and Urban Development. This service is provided through a multi-channel contact center with inquires received and responded to via phone, email, mail and fax.

Respondents: Individuals or households, State, Tribal or local governments.

Estimated Number of Respondents: 10,800.

Estimated Number of Responses: 10,800.

Frequency of Response: 1.

Average Hours per Response: 1 minute.

Total Estimated Burdens: 10,800.

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: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: November 25, 2015.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2015-30797 Filed 12-4-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5831-N-60]

30-Day Notice of Proposed Information Collection: Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies

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:* January 6, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: 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 at 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 September 25, 2015 at 80 FR 57848.

A. Overview of Information Collection

Title of Information Collection: Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies.

OMB Approval Number: 2502-0563.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage and/or third mortgage debt.

Respondents: Non-profits/public agencies and tenants/heads of households.

Estimated Number of Respondents: 371.

Estimated Number of Responses: 371.

Frequency of Response: 1.

Average Hours per Response: 10 (non-profits/public agencies); 1 (tenants/heads of households).

Total Estimated Burdens: 398.

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: December 1, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015-30795 Filed 12-4-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-MB-2015-N230; FF09M21200-156-FXMB1231099BPP0]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Control and Management of Resident Canada Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB

regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before January 6, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail), or *hope_grey@fws.gov* (email). Please include "1018-0133" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703-358-2482 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018-0133.

Title: Control and Management of Resident Canada Geese, 50 CFR 20.21, 21.49, 21.50, 21.51, 21.52, and 21.61.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State fish and wildlife agencies, tribes, and local governments; airports; landowners; and farms.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

| Activity | Number of respondents | Number of responses | Completion time per response | Total annual burden hours* |
|---|-----------------------|---------------------|------------------------------|----------------------------|
| 21.49—Airport Control Order—Annual Report | 50 | 50 | 1.5 hours | 76 |
| 21.50—Nest and Egg Depredation Order—Initial Registration | 1,000 | 1,000 | 30 minutes | 500 |
| 21.50—Nest and Egg Depredation Order—Renew Registration | 3,000 | 3,000 | 15 minutes | 751 |
| 21.50—Nest and Egg Depredation Order—Annual Report | 4,000 | 4,000 | 15 minutes | 1,000 |
| 21.51—Agricultural Depredation Order—Recordkeeping | 600 | 600 | 30 minutes | 300 |
| 21.51—Agricultural Depredation Order—Annual Report | 20 | 20 | 8 hours | 160 |
| 21.52—Public Health Control Order—Annual Report | 20 | 20 | 1 hour | 20 |
| 21.49, 21.50, 21.51, and 21.52—Report Take of Endangered Species | 2 | 2 | 15 minutes | 1 |
| 21.61—Population Control Approval Request—Recordkeeping and Annual Report | 3 | 3 | 24 hours | 72 |
| 21.61—Population Control Approval Request—Population Estimates | 3 | 3 | 160 hours | 4,80 |
| Totals | 8,698 | 8,698 | | 3,360 |

* Rounded.

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Migratory Bird Treaty Act prohibits the take, possession,

import, export, transport, sale, purchase, or bartering of migratory birds or their

parts except as permitted under the terms of a valid permit or as permitted by regulations. In 2006, we issued regulations establishing two depredation orders and three control orders that allow State and tribal wildlife agencies, private landowners, and airports to conduct resident Canada goose population management, including the take of birds. We monitor the data collected for activities under these orders and may rescind an order if monitoring indicates that activities are inconsistent with conservation of Canada geese.

Control order for airports. Our regulations at 50 CFR 21.49 allow managers at commercial, public, and private airports and military airfields and their employees or agents to implement management of resident Canada geese to resolve or prevent threats to public safety. An airport must be part of the National Plan of Integrated Airport Systems and have received Federal grant-in-aid assistance or be a military airfield under the jurisdiction, custody, or control of the Secretary of a military department. Each facility exercising the privileges of the order must submit an annual report with the date, numbers, and locations of birds, nests, and eggs taken.

Depredation order for nests and eggs. Our regulations at 50 CFR 21.50 allow private landowners and managers of public lands to destroy resident Canada goose nests and eggs on property under their jurisdiction, provided they register annually on our Web site at <https://epermits.fws.gov/eRCGR>. Registrants must provide basic information, such as name, address, phone number, and email, and identify where the control work will occur and who will conduct it. Registrants must return to the Web site to report the number of nests with eggs they destroyed.

Depredation order for agricultural facilities. Our regulations at 50 CFR 21.51 allow States and tribes, via their wildlife agencies, to implement programs to allow landowners, operators, and tenants actively engaged in commercial agriculture to conduct damage management control when geese are committing depredations, or to resolve or prevent other injury to agricultural interests. State and tribal wildlife agencies in the Atlantic, Central, and Mississippi Flyway portions of 41 States may implement the provisions of the order. Each implementing agricultural producer must maintain a log of the date and number of birds taken under this authorization. Each State and tribe exercising the privileges of the order must submit an annual report of the

numbers of birds, nests, and eggs taken, and the county or counties where take occurred.

Public health control order. Our regulations at 50 CFR 21.52 authorize States and tribes of the lower 48 States to conduct (via the State or tribal wildlife agency) resident Canada goose control and management activities when the geese pose a direct threat to human health. States and tribes operating under this order must submit an annual report summarizing activities, including the numbers of birds taken and the county where take occurred.

Population control. Our regulations at 50 CFR 21.61 establish a managed take program to reduce and stabilize resident Canada goose populations when traditional and otherwise authorized management measures are not successful or feasible. A State or tribal wildlife agency in the Atlantic, Mississippi, or Central Flyway may request approval for this population control program. If approved, the State or tribe may use hunters to harvest resident Canada geese during the month of August. Requests for approval must include a discussion of the State's or tribe's efforts to address its injurious situations using other methods, or a discussion of the reasons why the methods are not feasible. If the Service Director approves a request, the State or tribe must (1) keep annual records of activities carried out under the authority of the program, and (2) provide an annual summary, including number of individuals participating in the program and the number of resident Canada geese shot. Additionally, participating States and tribes must monitor the spring breeding population by providing an annual estimate of the breeding population and distribution of resident Canada geese in their State.

Our regulations at 50 CFR 21.49, 21.50, 21.51, and 21.52 require that persons or entities operating under the depredation and control orders must immediately report the take of any species protected under the Endangered Species Act (ESA). This information ensures that the incidental take limits authorized under section 7 of the ESA are not exceeded.

Comments Received and Our Responses

On August 18, 2015, we published in the **Federal Register** (80 FR 50021) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on October 19, 2015. We received one comment. The commenter objected to the taking of Canada geese, but did not address the information collection

requirements. We did not make any changes to our requirements as a result of this comment.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 1, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015-30696 Filed 12-4-15; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Sovereignty in Indian Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability and request for proposals.

SUMMARY: The Bureau of Indian Education (BIE) announces the availability of enhancement funds to tribes and their tribal education departments (TEDs) to promote tribal control and operation of BIE-funded schools on their reservations. This notice invites tribes with at least one BIE-funded school on their reservation/Indian land to submit grant proposals. **DATES:** Grant proposals must be received by December 18, 2015, at 4:00 p.m.

Eastern Time. BIE will hold pre-grant proposal training sessions. See **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: Complete details on requirements for proposals and the evaluation and selection process can be found on the BIE Web site at <http://www.bie.edu>. Submit grant applications to: Bureau of Indian Education, Attn: Wendy Greyeyes, 1849 C Street NW., MS-4655-MIB, Washington, DC 20240. Email submissions will be accepted at this address: wendy.greyeyes@bie.edu. Limit email submissions to attachments compatible with Microsoft Office Word 2007 or later and files with a .pdf file extension. Emailed submissions may not exceed 3MB total in size. Fax submissions are NOT acceptable.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Greyeyes, Bureau of Indian Education, Office of the Director, Washington, DC 20240, (202) 208-5810.

SUPPLEMENTARY INFORMATION:

A. Background

In 2013, the Secretary of the Interior and the Secretary of Education convened an American Indian Education Study Group (Study Group) to diagnose the systemic challenges facing the BIE and to propose a comprehensive plan for reform to ensure all students attending BIE-funded schools receive a world-class education. The Study Group drafted a framework for reform based on several listening sessions in the fall of 2013 with tribal leaders, Indian educators and

others throughout Indian Country on how to facilitate tribal sovereignty in American Indian education and how to improve educational outcomes for students at BIE-funded schools. Overall, the Study Group met with nearly 400 individuals and received nearly 200 comments that helped it prepare the draft framework for educational reform that became the subject of four tribal consultation sessions held in April and May of 2014. These efforts resulted in the *Blueprint for Reform*, which was released by the Department of the Interior (DOI) on June 13, 2014.

Acting on the recommendations in the *Blueprint for Reform*, BIE will award enhancement funds to tribes and their tribal education agencies to promote tribal control and operation of BIE-funded schools on their Indian reservations. The purpose of these enhancements is to support the tribes' capacity to manage and operate tribally controlled schools as defined in the Tribally Controlled Schools Act of 1988 (Pub. L. 100-297). These funds will: (a) Support the development of a school-reform plan to improve educational outcomes for students, and: (b) improve efficiencies and effectiveness in the operation of BIE-funded schools within a reservation.

Enhancement funding is a two-year program, and awards will range from \$100,000 to \$200,000 per fiscal year. The amounts are dependent on the number of schools involved, number of students, complexity of creating a new tribally managed school system and the

tribe's technical approach. Tribes with at least one Bureau-funded school on or near their reservation are eligible for these funds. These enhancements will provide funds for the tribe to:

- Develop an implementation plan that will reform a tribe's current organizational structure toward an expert and independent Tribal Education Department that will support schools and students;
- Cover the execution of the implementation plan with identified staffing, projected timelines, proposed budgets, and activities; and
- Research an alternative definition of adequate yearly progress (AYP) which is optional for applicants.

BIE is seeking proposals from tribes that support efforts to take control and operate BIE-funded schools located on the tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education department fulfills the obligations of the grant. Complete details on requirements for proposals and the evaluation and selection process can be found on the BIE Web site at the address in the **ADDRESSES** section of this notice. In addition, BIE will hold pre-grant proposal training as noted below:

BIE PRE-GRANT PROPOSAL TRAINING

| Activity | Date |
|--|--------------------------------|
| Webinar 11 a.m. (ET) To register go to: https://dcma100.webex.com/dcma100/k2/j.php?MTID=t6394cada3bc9d9b28993ecb06b7e8ecd and register. | December 8, 2015. |
| Webinar 4 p.m. (ET) | December 11, 2015. |
| To register go to: https://dcma100.webex.com/dcma100/k2/j.php?MTID=t6cbc6c13d4aeab46fd3e93caa597b394 and register. | |
| Grant application submissions due | December 18, 2015, 4 p.m. (ET) |
| Final implementation due | August 26, 2016. |
| Final Presentations | August 31, 2016. |

The grant proposal is due *December 18, 2015, at 4:00 p.m. Eastern Time*. The proposal should be packaged for delivery to permit timely arrival. The proposal package should be sent or hand delivered to the address in the **ADDRESSES** section of this notice.

Faxed applications will NOT be accepted. Email submissions will be accepted at the address in the **ADDRESSES** section of this notice. Email submissions are limited to attachments

compatible with Microsoft Office Word 2007 or later or files with a .pdf file extension. Emailed submissions shall not exceed 3MB total in size.

Proposals submitted by Federal Express or Express Mail should be sent two or more days prior to the closing date. The proposal package should be sent to the address shown in the **ADDRESSES** section of this notice. The tribe is solely responsible for ensuring its proposal arrives in a timely manner.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The OMB control number is 1076-0182. The authorization expires on March 31, 2018. An agency may not sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

The information collected is used to determine whether a tribe is eligible for the Sovereignty in Indian Education Grant and to determine whether the tribe is using the funding for the stated purpose of promoting tribal sovereignty in BIE-funded schools. The information is supplied by the respondents to obtain and/or retain a benefit. The public reporting burden is estimated to be between 1 and 40 hours per response. This includes the time needed to understand the requirements; gather the information; complete the proposal, quarterly budget reports, and the annual report; and submit to the Department. Comments regarding the burden or other aspects of the information collection may be directed to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., MS-3642, Washington, DC 20240.

Dated: November 20, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015-30806 Filed 12-4-15; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/
AOA501010.999900 253G]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Proposed Integrated Resource Management Plan for the Nez Perce Reservation in North Central Idaho

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency intends to prepare a programmatic environmental impact statement (PEIS) and conduct public scoping meetings to evaluate potential environmental impacts of the proposed Integrated Resource Management Plan (IRMP) for the Nez Perce Reservation located in north central Idaho. The PEIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA).

DATES: The dates and locations of public scoping meetings will be published in the Lewiston Tribune, Moscow-Pullman Daily News, Ta'c Tito'oqan, Clearwater Tribune, Idaho County Free Press, Lewis County Herald, The Clearwater Progress, and Cottonwood Chronicle. Additional information will also be posted on the Tribe's Web site at www.nezperce.org.

Written comments to this notice must be received by February 5, 2016.

ADDRESSES: The public is invited to submit written comments to this Notice. Written comments may be submitted by mail, email, hand carry, or fax to: Ms. Anna Schmidt, Wildlife Biologist, BIA Northwest Regional Office, 911 NE. 11th Avenue, Portland, OR 97232-4169, Phone: (503) 231-6808, Fax: (503) 231-6774, Email: anna.schmidt@bia.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Schmidt at (503) 231-6808 or anna.schmidt@bia.gov.

SUPPLEMENTARY INFORMATION: The proposed action is the preparation of an IRMP for the Nez Perce Reservation and BIA approval of long-term natural and cultural resource planning goals and objectives for the Nez Perce Reservation. The Tribe may use the Programmatic EIS (PEIS) for tiered, project-specific environmental assessments to cover specific actions as the IRMP is implemented. The Tribe has managed its natural and cultural resources under the goals and objectives of various department-specific plans under the direction of the Nez Perce Tribal Executive Committee. The PEIS will consider a proposed strategy in the IRMP to provide a framework for all Nez Perce Tribal agencies to manage natural and cultural resources within the Nez Perce Reservation.

It is anticipated that the PEIS will assess four management strategy alternatives and a No Action Alternative. Under the Maximum Resource Development Alternative, the Tribe's resource management strategy would be to maximally promote human land uses, growth, and the use of natural and cultural resources to generate revenue for the Tribe. Under the Development Emphasis Alternative, the Tribe's resource management strategy would be to emphasize human land use, growth, and the use of natural and cultural resources to generate revenue for the Tribe, while ensuring a moderate level of natural and cultural resource conservation, protection, and enhancement. Under the Conservation Emphasis Alternative, the Tribe's resource management strategy would be to emphasize natural and cultural resource conservation, protection, and enhancement, while ensuring a moderate level of human land use, growth, and the use of natural and cultural resources to generate revenue for the Tribe. Under the Maximum Conservation Alternative, the Tribe's resource management strategy would be to maximally promote natural and cultural resource conservation, protection, and enhancement. Under the

No Action Alternative, the existing resource management strategies will be assessed. Additional strategies or alternatives or variations of those proposed above may be developed as a result of public scoping. Significant issues to be covered during the scoping process may include, but will not be limited to, air quality, geology and soils, surface and groundwater resources, wildlife habitat, threatened and endangered species, cultural resources, socioeconomic conditions, land use, aesthetics, and Indian trust resources.

Directions for Submitting Public Comments: Please include your name, return address, and the caption "Programmatic EIS, Nez Perce Reservation IRMP" on the first page of any written comments you submit. You may also submit comments at the public scoping meetings. The public scoping meetings will be held to seek comments from all parties concerning the use of natural and cultural resources on the Nez Perce Reservation, concerns regarding impacts to those resources, and preferred management strategies. The meetings will be held at various Nez Perce Reservation communities, and notices will be published in the Lewiston Tribune, Moscow-Pullman Daily News, Ta'c Tito'oqan, Clearwater Tribune, Idaho County Free Press, Lewis County Herald, The Clearwater Progress, and Cottonwood Chronicle. Additional information will also be posted at the Tribe's Web site at www.nezperce.org.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section of this notice, during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published in accordance with sections 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs, by part 209 of the Departmental Manual.

Dated: November 30, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–30805 Filed 12–4–15; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the USIBWC is issuing public notice of its intent to modify an existing Privacy Act system of records notice, DOI–85, “Payroll, Attendance, Retirement, and Leave Records.” The revisions will update the categories of individuals covered by the system, categories of records in the system, routine uses of records maintained in the system, retrievability of records, records’ safeguards, retention and disposition of records, and record source categories.

DATES: Comments must be received by January 2, 2016.

ADDRESSES: Any persons interested in commenting on these proposed amendments may do so by submitting comments in writing to the Legal Department, Senior Agency Officer for Privacy, Matthew Myers, U.S. IBWC, 4171 N. Mesa, C–100, El Paso, TX 79902, or by email to Matthew.Myers@ibwc.gov.

FOR FURTHER INFORMATION CONTACT: Z. Mora, Chief, Information Management Division, Administration Department, 4171 N. Mesa, C–100, El Paso, TX 79902 or by email at Z.Mora@ibwc.gov.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of the Department of the Interior is proposing to amend the system notice for DOI–85, “Payroll, Attendance, Retirement, and Leave Records” to update the categories of individuals covered by the system, categories of records in the system, routine uses of records maintained in the system, retrievability of records, records’ safeguards, retention and disposition of records, and record source categories to reflect changes that have occurred since the notice was last published. These amendments will be effective as proposed at the end of the comment period unless comments are

received which would require a contrary determination. The USIBWC will publish a revised notice if changes are made based upon a review of comments received.

Dated: October 28, 2015.

Matthew Myers,

Chief Counsel/Secretary Acting Privacy Act Officer.

SYSTEM NAME:

Payroll, Attendance, Retirement, and Leave Records—Interior, DOI–85.

SYSTEM LOCATION:

(1) Personnel and Payroll Systems Division, National Business Center, U.S. Department of the Interior, 7201 West Mansfield Avenue, MS D–2400, Denver, CO 80235–2230.

(2) All Departmental offices and locations which prepare and provide input documents and information for data processing and administrative actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees of the USIBWC

(2) Current and former emergency workers (“casuals”) of the USIBWC (emergency workers).

(3) Volunteers within the USIBWC (volunteers).

(4) Contractors within the USIBWC (contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Emergency worker name, emergency worker address, emergency worker phone numbers, emergency worker Social Security Number and organizational code; contractor name, contractor Social Security Number, contractor organization; employee name, employee address, employee phone numbers, employee emergency contact information (including name, address and phone number), employee Social Security Number and organizational code; employee common identifier (ECI), pay rate, grade, length of service, individual’s pay and leave records; source documents for posting time and leave attendance; allowances, and cost distribution records; deductions for Medicare, Old Age, Survivors, and Disability Insurance (OASDI, also known as Social Security), bonds, Federal Employees Group Life Insurance (FEGLI), union dues, taxes, allotments, quarters, retirement, charities, health benefits, Flexible Spending Account, Long Term Care, Thrift Savings Fund contributions, awards, shift schedules, and pay differentials, tax lien data, commercial garnishments, child support and/or

alimony wage assignments; and related payroll and personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee or emergency worker. The payroll, attendance, retirement, and leave records described in this notice form a part of the information contained in the Department of the Interior’s integrated Federal Personnel and Payroll System (FPPS). Personnel records contained in the FPPS are covered under the government-wide system of records notice published by the Office of Personnel Management (OPM/GOVT–1) and the Department-wide system of records notice, DOI–79, “Interior Personnel Records.”

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, *et seq.*; 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for fiscal operations for payroll, time and attendance, leave, insurance, tax, retirement, debt, budget, and cost accounting programs; to prepare related reports to other Federal agencies including the Department of the Treasury and the Office of Personnel Management; for reporting purposes by the DOI component for which the employee works or the agency for which the DOI emergency worker works; and for human capital management purposes.

Disclosure outside the Department of the Interior may be made:

(1) To the Department of the Treasury for preparation of payroll (and other) checks and electronic funds transfers to Federal, State, and local government agencies, non-governmental organizations, and individuals.

(2) To the Internal Revenue Service and to State, local, tribal, and territorial governments for tax purposes.

(3) To the Office of Personnel Management or its contractors in connection with programs administered by that office, including, but not limited to, the Federal Long Term Care (LTC) Insurance Program, the Federal Dental and Vision Insurance Program (FEDVIP), the Flexible Spending Accounts for Federal Employees Program (FSAFEDS), and the electronic Human Resources Information Program (EHRI).

(4) To another Federal agency to which an employee or DOI emergency worker has transferred or in which a DOI volunteer transfers in a volunteer capacity.

(5) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

- (i) The U.S. Department of Justice (DOJ);
- (ii) A court or an adjudicative or other administrative body;
- (iii) A party in litigation before a court or an adjudicative or other administrative body; or
- (iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

- (i) One of the following is a party to the proceeding or has an interest in the proceeding:
 - (A) DOI or any component of DOI;
 - (B) Any other Federal agency appearing before the Office of Hearings and Appeals;
 - (C) Any DOI employee acting in his or her official capacity;
 - (D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

- (A) Relevant and necessary to the proceeding; and
 - (B) Compatible with the purpose for which the records were compiled.
- (6) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(7) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(8) To Federal, State or local agencies where necessary to enable the employee's, DOI emergency worker's, or DOI volunteer's agency to obtain information relevant to the hiring or retention of that employee, DOI emergency worker, or DOI volunteer, or the issuance of a security clearance, contract, license, grant or other benefit.

(9) To appropriate Federal and State agencies to provide required reports including data on unemployment insurance.

(10) To the Social Security Administration to credit the employee's

or emergency worker's account for OASDI and Medicare deductions.

(11) To labor unions to report union dues deductions.

(12) To employee or emergency worker associations to report dues deductions.

(13) To insurance carriers to report employee or DOI emergency worker election information and withholdings for health insurance.

(14) To charitable institutions to report contributions.

(15) To a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset.

(16) To disclose debtor information to the Internal Revenue Service or to another Federal agency or its contractor solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal government through the offset of tax refunds.

(17) To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

(18) To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the employee's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

(19) To disclose information to the Internal Revenue Service, and state and local authorities for the purposes of locating a debtor to collect a claim against the debtor.

(20) With respect to Bureau of Indian Affairs employee or DOI emergency worker records, to a Federal, State, local agency, or Indian tribal group or any establishment or individual that assumes jurisdiction, either by contract or legal transfer, of any program under the control of the Bureau of Indian Affairs.

(21) With respect to Bureau of Reclamation employee or DOI emergency worker records, to non-Federal auditors under contract with the Department of the Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits.

(22) To the Federal Retirement Thrift Investment Board's record keeper which administers the Thrift Savings Plan to report deductions, contributions and loan payments.

(23) To disclose the names, Social Security Numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information and state of hire of employees or emergency workers to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

(24) To a commercial contractor to provide employment and income data for use in employment verifications, unemployment claims, and W–2 services.

(25) To OPM's Employee Express system to allow employees a self-service capability to initiate personnel and payroll actions and to obtain payroll information.

(26) To the Department of Labor for processing claims for employees, DOI emergency workers, or DOI volunteers injured on the job or claiming occupational illness.

(27) To support interfaces to other systems operated by the Federal agencies for which the employee or DOI emergency worker works, or a DOI volunteer volunteers, for the purpose of avoiding duplication, increasing data integrity and streamlining government operations.

(28) To an official of another federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(29) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(30) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(31) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(32) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of

information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(33) To federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(34) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(35) To the Department of the Treasury to recover debts owed to the United States.

(36) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual, microfilm, microfiche, electronic, imaged and computer printout form. Original input documents are stored in standard office filing equipment and/or as imaged documents on magnetic media at all locations which prepare and provide input documents and information for data processing.

RETRIEVABILITY:

Records may be retrieved by employee, DOI emergency worker, or DOI volunteer identification such as name, Social Security Number, common identifier, birthday, organizational code, etc.

SAFEGUARDS:

Access to records covered by the system will be permitted only to authorized personnel in accordance with requirements found in the Departmental Privacy Act regulations (43 CFR 2.51). Paper or micro format records are maintained in locked metal file cabinets or in Secured rooms. Electronic records are maintained with safeguards meeting the security requirements of 43 CFR 2.51 for automated records, which conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. The electronic data are protected through user identification, passwords, database permissions, encryption and software controls. Such security measures establish different degrees of access for different types of users. An audit trail is maintained and reviewed periodically to identify unauthorized access. A Privacy Impact Assessment was completed and is updated at least annually to ensure that Privacy Act requirements and personally identifiable information safeguard requirements are met.

RETENTION AND DISPOSAL:

The records contained in this system of records have varying retention periods as described in the General Records Schedule, Sections 1, 2, and 20, (at <http://www.archives.gov>), issued by the Archivist of the United States, and are disposed of in accordance with the National Archives and Records Administration Regulations, 36 CFR part 1228 *et seq.* They are also covered by item 7551 of the Department of the Interior, Office of the Secretary's pending records schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The following system manager is responsible for the payroll records contained in the Department's Federal Personnel and Payroll System (FPPS): Chief, Personnel and Payroll Systems Division, National Business Center, U.S. Department of the Interior, 7201 West Mansfield Avenue, Denver, CO 80235-2230. Personnel records contained in the system fall under the jurisdiction of the Office of Personnel Management as prescribed in 5 CFR part 253 and 5 CFR part 297.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

The source data for the system comes from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.
[FR Doc. 2015-29532 Filed 12-4-15; 8:45 am]
BILLING CODE 7010-01-P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Proposed establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the USIBWC is issuing public notice of its intent to establish a new Privacy Act system of records, DOI-84, "Interior Business Center Datamart."

DATES: Comments must be received by January 2, 2016.

ADDRESSES: Any persons interested in commenting on this new, proposed system of records may do so by submitting comments in writing to the Legal Department, Senior Agency Officer for Privacy, Matthew Myers, U.S.

IBWC, 4171 N. Mesa, C-100, El Paso, TX 79902, or by email to Matthew.Myers@ibwc.gov

FOR FURTHER INFORMATION CONTACT: Z. Mora, Chief, Information Management Division, Administration Department, 4171 N. Mesa, C-100, El Paso, TX 79902 or by email at Z.Mora@ibwc.gov

SUPPLEMENTARY INFORMATION: The information contained in Datamart is derived from two existing systems covered by Privacy Act Systems of Records Notices: Federal Personnel and Payroll System (FPPS) covered by DOI-85, "Payroll, Attendance, Retirement, and Leave Records" and Federal Financial System (FFS) covered by DOI-90, "Federal Financial System," as well as associated systems. The purpose of the Datamart is to provide a data warehouse that allows appropriate users to access FPPS and FFS data through a core reporting tool, Hyperion. The reports may be pre-formatted or ad hoc, and are available to appropriate users from the Department of the Interior or appropriate individuals from other Federal agencies, as detailed in the routine uses. This notice will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The USIBWC will publish a revised notice if changes are made based upon a review of comments received.

Dated: October 8, 2015.

Matthew Myers,

Chief Counsel/Secretary Acting Privacy Act Officer.

SYSTEM NAME:

Interior, Interior Business Center Datamart, DOI-84.

SYSTEM LOCATION:

Records are located at the Interior Business Center, U.S.

Department of the Interior, 7301 West Mansfield Avenue, Denver, CO 80235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

- (1) Current and former employees of the USIBWC.
- (2) Current and former emergency workers of the USIBWC.
- (3) Current and former volunteers within the USIBWC (volunteers).
- (4) Current and former contractors within the USIBWC (contractors).
- (5) Individuals identified as emergency contacts for the above employees, emergency workers, and volunteers.
- (6) Individual and corporate vendors who do business with the USIBWC. (Only records containing personal

information relating to individuals are subject to the Privacy Act.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee (and emergency worker, volunteer, contractor and vendor) name, address, phone numbers, birth date; employee (and emergency worker and volunteer) emergency contact information (including name, address, phone numbers and relationship to individual), Social Security Number and organizational code; employee common identifier (ECI); vendor Taxpayer Identification Number; vendor code or number; employee ethnicity/race, pay rate, grade, length of service, individual's pay and leave records; time and attendance records, leave request records, allowances and cost distribution records; employee deductions for Medicare, Old Age Survivor and Disability Insurance (OASDI), bonds, Federal Employees' Group Life Insurance (FEGLI), union dues, taxes, allotments, quarters, retirement, charities, health benefits, Flexible Spending Account, Long Term Care, and Thrift Savings Fund contributions; employee awards, shift schedules, pay differentials, tax lien data, commercial garnishments and child support and/or alimony wage assignments; related payroll and personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed or a debt referred for collection on an employee, emergency worker or contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, *et seq.*; 5 U.S.C. 5101, *et seq.*; Pub. L. 97-255; Office of Management and Budget Circular A-127.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of records in the system is to provide a repository for data from FPPS (Federal Personnel Payroll System) and FFS (Federal Financial System) that allows agencies to query the data in order to produce required reports in support of fiscal operations and personnel payroll processing.

DISCLOSURE OUTSIDE THE USIBWC MAY BE MADE:

- (1) To other Federal agencies to produce required reports, in support of their fiscal and personnel/payroll processing.
- (2) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:
 - (i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any USIBWC employee or USIBWC emergency worker acting in his or her individual capacity if USIBWC or DOJ or the DOI emergency worker's agency has agreed to represent that individual or pay for private representation of the individual;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) USIBWC or any component of USIBWC;

(B) Any USIBWC emergency worker's agency;

(C) Any other Federal agency appearing before the Office of Hearings and Appeals;

(D) Any USIBWC employee or USIBWC emergency worker acting in his or her official capacity;

(E) Any USIBWC employee or USIBWC emergency worker acting in his or her individual capacity if USIBWC or DOJ or the USIBWC emergency worker's agency has agreed to represent that individual or pay for private representation of the individual;

(F) The United States, when DOJ determines that USIBWC or any USIBWC emergency worker's agency is likely to be affected by the proceeding; and

(ii) USIBWC or any DOI emergency worker's agency deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(3) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The USIBWC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to an economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the USIBWC's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

(4) To a congressional office in response to a written inquiry that an

individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(5) To any criminal, civil or regulatory law enforcement authority (whether federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(7) To Federal, state, territorial, local, tribal or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(9) To state and local governments and tribal organizations to provide information needed in response to court order and/or for discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(10) To an expert, consultant or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in the Datamart are electronic and contain information from source systems. They are stored in magnetic media at the central computer processing center. All NIST guidelines, as well as Departmental and OMB guidance are followed concerning the storage of the records.

RETRIEVABILITY:

Records may be retrieved by entries reflecting the various categories of records in the system including name of individual, name of emergency contact, Social Security Number, Tax

Identification Number, vendor code or number, date of birth, organizational code, etc.

SAFEGUARDS:

Electronic records are maintained with safeguards meeting all appropriate statutory and regulatory guidelines, as well as Departmental guidance addressing the security requirements of Departmental Privacy Act Regulations (43 CFR 2.51) for automated records, and with Office of Management and Budget, and NIST. Further, agency officials only have access to records pertaining to their agencies.

(1) Physical security: Computer systems are maintained in locked rooms housed within secure USIBWC buildings.

(2) Technical Security: Electronic records are maintained in conformity with Office of Management and Budget and USIBWC guidelines reflecting the implementation of the Federal Information Security Management Act. The electronic data are protected through user identification, passwords, database permissions, encryption and software controls. Such security measures establish different degrees of access for different types of users. An audit trail is maintained and reviewed periodically to identify unauthorized access. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and personally identifiable information safeguard requirements are met.

(3) Administrative Security: All USIBWC and contractor employees with access to Datamart are required to complete Privacy Act, Federal Records Act and IT Security Awareness training prior to being given access to the system, and on an annual basis thereafter. In addition, Federal employees supervise and monitor the use of Datamart.

RETENTION AND DISPOSAL:

Records contained in this system are documented as items 1400 and 7554 of the Department of the Interior, Office of the Secretary's pending records schedule.

SYSTEM MANAGER AND ADDRESS:

Chief, Applications Management and Technical Services Branch, Interior Business Center, U.S. Department of the Interior, 7301 West Mansfield Avenue, Denver, CO 80235-2230.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and

meet the requirements of 43 CFR 2.60, which requires writing PRIVACY ACT INQUIRY prominently on your envelope and correspondence.

RECORDS ACCESS PROCEDURES:

A request for access should be submitted to the System Manager at the above address. It must be submitted in writing, signed by the requester, and meet the requirements of 43 CFR 2.63, which requires writing PRIVACY ACT REQUEST FOR ACCESS prominently on the envelope and the front of the request.

CONTESTING RECORDS PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71, which include stating the reasons why the petitioner believes the record is in error, and the changes sought.

RECORD SOURCE CATEGORIES:

The source data for the system comes from FPPS and FFS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015-29531 Filed 12-4-15; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-943]

Certain Wireless Headsets; Commission Determination To Review an Initial Determination Granting Respondents' Motion for Summary Determination of Patent Invalidity Due to Indefiniteness

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 17) granting respondents' motion for summary determination of patent invalidity due to indefiniteness.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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 January 13, 2015, based on a complaint filed by One-E-Way, Inc. of Pasadena, California ("One-E-Way"). 80 FR 1663 (Jan. 13, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless headsets by reason of infringement of certain claims of U.S. Patent Nos. 7,865,258 ("the '258 patent") and 8,131,391 ("the '391 patent"). *Id.* The notice of investigation named several respondents, including Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; and Sony Electronics, Inc. of San Diego, California (collectively, "Sony"); Beats Electronics, LLC of Culver City, California and Beats Electronics International Ltd. of Dublin, Ireland (collectively, "Beats"); Sennheiser Electronic GmbH & Co. KG of Wedemark, Germany and Sennheiser Electronic Corporation of Old Lyme, Connecticut (collectively, "Sennheiser"); BlueAnt Wireless Pty, Ltd. of Richmond, Australia and BlueAnt Wireless, Inc. of Chicago, Illinois (collectively, "BlueAnt"); Creative Technology Ltd. of Singapore and Creative Labs, Inc. of Milpitas, California (collectively, "Creative Labs"); and GN Netcom A/S d/b/a Jabra of Ballerup, Denmark ("GN Netcom"). *Id.* The Office of Unfair Import Investigations (OUII) also was named as a party to the investigation. *Id.* The Commission previously terminated the investigation with respect to Beats and Sennheiser. See Notice (Apr. 29, 2015); Notice (June 11, 2015). The Commission also previously terminated the investigation with respect to certain claims of the '258 and '391 patents. See Notice (May 26, 2015); Notice (Aug. 26, 2015).

On August 10, 2015, respondents Sony, BlueAnt, Creative Labs, and GN Netcom (collectively, "Respondents")

filed a motion for summary determination that asserted claim 8 of the '258 patent and asserted claims 1, 3-6, and 10 of the '391 patent are invalid as indefinite under 35 U.S.C. 112, ¶ 2. On August 20, 2015, the Commission investigative attorney ("IA") filed a response in support of the motion. Also on August 20, 2015, One-E-Way filed an opposition to the motion. On August 27, 2015, Respondents moved for leave to file a reply to One-E-Way's opposition, which the presiding administrative law judge ("ALJ") granted that same day. See Order No. 16 (Aug. 27, 2015).

On September 21, 2015, the ALJ issued the subject initial determination ("ID"), granting Respondents' motion for summary determination that all of the asserted claims of the '258 and '391 patents are invalid as indefinite under 35 U.S.C. 112, ¶ 2 and terminating the investigation with a finding of no violation of section 337.

On October 2, 2015, One-E-Way filed a petition for review of the subject ID. On October 9, 2015, Respondents and the IA each filed responses to the petition.

Having examined the record of this investigation, including the subject ID, the petitions for review, and the responses thereto, the Commission has determined to review the subject ID.

In connection with its review, the Commission requests responses to the following questions:

1. Please point to the specific areas in the record where the putative indefiniteness of the clause "virtually free from interference" was a significant topic of substantive discussion among the parties and the ALJ.

2. Please explain how the clause "virtually free from interference" is material to a position any party has taken in this Investigation with respect to validity under 35 U.S.C. 102, 103, or 112(a) (formerly 112 ¶1), or infringement under section 271. Please provide citations to specific areas in the record (including document name and page number) in which this materiality was raised or discussed.

3. Please explain how the materiality discussed in Q2 turns on the degree of freedom from interference. Please provide citations to specific areas in the record (including document name and page number) in which this turning was raised or discussed.

4. Please explain in detail what lead to the difference in outcomes on the issue of indefiniteness under 35 U.S.C. 112(b) (formerly 112 ¶2) of the Federal Circuit decisions in *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1369-74 (Fed. Cir. 2014) and *DDR Holdings LLC v. Hotelscom LP*, 773 F.3d 1245,

1260-61 (Fed. Cir. 2014). In these two cases, to what extent did the indefiniteness determinations turn on the materiality of the potentially indefinite clauses to other arguments that had been raised in those cases regarding validity under 35 U.S.C. 102, 103, or 112(a) (formerly 112 ¶1), or infringement under section 271?

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on December 11, 2015. Initial submissions are limited to 30 pages. Reply submissions must be filed no later than the close of business on December 18, 2015. Reply submissions are limited to 15 pages. The parties may not incorporate by reference their prior filings before the ALJ or the Commission. 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-943") 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 (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 any confidential filing. All non-confidential 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: December 1, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-30734 Filed 12-4-15; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-973]

Certain Wearable Activity Tracking Devices, Systems, and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 2, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fitbit, Inc. of San Francisco, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wearable activity tracking devices, systems, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,920,332 (“the ‘332 patent”); U.S. Patent No. 8,868,377 (“the ‘377 patent”); and U.S. Patent No. 9,089,760 (“the ‘760 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <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>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 1, 2015, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wearable activity tracking devices, systems, and components thereof by reason of infringement of one or more of claims 1, 4, 5, and 13-17 of the ‘332 patent; claims 1-4, 7-11, 16, 25, 27, and 28 of the ‘377 patent; claims 1-15 and 18-21 of the ‘760 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Fitbit, Inc., 405 Howard Street, San Francisco, CA 94105.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: AliphCom d/b/a Jawbone, 99 Rhode Island Street, 3rd Floor, San Francisco, CA 94103. BodyMedia, Inc., Union Trust Building, 501 Grant Street, Suite 1075, Pittsburgh, PA 15219.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the

Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 1, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-30732 Filed 12-4-15; 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; Commission’s Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation and has issued a limited exclusion order prohibiting respondents Garmin International, Inc. and Garmin USA, Inc., both of Olathe, Kansas, and Garmin (Asia) Corporation of New Taipei City, Taiwan (collectively, “Garmin”), from importing certain marine sonar imaging devices, including

downscan and sidescan devices, products containing the same, and components thereof that infringe certain claims of U.S. Patent Nos. 8,305,840 (“the ‘840 patent”) and 8,605,550 (“the ‘550 patent”). The Commission has also issued a cease and desist order against Garmin prohibiting the sale and distribution within the United States of articles that infringe certain claims of the ‘840 and ‘550 patents. The Commission has found no violation based on U.S. Patent No. 8,300,499 (“the ‘499 patent”). The investigation is terminated.

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 FR 40778 (July 14, 2014). The complaint alleged violations of section 337 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 the ‘840, ‘499, and ‘550 patents. *Id.* The notice of investigation named 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 March 3, 2015, the Commission determined on summary determination that Navico satisfied the economic prong of the domestic industry requirement for the ‘840 and ‘499 patents and the technical prong of the domestic industry requirement for the ‘840 and ‘550 patents. Notice (Mar. 3, 2015) (determining not to review Order No. 14 (Jan. 29, 2015) and Order No. 15 (Jan. 30, 2015)).

On July 2, 2015, the ALJ issued a final initial determination (“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 and OUII filed petitions for review challenging various findings in the final ID, and Garmin filed a contingent petition for review. On July 28, 2015, the parties filed responses to the various petitions. On August 5, 2015, Navico and Garmin filed post-RD statements 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).

On September 3, 2015, the Commission determined to review the final ID in part and requested additional briefing from the parties on certain issues. 80 FR 54592 (Sept. 10, 2015). Specifically, the Commission 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. *Id.* The Commission also solicited briefing from the parties and the public on the issues of remedy, bonding, and the public interest. *Id.*

On September 14, 2015, the parties filed initial written submissions addressing the Commission’s questions and remedy, bonding, and the public interest. On September 21, 2015, the parties filed response briefs. No comments were received from the public.

Having examined the record of this investigation, including the final ID and the parties’ submissions, the Commission has determined that Navico has proven a violation of section 337 based on infringement of claims 1, 5, 7, 9, 11, 16–19, 23, 32, 39–41, 63, and 70–72 of the ‘840 patent and infringement of claims 32 and 44 of the ‘550 patent. The Commission has determined to modify the ALJ’s construction of certain terms in the asserted claims of the asserted patents, including “single linear downscan transducer element” recited in the ‘840 patent and its variants recited in the ‘550 and ‘499 patents. Under the modified constructions, the Commission has determined Navico has proven that (i) the accused Garmin echo products, echoMAP products, and GPSMAP products with their respective transducers infringe claims 1, 5, 7, 9, 11, 16–19, 23, 32, 39–41, and 70–72 of the ‘840 patent; (ii) the accused Garmin echoMAP products and GPSMAP products with their respective transducers infringe claim 63 of the ‘840 patent; (iii) the accused Garmin GCV10 and GSD25 sonar modules with their respective transducers infringe claims 1, 5, 9, 11, 23, and 32 of the ‘840 patent; (iv) the accused Garmin GT30 transducer, which comes with the GCV10 sonar module, infringes claims 1, 7, 12, 13, and 57 of the ‘550 patent; and (v) the accused Garmin GT30 transducer, in conjunction with the GCV10 sonar module, infringes claims 32 and 44 of the ‘550 patent. The Commission has determined Garmin has not proven that the asserted claims of the ‘840 patent are invalid. The Commission has determined that Garmin has proven that claims 1, 7, 12, 13, and 57 of the ‘550 patent are invalid as obvious, but that Garmin has not proven that claims 32 and 44 of the ‘550 patent are invalid. The Commission has also determined that Navico has proven that a domestic industry exists in the United States for the ‘550 patent.

The Commission has determined that Navico has not proven a violation with respect to the '499 patent. The Commission has determined to adopt, on modified grounds, the ALJ's construction of the term "combining" (and its variants) recited in the asserted claims of the '499 patent. Under that construction, the Commission has determined that the asserted claims are not invalid and not infringed.

The Commission has determined the appropriate remedy is a limited exclusion order and a cease and desist order prohibiting Garmin from importing into the United States or selling or distributing within the United States certain marine sonar imaging devices, including downscan and sidescan devices, products containing the same, and components thereof that infringe the asserted claims of the '840 and '550 patents. The Commission has determined the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist order.

Finally, the Commission has determined to apply a bond in the amount of 100 percent of the entered value of excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 1, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015-30733 Filed 12-4-15; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on October 22, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Spectrum Consortium ("NSC")

has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alion Science and Technology Corporation, Rome, NY; All Purpose Networks LLC, Dover, NJ; Altgrove LLC, Herndon, VA; ANDRO Computational Solutions, LLC, Rome, NY; Arizona State University, Tempe, AZ; Astrapi Corporation, Dallas, TX; AT&T, Inc., Vienna, VA; ATDI Government Services, LLC, McLean, VA; BAE Systems Information and Electronic Systems Integration, Inc., Nashua, NH; Battelle Energy Alliance, LLC, Idaho Falls, ID; Black River Systems Company, Inc., Utica, NY; Brigham Young University, Provo, UT; Chesapeake Technology International Corporation, California, MD; CIPHER-TM, LLC, Charleston, SC; Cognitive Radio Technologies, LLC, Lynchburg, VA; CommScope Technologies, LLC, Ashburn, VA; Constellation Data Systems, Inc., Cincinnati, OH; Creative Digital Systems Integration, Inc., Simi Valley, CA; CRFS, Inc., Falls Church, VA; Cubic Defense Applications, Inc., San Diego, CA; Darkblade Systems Corporation, Stafford, VA; Disney/ABC TV Group, New York, NY; DRS Signal Solutions, Inc., Germantown, MD; Exelis, Inc., Clifton, NJ; Expression Networks LLC, McLean, VA; Federated Wireless, Arlington, VA; Florida International University, Miami, FL; Foundry, Inc., Millersville, MD; Genesys Technologies Ltd., Langhorne, PA; Georgia Tech Applied Research Corporation, Atlanta, GA; GIRD Systems, Inc., Cincinnati, OH; Gonzaga University, Spokane, WA; Haigh-Farr, Inc, Bedford, NH; Harris Corporation, Melbourne, FL; Honeywell International, Inc., Morris Township, NJ; Hughes Network Systems LLC, Germantown, MD ICF Incorporated, LLC, Fairfax, VA; IJK Controls LLC, Dallas, TX; InCadence Strategic Solutions, Manassas, VA; Infinite Dimensions Integration, Inc., Alexandria, VA; Intelligent Automation, Inc., Rockville, MD; InterDigital Communications, Wilmington, DE; Kerberos International, Inc., Temple, TX; Kestrel Corporation, Albuquerque, NM; Key Bridge Global LLC d/b/a Key Bridge LLC, McLean, VA; Keysight Technologies, Inc., Santa Rosa, CA; KinetX, Inc., Tempe, AZ; Kranze Technology Solutions, Inc., Prospect Heights, IL; L3 Communications, San

Diego, CA; L3 Communications Systems West, Salt Lake City, UT; L3 Communications Telemetry West, San Diego, CA; Laulima Systems, Kalaheo, HI; LGS Innovations, Herndon, VA; LHC2 Inc. d/b/a Eigen Wireless, Liberty Lake, WA; Lockheed Martin Corporation, Cherry Hill, NJ; LS telcom Inc., Bowie, MD; Metric Systems Corporation, Vista, CA; Monterey-Nouveau & Associates, LLC, Dayton, OH; Nokia Networks, Irving, TX; Northrop Grumman Systems Corporation, Electronic Systems, Linthicum Heights, MD; Northwestern University, Evanston, IL; NTS Technical Systems, Calabasas, CA; Oceanit Laboratories, Inc., Honolulu, HI; Ocu Networks, Inc., Reston, VA; Optical Filter Corp d/b/a Corning Specialty Materials, Keene, NH; Pathfinder Wireless Corp, Seattle, WA; Perceptix LLC, Washington, DC; Physical Optics Corporation, Torrance, CA; Pirhonen, Riku P. d/b/a The Research Armadillo, Flower Mound, TX; Planned Systems International, Inc., Columbia, MD; PrioriTech, Inc., State College, PA; Purdue University, West Lafayette, IN; Raytheon Company, El Segundo, CA; Roberson and Associates LLC, Chicago, IL; Rockwell Collins, Inc., Cedar Rapids, IA; RWC, LLC, Annapolis, MD; S2 Corporation, Bozeman, MT; SA Photonics, Inc., Los Gatos, CA; Sage Management Enterprise, LLC, Columbia, MD; SENTEL Corporation, Alexandria, VA; Shared Spectrum Company, Vienna, VA; Shenandoah Research and Technology, LLC, Mount Jackson, VA; SI2 Technologies, Inc., N. Billerica, MA; Signal Hound, Inc., La Center, WA; Silvus Technologies, Inc., Los Angeles, CA; Southwest Research Institute, San Antonio, TX; Spectronn, Holmdel, NJ; SpectrumFi, Sunnyvale, CA; SRI International, Menlo Park, CA; SSC Innovations LLC, Vienna, VA; Stevens Institute of Technology, Hoboken, NJ; The Aerospace Corporation, El Segundo, CA; The Charles Stark Draper Laboratory, Inc., Cambridge, MA; The John Hopkins University Applied Physics Laboratory, Laurel, MD; The Ohio State University, Columbus, OH; Trabus Technologies, Inc., San Diego, CA; TrellisWare Technologies, Inc., San Diego, CA; TriaSys Technologies Corporation, N. Billerica, MA; Under the Grid, LLC, Pacific Grove, CA; University of Arizona—Electrical and Computer Engineering, Tucson, AZ; University of Illinois, Urbana, IL; University of Mississippi, University, MS; University of Notre Dame, Notre Dame, IN; University of Southern California Information Sciences Institute, Marina Del Ray, CA;

University of Washington, Seattle, WA; Vanu, Inc., Cambridge, MA; Vencore Labs, Inc d/b/a Applied Communication Sciences, Basking Ridge, NJ; ViaSat Inc., Carlsbad, CA; Virginia Tech Applied Research Corporation (VT-ARC), Arlington, VA; Virginia Tech/Wireless @ Virginia Tech, Blacksburg, VA; VISTology, Inc., Framingham, MA; VUUM LLC, Houston, TX; W5 Technologies, Inc., Scottsdale, AZ; Worcester Polytechnic Institute, Worcester, MA; X-COM Systems LLC, Reston, VA; and xG Technology, Inc., Sunrise, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015-30754 Filed 12-4-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on October 19, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the American Society of Mechanical Engineers (“ASME”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since May 18, 2015, ASME has established one new consensus committee, disbanded one consensus committee, published two new standards, initiated three new standard activities, and withdrawn one published standard within the general nature and scope of ASME’s standards

development activities, as specified in its original notification. More detail regarding these changes can be found at www.asme.org.

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on May 20, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2015 (80 FR 37302).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015-30765 Filed 12-4-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on October 30, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ODVA, Inc. (“ODVA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cincinnati Test Systems, Inc., Harrison, OH; Automation Controls Group, Milwaukee, WI; ESYSE GmbH Embedded Systems Engineering, Duesseldorf, GERMANY; Wieland Electric GmbH, Bamberg, GERMANY; ELAP S.R.L., Corisco, ITALY; Define Instruments, Auckland, NEW ZEALAND; ORing Industrial Networking Corp., TAIWAN; and WEG Drives & Controls, Jaraguá do Sul, BRAZIL, have been added as parties to this venture.

Also, FiberFin, Inc., Yorkville, IL; EN Technologies Inc., Gunpo-si, REPUBLIC OF KOREA; and OTO Ltd., Gyungju-Si, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written

notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on August 5, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 25, 2015 (80 FR 51605).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015-30763 Filed 12-4-15; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0039]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Firearms Licensee Firearms Inventory Theft/Loss Report

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 80 FR 58791, on September 19, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 6, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please Larry Penninger, Chief, National Tracing Center, 244 Needy Road, Martinsburg, WV 20226 at email: Larry.Penninger@atf.gov. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or

sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection 1140-0039:

1. *Type of Information Collection:* Extension of an existing collection without change.
2. *The Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF F 3310.11.
Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
Primary: Business or other for-profit.
Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.
Abstract: This form requires that licensees report the theft or loss of firearms to the Attorney General and the appropriate authorities.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,000 respondents will take 24 minutes to complete this form.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public

burden associated with this collection is 960 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E-405B, Washington, DC 20530.

Dated: December 2, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015-30759 Filed 12-4-15; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2006-0042]

Canadian Standards Association: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for Canadian Standards Association, as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:
Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: robinson.kevin@dol.gov. OSHA's Web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of

Canadian Standards Association (CSA) as an NRTL. CSA's expansion covers the addition of two test standards to its scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

CSA submitted an application, dated January 29, 2015 (OSHA-2006-0042-0003), to expand its recognition to include two additional test standards. OSHA staff detailed analysis of the application and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing CSA's expansion application in the **Federal Register** on October 6, 2015 (80 FR 60408). The Agency requested comments by October 21, 2015, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of CSA's scope of recognition.

To obtain or review copies of all public documents pertaining to CSA's application, go to www.regulations.gov or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210. Docket No. OSHA-2006-0042 contains

all materials in the record concerning CSA's recognition.

II. Final Decision and Order

OSHA staff examined CSA's expansion application, its capability to meet the requirements of the test

standards, and other pertinent information. Based on its review of this evidence, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is

proceeding with this final notice to grant CSA's scope of recognition. OSHA limits the expansion of CSA's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN CSA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|--------------------------------|--|
| UL 1004-1 | Standard for Rotating Electrical Machines—General Requirements. |
| AAMI ES 60601-1: 2005/(R) 2012 | Medical Electrical Equipment, Part 1: General Requirements for Basic Safety and Essential Performance. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, CSA must abide by the following conditions of the recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. CSA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of CSA, subject to the

limitation and conditions specified above.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015-30784 Filed 12-4-15; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0043]

TUV SUD America Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV SUD America Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 22, 2015.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the

instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2007-0043, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.-4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2007-0043). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to

read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before December 22, 2015 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that TUV SUD America Inc. (TUVAM) is applying for expansion of its current

recognition as an NRTL. TUVAM requests the addition of one recognized testing and certification site and fifteen test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in Title 29, Code of Federal Regulations, Section 1910.7 (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. Recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have

the technical capability to perform the product testing and product-certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use. Each of these elements allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

TUVAM currently has three facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: TUD SUD America, Inc., 10 Centennial Drive, Peabody, MA 01960. A complete list of TUVAM sites recognized by OSHA is available at <https://www.osha.gov/dts/otpc/nrtl/tuvam.html>.

II. General Background on the Application

TUVAM submitted an application, dated October 16, 2014 (Exhibit 15-3, Application to Add Test Site and Test Standards, OSHA-2007-0043), to expand its recognition to include the addition of one recognized testing and certification site located at: TUV SUD, 1229 Ringwell Drive, Newmarket, ON, L3Y 8T8, Canada. Additionally, this application seeks to expand its recognition to include fifteen additional test standards. OSHA staff also performed an on-site review of TUVAM's testing facilities in Newmarket, ON Canada on July 14-15, 2015, during which the assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVAM addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the application.

Table 1 below lists the appropriate test standards found in TUVAM's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|--------------------|--|
| UL 2202 | Standard for Electric Vehicle (EV) Charging System Equipment. |
| ANSI Z83.8 | Gas Unit Heaters, Gas Utility Heaters and Gas-Fired Duct Furnaces. |
| ANSI Z21.13 | Gas-Fired Low Pressure Steam and Hot Water Boilers. |
| UL 795 | Standard for Commercial-Industrial Gas Heating Equipment. |
| UL 726 | Standard for Oil-Fired Boiler Assemblies. |
| UL 727 | Standard for Oil-Fired Central Furnaces. |
| ANS Z21.10.3 | Gas-Fired Water Heaters—Volume III, Storage Water Heaters With Input Ratings Above 75,000 BTU Per Hour, Circulating and Instantaneous. |
| UL 484 | Standard for Room Air Conditioners. |
| UL 705 | Standard for Power Ventilators. |
| UL 1812 | Standard for Ducted Heat Recovery Ventilators. |
| UL 1815 | Standard for Non-ducted Heat Recovery Ventilators. |
| UL 412 | Standard for Refrigeration Unit Coolers. |
| UL 1042 | Standard for Electric Baseboard Heating Equipment. |
| UL 1996 | Standard for Electric Duct Heaters. |
| UL 2021 | Standard for Fixed and Location-Dedicated Electric Room Heaters. |

III. Preliminary Finding on the Application

TUVAM submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and its detailed on-site assessment indicate that TUVAM can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of one site and fifteen standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVAM's application.

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2007-0043.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant TUVAM's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No.

1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015-30783 Filed 12-4-15; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2013-0017]

Quality Auditing Institute, Ltd.: Application for Expansion of Recognition and Modification to the List of Appropriate NRTL Program Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Quality Auditing Institute, Ltd. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application. Additionally, OSHA proposes to add a new test standard to the NRTL list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 22, 2015.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA-2013-0017, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials

by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.-4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2013-0017). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before December 22, 2015 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department

of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; phone: (202) 693-2110 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Quality Auditing Institute, Ltd. (QAI), is applying for expansion of its current recognition as an NRTL. QAI requests the addition of sixteen test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards

within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including QAI, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

QAI currently has two facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: #16-211 Schoolhouse Street,

Coquitlam, B.C., V3K 4X9, Canada. A complete list of QAI's scope of recognition is available at <https://www.osha.gov/dts/otpca/nrtl/qai.html>.

II. General Background on the Application

QAI submitted an application, dated November 18, 2014 (Exhibit 15-1—Application for Scope Expansion OSHA-2013-0017), to expand its recognition to include sixteen additional test standards. OSHA staff performed detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the test standards found in QAI's application for expansion for testing and certification of products under the NRTL Program. All of these standards already appear on OSHA's list of appropriate test standards except UL 962, Standard for Household and Commercial Furnishings. As discussed below, OSHA is proposing to add UL 962 to the appropriate test standard list by this notice.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|------------------|---|
| UL 48 | Standard for Electric Signs. |
| UL 153 | Standard for Portable Electric Luminaires. |
| UL 234 | Standard for Low Voltage Lighting Fixtures for Use in Recreational Vehicles. |
| UL 355 | Standard for Cord Reels. |
| UL 507 | Standard for Electric Fans. |
| UL 508 | Standard for Industrial Control Equipment. |
| UL 508A | Standard for Industrial Control Panels. |
| UL 514C | Standard for Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers. |
| UL 514D | Cover Plates for Flush-Mounted Wiring Devices. |
| UL 962* | Standard for Household and Commercial Furnishings. |
| UL 1574 | Standard for Track Lighting Systems. |
| UL 1993 | Self-Ballasted Lamps and Lamp Adapters. |
| UL 2108 | Standard for Low Voltage Lighting Systems. |
| UL 60950-1 | Information Technology Equipment—Safety—Part 1: General Requirements. |
| UL 61010-1 | Safety Requirements for Electrical Equipment Measurement, Control, and Laboratory Use—Part 1: General Requirements. |
| UL 8750 | Standard for Light Emitting Diode (LED) Equipment for Use in Lighting Products. |

*Represents a new standard that OSHA is proposing to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the Agency evaluates the

document to (1) verify it represents a product category for which OSHA requires certification by an NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications).

In this notice, OSHA proposes to add a new test standard to the NRTL

Program's list of appropriate test standards. Table 2, below, lists the test standard new to the NRTL Program. OSHA preliminarily determined that this test standard is an appropriate test standard and proposes to include this test standard in the NRTL Program's list of appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—TEST STANDARD OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

| Test standard | Test standard title |
|---------------|--|
| UL 962 | Standard for Household and Commercial Furnishings. |

IV. Preliminary Findings on QAI's Application

QAI submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent information indicate that QAI can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these sixteen test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of QAI's application.

OSHA welcomes public comment as to whether QAI meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2013-0017.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant QAI's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015-30786 Filed 12-4-15; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0026]

Curtis-Strauss LLC: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for Curtis-Strauss LLC, as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on December 7, 2015.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210;

telephone: (202) 693-2110; email: robinson.kevin@dol.gov. OSHA's Web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Curtis-Strauss LLC (CSL), as an NRTL. CSL's expansion covers the addition of five test standards to its scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

CSL submitted an application, dated November 3, 2014 (OSHA-2009-0026-0058), to expand its recognition to include five additional test standards. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA performed an on-site review in relation to this application on January 27-28, 2015.

OSHA published the preliminary notice announcing CSL's expansion

application in the **Federal Register** on September 22, 2015 (80 FR 57232). The Agency requested comments by October 7, 2015, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of CSL's scope of recognition.

To obtain or review copies of all public documents pertaining to the CSL's application, go to www.regulations.gov or contact the Docket Office, Occupational Safety and

Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-2625, Washington, DC 20210. Docket No. OSHA-2009-0026 contains all materials in the record concerning CSL's recognition.

II. Final Decision and Order

OSHA staff examined CSL's expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on its review of this evidence,

OSHA finds that CSL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant CSL's scope of recognition. OSHA limits the expansion of CSL's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN CSL'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|--------------------|--|
| UL 507 | Standard for Electric Fans. |
| UL 1026 | Standard for Electric Household Cooking and Food-Serving Appliances. |
| UL 1082 | Standard for Household Electric Coffee Makers and Brewing-Type Appliances. |
| UL 60335-1 | Safety of Household and Similar Electrical Appliances, Part 1: General Requirements. |
| UL 60335-2-8 | Standard for Safety for Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Shavers, Hair Clippers and Similar Appliances. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, CSL must abide by the following conditions of the recognition:

1. CSL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. CSL must meet all the terms of its recognition and comply with all OSHA

policies pertaining to this recognition; and

3. CSL must continue to meet the requirements for recognition, including all previously published conditions on CSL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of CSL, subject to the limitation and conditions specified above.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015-30785 Filed 12-4-15; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Endowment for the Humanities, National Foundation On the Arts and the Humanities.

ACTION: Notice of Charter Renewal for Arts and Artifacts Indemnity Panel Advisory Committee.

SUMMARY: Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) and its implementing regulations, 41 CFR 102-3.65, the Federal Council on the Arts and the Humanities (the Council) gives notice that the Charter for the Arts and Artifacts Indemnity Panel advisory committee was renewed for an additional two-year period on November 25, 2015. The Council determined that renewing the advisory committee is in the public interest in connection with the duties imposed on the Council by the Arts and Artifacts Indemnity Act, 20 U.S.C. 971 *et seq.*, as amended.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 Seventh Street SW., Washington, DC 20506. Telephone: (202) 606-8322, facsimile (202) 606-8600, or email at gencounsel@neh.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the

Humanities' TDD terminal at (202) 606-8282.

Dated: December 1, 2015.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2015-30728 Filed 12-4-15; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Advisory Committee; Charter Renewal

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Charter Renewal for Humanities Panel Advisory Committee.

SUMMARY: Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) and its implementing regulations, 41 CFR 102-3.65, the National Endowment for the Humanities (NEH) gives notice that the Charter for the Humanities Panel advisory committee was renewed for an additional two-year period on November 25, 2015. The Chairman of NEH determined that the renewal of the Humanities Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Chairperson of NEH by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 *et seq.*, as amended.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 Seventh Street SW., Washington, DC 20506. Telephone: (202) 606-8322, facsimile (202) 606-8600, or email at gencounsel@neh.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606-8282.

Dated: December 1, 2015.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2015-30729 Filed 12-4-15; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in

regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Thursday, December 10, 2015 at 1:30-2:00 p.m. EST.

SUBJECT MATTER: Chair's opening remarks; discussion of candidates proposed for the NSB Class of 2016-2022 by the ad hoc Committee on Nominations (NOMS).

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (www.nsf.gov/nsb) for information or schedule updates, or contact: Ronald Campbell, (jrcampbe@nsf.gov), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Kyscha Slater-Williams,

Program Specialist.

[FR Doc. 2015-30880 Filed 12-3-15; 4:15 pm]

BILLING CODE 7555-01-P

PENSION BENEFIT GUARANTY CORPORATION

OMB Approval of Information Collections; Duties of Plan Sponsor Following Mass Withdrawal, Notice of Insolvency; Termination of Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval of revised collections of information.

SUMMARY: The Office of Management and Budget has approved revisions to three collections of information under the Pension Benefit Guaranty Corporation's regulations.

FOR FURTHER INFORMATION CONTACT:

Catherine B. Klion, Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: On September 17, 2015 (at 80 FR 55742), the Pension Benefit Guaranty Corporation (PBGC) published a final rule amending its regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000), Termination of Multiemployer Plans (29 CFR 4041A), and Duties of Plan Sponsor

Following Mass Withdrawal (29 CFR 4281) to require mandatory e-filing of certain multiemployer plan notices starting 2016. The amendments affect three collections of information:

- Duties of Plan Sponsor Following Mass Withdrawal, OMB control number, 1212-0032.
- Notice of Insolvency, OMB control number 1212-0033.
- Termination of Multiemployer Plans, OMB control number 1212-0020.

PBGC submitted the revised collections of information for review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. On November 24, 2015, OMB approved the revised collections of information through November 30, 2018. 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.

Issued in Washington, DC, this 2nd day of December, 2015.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2015-30773 Filed 12-4-15; 8:45 am]

BILLING CODE 7709-02-P

PENSION BENEFIT GUARANTY CORPORATION

OMB Approval of Information Collections; Reportable Events; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval of revised collections of information.

SUMMARY: The Office of Management and Budget (OMB) has approved revisions to two collections of information under the Pension Benefit Guaranty Corporation's regulation on Reportable Events and Certain Other Notification Requirements.

FOR FURTHER INFORMATION CONTACT:

Catherine B. Klion, Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: On September 11, 2015 (at 80 FR 54980), the Pension Benefit Guaranty Corporation (PBGC) published a final rule amending its regulation on Reportable Events and Certain Other

Notification Requirements (29 CFR part 4043) to modify the system of waivers from reporting, implement provisions of the Pension Protection Act of 2006, and make other changes. PBGC made changes to two collections of information:

- Reportable Events, OMB control number, 1212-0013 (covering subparts B and C of 29 CFR part 4043).
- Notice of Failure to Make Required Contributions, OMB control number 1212-0041 (covering subpart D of 29 CFR part 4043).

PBGC submitted the revised collections of information for review by OMB under the Paperwork Reduction Act. On November 24, 2015, OMB approved the revised collections of information through November 30, 2018. 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.

Issued in Washington, DC, this 2nd day of December, 2015.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2015-30771 Filed 12-4-15; 8:45 am]

BILLING CODE 7709-02-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76531; File No. SR-BX-2015-074]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Order Spread Protection

December 1, 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 November 20, 2015, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) 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 proposes to amend the BX rules at Chapter VI, Section 6,

entitled “Acceptance of Quotes and Orders,” specifically at Section 6(c) concerning Market Order Spread Protection.

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 filing is to amend Chapter VI, Section 6 entitled “Acceptance of Quotes and Orders,” specifically, at paragraph (c) related to Market Order Spread Protection. This feature was adopted in 2012.³ The Market Order Spread Protection was designed to protect Market Orders⁴ from being executed in very wide markets. This feature is not optional and is set at the same threshold for all options traded on BX. The Market Order Spread Protection is applicable to all Participants submitting Market Orders.

At this time, the Exchange is proposing to amend Section 6(c) which currently states, “System Orders that are Market Orders will be rejected if the NBBO is wider than a preset threshold at the time the order is received by the System.” The Exchange proposes to amend this sentence as follows: “System Orders that are Market Orders will be rejected if the *best of the* NBBO

³ See Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Establishment of a New Options Market, NASDAQ OMX BX Options).

⁴ “Market Orders” are orders to buy or sell at the best price available at the time of execution. Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant. See BX Rules at Chapter VI, Section 1(e)(5).

and the internal market BBO⁵ (the “Reference BBO”) is wider than a preset threshold at the time the order is received by the System.” The Exchange is amending this rule text to account for orders which would lock or cross another market,⁶ could result in non-displayed pricing and would result in the internal market BBO being better than the NBBO.

The current rule text does not reflect the possibility that orders will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price. The proposed rule text amends the current rule text to account for the results of repricing.

This rule change will correct the existing rule text to reflect current practice which accounts for repricing due to trade-through and locked and crossed market restrictions.⁷ Participants were notified via an Options Trader Alert of this rule text error.⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by amending the rule text to reflect the impact of repricing due to trade-through and locked and crossed market restrictions.

Amending the current BX rule text for Market Order Spread Protection to account for repricing due to trade-through and locked and crossed market restrictions would provide Participants with the expected results of the Market Order Spread Protection feature. The Exchange believes that it is consistent with the Act to amend the rule text to reflect the possibility that orders will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one

⁵ Best Bid or Best Offer on BX.

⁶ Options Order Protection and Locked and Crossed Market Rules are located in Chapter XII of BX Rules. In the event of a locked and crossed market, the BBO will be repriced and displayed in accordance with BX Rules at Chapter VI, Section 7(b)(3)(C).

⁷ See Chapter XII of BX Rules.

⁸ See Options Regulatory Alert 2015-28 dated September 4, 2015.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

minimum price variance above (for offers) or below (for bids) the national best price.

The Exchange believes that the amendment to the Market Order Spread Protection language does not otherwise create an impediment to a free and open market because the repricing due to trade throughs and locked and crossed markets exists today and serve to protect against trading through or locking or crossing another market. This proposal reflects the impact of repricing due to trade-through and locked and crossed market restrictions on the Market Order Spread Protection feature.

By reflecting the proper rule text to account for trade-through and locked and crossed market restrictions, the Exchange is providing Participants with additional information with which to anticipate the impact of the Market Order Spread Protection feature.

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 does not believe that the proposal to amend the Market Order Spread Protection rule text to account [sic] repricing due to trade-through and locked and crossed market restrictions creates an undue burden on competition because it will serve to provide Participants with greater information to anticipate the impact of the Market Order Spread Protection feature. Today, Participants' orders are repriced due to trade-through and locked and crossed market restrictions. The purpose of this rule change is to protect market orders resting on the Order Book when the market is wide. This feature will be applied in a similar manner to all Participants on BX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective

pursuant to Section 19(b)(3)(A)¹¹ of the Act and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: Necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act. 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-2015-074 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-2015-074. 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-2015-074 and should be submitted on or before December 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-30720 Filed 12-4-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76532; File No. SR-FINRA-2015-050]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

December 1, 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 November 24, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within FINRA rules, primarily as the result of approval of a new consolidated FINRA rule.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a consolidated rulebook ("Consolidated FINRA Rulebook").⁴ That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make several such changes, as well as other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook.

First, the proposed rule change would update rule cross-references to reflect

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

the adoption of a consolidated equity research conflict of interest rule. On July 16, 2015, the SEC approved a proposed rule change to adopt NASD Rule 2711 as FINRA Rule 2241 (Research Analysts and Research Reports), with several modifications. As part of that rule filing, FINRA also amended FINRA Rule 9610, NASD Rule 1050, and Incorporated NYSE Rules 344 and 472, and deleted in their entirety the corresponding Incorporated NYSE Rule 351 and Incorporated NYSE Rule Interpretation 472.⁵ Rule 2241 will be fully implemented on December 24, 2015. As such, the proposed rule change would update references to the new rule number in FINRA Rules 1250 (Continuing Education Requirements), 2210 (Communications with the Public), 5230 (Payments Involving Publications that Influence the Market Price of a Security), and 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)).⁶

Second, the proposed rule change would make technical changes to FINRA Rules 2272 (Sales and Offers of Securities on Military Installations)⁷ and 6250 (Quote and Order Access Requirements)⁸ to reflect FINRA Manual style convention changes and correct cross references within Rule 6250, respectively.

Finally, the proposed rule change would also delete from the FINRA Manual the Series heading for NASD Rules 2400 (Commissions, Mark-ups and Charges) and 2700 (Securities Distributions) to reflect that the NASD Rules 2400⁹ and 2700¹⁰ Series have fully been consolidated into the FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days

⁵ See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (Order Approving File No. SR-FINRA-2014-047) and *Regulatory Notice* 15-30 (August 2015).

⁶ The proposed rule change also would delete a reference in FINRA Rule 9217 to Incorporated NYSE Rule 345.11, which was previously deleted from the FINRA Manual. See Securities Exchange Act Release No. 73966 (December 30, 2014), 80 FR 546 (January 6, 2015) (Order Approving File No. SR-FINRA-2014-038).

⁷ See Securities Exchange Act Release No. 75633 (August 6, 2015), 80 FR 48376 (August 12, 2015) (Order Approving File No. SR-FINRA-2015-009) and *Regulatory Notice* 15-34 (October 2015).

⁸ See Securities Exchange Act Release No. 71467 (February 3, 2014), 79 FR 7485 (February 7, 2014) (Order Approving File No. SR-FINRA-2013-053).

⁹ See Securities Exchange Act Release No. 73954 (December 30, 2014), 80 FR 553 (January 6, 2015) (Order Approving File No. SR-FINRA-2014-037).

¹⁰ See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (Order Approving File No. SR-FINRA-2014-047).

after the date of the filing, so that FINRA can implement the proposed rule change to coincide with effective dates of the relevant consolidated FINRA rules. The implementation date for the proposed changes to FINRA Rules 1250, 2210, 5230, 6250, and 9217 and the proposed deletion of the NASD Rule 2400 and 2700 Series headings will be December 24, 2015. The implementation date for the proposed rule change to FINRA Rule 2272 will be March 30, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative before 30 days from

¹¹ 15 U.S.C. 78a-3(b)(6).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow FINRA to implement the proposed rule change to coincide with the effective dates of the relevant consolidated FINRA rules. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2015-050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-050, and should be submitted on or before December 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-30721 Filed 12-4-15; 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:

Rules 17Ad-22—Clearing Agency Standards and Governance, SEC File No. 270-646, OMB Control No. 3235-0695.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA")(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rules 17Ad-22 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection

of information to the Office of Management and Budget ("OMB") for extension and approval.

i. Standards for Clearing Agencies

a. Measurement and Management of Credit Exposures

Rule 17Ad-22(b)(1) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once each day, and limit its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. The purpose of the collection of information is to enable the clearing agency to monitor and limit its exposures to its participants.

b. Margin Requirements

Rule 17Ad-22(b)(2) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (i) Use margin requirements to limit its credit exposures to participants in normal market conditions; (ii) use risk-based models and parameters to set margin requirements; and (iii) review the models and parameters at least monthly. The purpose of the collection of information is to enable the clearing agency to maintain sufficient collateral or margin.

c. Financial Resources

Rule 17Ad-22(b)(3) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions, provided that a registered clearing agency acting as a central counterparty for security-based swaps shall maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps. The purpose of the collection of information is to enable the clearing agency to satisfy all of its settlement obligations in the event of a participant default.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

d. Model Validation

Rule 17Ad-22(b)(4) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. The purpose of the collection of information is to enable the clearing agency to obtain an assessment of its margin model by a qualified, independent person.

e. Non-Dealer Access

Rule 17Ad-22(b)(5) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership at the clearing agency to clear securities for itself or on behalf of other persons. The purpose of the collection of information is to enable more market participants to obtain indirect access to clearing agencies.

f. Portfolio Size and Transaction Volume Restrictions

Rule 17Ad-22(b)(6) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require that participants maintain a portfolio of any minimum size or that participants maintain a minimum transaction volume. The purpose of the collection of information is to remove unnecessary barriers to participation in clearing agencies that provide CCP services.

g. Net Capital Restrictions

Rule 17Ad-22(b)(7) would require a clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership at the clearing agency, provided that such persons are able to comply with other reasonable membership standards, with any net capital requirements being scalable so that they are proportional to the risks

posed by the participant's activities to the clearing agency. The rule also permits a clearing agency to provide for a higher net capital requirement (*i.e.*, higher than \$50 million) as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures, such as scalable limitations on the transactions that the participants may clear through the clearing agency, and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application. The purpose of the collection of information is to remove unnecessary barriers to clearing access by market participants with a net capital level above \$50 million, while at the same time facilitating sound risk management practices by clearing agencies by encouraging them to examine and articulate the benefits that higher net capital requirements would create through having clearing agencies develop scalable membership standards that links the activities any participants could potentially engage in with the potential risks posed by the participant.

h. Record of Financial Resources

Rule 17Ad-22(c)(1) would require that each fiscal quarter (based on calculations made as of the last business day of the clearing agency's fiscal quarter), or at any time upon Commission request, a clearing agency that performs CCP services shall calculate and maintain a record of the financial resources necessary to meet the requirement in Rule 17Ad-22(b)(3) and sufficient documentation to explain the methodology it uses to compute such financial resource requirement. The purpose of the collection of information is to enable the Commission to monitor the financial resources of clearing agencies that provide CCP services.

i. Annual Audited Financial Statements

Rule 17Ad-22(c)(2) would require a clearing agency to post on its Web site an annual audited financial statement that must (i) be a complete set of financial statements of the clearing agency for the most recent two fiscal years of the clearing agency and be prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), except that for a clearing agency that is a corporation or other organization incorporated or organized under the laws of any foreign country, the financial statements may be prepared

according to U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS"); (ii) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2-01 of Regulation S-X (17 CFR 210.2-01); and (iii) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2-02 of Regulation S-X (17 CFR 210.2-02). The purpose of the collection of information is to enable the Commission to monitor the financial resources of clearing agencies that provide CCP services.

j. Transparent and Enforceable Rules and Procedures

Rule 17Ad-22(d)(1) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of their activities in all relevant jurisdictions. The purpose of the collection of information is to help ensure that clearing agencies' policies and procedures do not cause confusion or legal uncertainty among their participants because they are unclear, incomplete or conflict with other applicable laws or judicial precedent.

The Commission believes that 10 registered clearing agencies will incur a total burden of approximately 8,029 hours annually.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comments to: Pamela Dyson, Director/Chief

Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: December 2, 2015.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-30746 Filed 12-4-15; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 9369]

30-Day Notice of Proposed Information Collection: Iraqi Citizens and Nationals Employed by Federal Contractors and Grantees

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to January 6, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* oir_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sophie Yan Gao, PRM/Admissions, 2025 E Street NW., SA-9, 8th Floor, Washington, DC 20522-0908, who may be reached on (202) 453-9255 or at GaoY1@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Iraqi Citizens and Nationals Employed by Federal Contractors, Grantees and Cooperative Agreement Partners.

- *OMB Control Number:* 1405-0184.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Population, Refugees, and Migration, Office of Admissions, PRM/A.
- *Form Number:* DS-7655.
- *Respondents:* Refugee applicants for the U.S. Refugee Admissions Program.
- *Estimated Number of Respondents:* 50 Department of State contractors, grantees, and cooperative agreement partners.
- *Estimated Number of Responses:* 200.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 100 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The information requested will be used to verify the employment of Iraqi citizens and nationals for the processing and adjudication of other refugee, asylum, special immigrant visa, and other immigration claims and applications.

Methodology:

The method for the collection of information will be via electronic submission. The format for compiling the information will be the Department of State's eForms application which is currently used by over 36,000 Department users worldwide. Contracting Officers and Grants Officers will distribute by email to the contractors, grantees and cooperative agreement partners under their authority the DS-7655 form file and Cerenade e-Form filler installation

instructions. Respondents, using the Cerenade filler, will complete the form and email the form file to their Contracting Officers or Grants Officer.

Dated: November 27, 2015.

Larry Bartlett,

Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2015-30775 Filed 12-4-15; 8:45 am]

BILLING CODE 4710-33-P

DEPARTMENT OF STATE

[Public Notice 9370]

Notice of Public Meeting

The Department of State will conduct an open meeting at 9:30 a.m. on Tuesday January 26, 2016, in Room 5 of the DOT Conference Center, 1200 New Jersey Ave, SE., Washington, DC 20590. The primary purpose of the meeting is to prepare for the third Session of the International Maritime Organization's (IMO) Sub-Committee on Human Element, Training and Watchkeeping (HTW) to be held at the IMO Headquarters, United Kingdom, on February 1-5, 2016.

The agenda items to be considered include:

- Decisions of other IMO bodies
- Validated model training courses
- Reports on unlawful practices associated with certificates of competency
- Guidance for the implementation of the 2010 Manila Amendments
- Comprehensive review of the 1995 STCW-F Convention
- Role of the human element
- Revision of the Guidelines on Fatigue
- Revised Guidelines on the Implementation of the ISM Code by Administrations (resolution A.1071(28)) on training audits
- Review of STCW passenger ship-specific safety training
- Amendments to SOLAS chapter II-1 and associated guidelines on damage control drills for passenger ships
- Completion of the detailed review of the Global Maritime Distress and Safety System (GMDSS)
- Revision of requirements for escape route signs and equipment location markings in SOLAS and related instruments
- Amendments to the IGF Code and development of guidelines for low-flashpoint fuels
- Review MODU Code, LSA Code and MSC.1/Circ.1206/Rev.1

Members of the public may attend this meeting up to the seating capacity of the room. Upon request, members of

the public may also participate via teleconference, up to the capacity of the teleconference phone line. The access number for this teleconference line will be posted online at <http://www.uscg.mil/imo/htw/default.asp> at least 5 working days in advance. For physical access to the meeting, reasonable accommodation or participation via the teleconference line, all attendees should respond to the meeting coordinator, Mr. E.J. Terminella, by email at Emanuel.J.TerminellaJr@uscg.mil, by phone at (202) 372-1239, by fax at (202) 372-8283, or in writing at 2703 Martin Luther King Jr. Ave. SE. Stop 7509, Washington, DC 20593-7509, not later than January 15, 2016. Requests made after January 15, 2016 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the DOT Conference Center. The DOT Conference Center is accessible by taxi, privately owned conveyance and public transportation. However, parking in the vicinity of the building is limited. Additional information regarding this and other IMO public meetings may be found at: <http://www.uscg.mil/imo>.

Dated: November 23, 2015.

Jonathan Burby,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2015-30774 Filed 12-4-15; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of Comment Period for Draft Environmental Assessment (EA) for the Proposed Part 139 Operating Certificate and Related Actions and Notice for Public Hearing at Paulding Northwest Atlanta Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: The FAA is extending the comment period for the Draft Environmental Assessment for the Proposed Part 139 Operating Certificate and Related Actions. In response to community requests, FAA is extending the comment period for 30 days, from December 11, 2015, to January 10, 2016.

DATES: The comment period for the proposed Draft EA made available for public review on October 20, 2015 is

extended. Comments on the document must be received on or before January 10, 2016.

ADDRESSES: Any person desiring to review the Draft EA and to comment on the document may do so at the following locations: Paulding Northwest Atlanta Airport, 730 Airport Parkway, Dallas, Georgia 30157 or Paulding County Library, 1010 Memorial Drive East, Dallas, Georgia 30132.

FOR FURTHER INFORMATION CONTACT: Lisa Favors, Environmental Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, Atlanta, GA 30337-2747, (404) 305-6744, Lisa.Favors@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA is hereby extending the comment period for the following notice to allow the community more time to develop and submit their comments.

In the notice that issued in the **Federal Register** on October 22, 2015, entitled "Notice of Availability for Draft EA for the Proposed Part 139 Operating Certificate and Related Actions and Notice for Public Hearing at Paulding Northwest Atlanta Airport", the FAA sought public comment on the Draft EA. The end of the comment period is hereby being extended from December 11, 2015 to January 10, 2016.

Comments can also be made online via the following Web sites: Paulding Northwest Atlanta Airport: www.pauldingairport.com Paulding County, Georgia: www.paulding.gov

Issued in Atlanta, Georgia, on November 24, 2015.

Larry F. Clark,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2015-30588 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability and Request for Comment on the Second Draft Environmental Assessment (EA) for the Kodiak Launch Complex Launch Pad 3, Kodiak Island, Alaska

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

ACTIONS: Notice of Availability, Notice of Public Comment Period, and Request for Comment.

SUMMARY: In accordance with the National Environmental Policy Act of

1969, as amended (NEPA; 42 United States Code 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations parts 1500 to 1508), and FAA Order 1050.1E, Change 1, *Environmental Impacts: Policies and Procedures*, the FAA is announcing the availability of and requesting comments on the Second Draft Environmental Assessment for the Kodiak Launch Complex Launch Pad 3 (Second Draft EA).

On September 15, 2014, the FAA issued a Draft EA for public review and comment and received 54 written comments and 26 oral comments over the public comment and review period that was extended to November 1, 2014. After taking into consideration the nature of public comments received on the Draft EA, the FAA is providing the public with an opportunity to review and comment on updates and clarification information that have since been added to the EA in response to public comments. The FAA is issuing an updated version of the Draft EA for a second public review and comment period.

FOR FURTHER INFORMATION CONTACT: Stacey M. Zee, Federal Aviation Administration, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031; email FAAKodiakEA@icfi.com; telephone (202) 267-9305.

SUPPLEMENTARY INFORMATION: The Second Draft EA is an updated version of the September 2014 Draft EA, and incorporates all public comments received on the Draft EA. All written and oral public comments received on the Draft EA, as well as the FAA's responses to these comments, can be found in Appendix R of the Second Draft EA. The FAA considered all public comments while preparing the Second Draft EA, and changes have been made to the EA where warranted.

The EA was prepared to analyze the potential environmental impacts of the FAA modifying the Alaska Aerospace Corporation's (AAC's) Launch Site Operator License to include medium-lift launch capability at the Kodiak Launch Complex (KLC), a commercial launch site currently operated under a FAA Launch Site Operator License (LSO-03-008), which authorizes only small-lift operations. The Kodiak Launch Complex was renamed as Pacific Spaceport Complex Alaska, effective April 21, 2015. The EA keeps the name as KLC for continuity and ease of reviewing.

Expansion of launch capabilities at KLC would include the addition of new infrastructure necessary to support

medium-lift launches, including the construction of a launch pad and associated facilities. As part of the Proposed Action addressed in the EA, AAC would make improvements to the KLC to add both solid and liquid-propellant, medium-lift launch capability, and to operate the KLC in the future as a small-lift and medium-lift launch complex. Proposed construction at KLC includes six primary modifications: Construction of Launch Pad 3 (LP3), a vehicle processing facility, rocket staging facility, liquid fuel facility, mission control center and improvements to Pasagshak Point Road. Proposed launch operations would include up to six orbital small-lift launches and three medium-lift launches per year from the existing launch pads and from the proposed LP3; however, to be conservative in the analysis of potential environmental impacts, the EA assumes a maximum of nine medium-lift launches per year.

The EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative. Under the No Action Alternative, the FAA would not modify AAC's Launch Site Operator License to include medium-lift launch capability and AAC would not proceed with the construction of medium-lift launch support infrastructure at KLC. Existing launch activities for up to nine orbital small-lift class launches per year from the existing launch pads would continue.

The impact categories considered in the EA include air quality; compatible land use; Department of Transportation Act: Section 4(f); fish, wildlife, and plants; hazardous materials, pollution prevention, and solid waste; historical, architectural, archaeological, and cultural resources; light emissions and visual impacts; natural resources and energy supply; noise; socioeconomic, environmental justice, and children's environmental health and safety risk; water quality; and wetlands. The EA also considers the potential cumulative environmental impacts.

The FAA has posted the Second Draft EA on the FAA Office of Commercial Space Transportation Web site: http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_progress/kodiak_launch/.

A paper copy and a CD version of the Second Draft EA may be reviewed for comment during regular business hours at the following libraries:

- Kodiak Public Library, 612 Egan Way, Kodiak, AK 99615

- University of Alaska Anchorage—Carolyn Floyd Library, 117 Benny Benson Drive, Kodiak, AK 99615
- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503

DATES: The FAA encourages all interested parties to provide comments concerning the scope and content of the Second Draft EA. To ensure that all comments can be addressed in the Final EA, comments on the draft must be received by the FAA no later than January 11, 2016. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their comments to be meaningful and inform the FAA of their interests and concerns by quoting or providing specific references to the text of the Second Draft EA. Matters that could have been raised with specificity during the comment period on the Second Draft EA may not be considered if they are raised for the first time later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

ADDRESSES: Please submit comments in writing to Stacey M. Zee, Federal Aviation Administration, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031; or by email at FAAKodiakEA@icfi.com.

Issued in Washington, DC on November 30, 2015.

Daniel Murray,
Manager, Space Transportation Development Division.

[FR Doc. 2015-30731 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-13-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 final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Daimler Trucks North America's (Daimler) application for an exemption to allow a Daimler employee to drive commercial motor vehicles (CMV) in the United States without having a commercial driver's license (CDL) issued by one of the States. The driver, Michael Seitter, will test-drive Daimler vehicles on U.S. roads to better understand product requirements for these vehicles in "real world" environments and verify results. He holds a valid German commercial license but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes that the process for obtaining a German commercial license is comparable to or as effective as the U.S. CDL requirements and ensures that this driver will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective December 7, 2015 and expires December 7, 2017.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearl Robinson, Driver and Carrier

Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, Email: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. If you have questions on viewing material in the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, "FMCSA-2012-0032 in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Background

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.

III. Legal Basis

The Secretary of Transportation (the Secretary) has the authority to grant exemptions from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under chapter 313 or § 31136 of title 49, United States Code, to a person(s) seeking regulatory relief (49 U.S.C. 31136(e) and 31315(b)). Prior to granting an exemption, the Secretary must request public comment and make a determination that the exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption. Exemptions may be granted for a period of up to 2 years and may be renewed.

The FMCSA Administrator has been delegated authority under 49 CFR 1.87(e)(1) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and subchapters I and III of chapter 311, relating, respectively, to the CDL program and to CMV programs and safety regulation.

IV. Daimler Application for Exemption

Daimler applied for the same CDL exemption for Michael Seitter as for the previous five German drivers. Notice of the application was published on September 10, 2015 (80 FR 54655). Only one comment was received to the docket and the commenter neither opposed nor supported the exemption for Mr. Seitter. A copy of the Daimler request is in the docket identified at the beginning of this notice. The exemption allows Mr. Seitter to operate CMVs to support Daimler field tests to meet future vehicle safety and environmental requirements and to promote the development of technology and advancements in vehicle safety systems and emissions reductions. He 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.

Section 383.21 requires CMV drivers in the United States to have a CDL issued by a State. Mr. Seitter is a citizen and resident of Germany. Only residents of a State can apply for a CDL. Without the exemption, Mr. Seitter would not be able to test-drive prototype CMVs on U.S. roads.

Mr. Seitter holds a valid German commercial license and is an experienced operator of CMVs. In the application for exemption, Daimler also submitted documentation showing his safe German driving record.

V. Method To Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German-issued commercial license ensure that drivers meet or exceed the same level of safety as if these drivers had obtained a U.S. CDL. Mr. Seitter is familiar with the operation of CMVs worldwide and will be accompanied at all times by a driver who holds a U.S. CDL and is familiar with the routes to be traveled. FMCSA has determined that the process for obtaining a commercial license in Germany is comparable to that for obtaining a CDL issued by one of the States and adequately assesses the

driver's ability to operate CMVs safely in the United States.

VI. FMCSA Decision

Based upon the merits of this application, including Mr. Seitter's extensive driving experience and safety record, and the fact that he has successfully completed the requisite training and testing to obtain a German commercial license, FMCSA concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

VII. Terms and Conditions for the Exemption

FMCSA grants Daimler and Mr. Michael Seitter an exemption from the CDL requirement in 49 CFR 383.23 to allow Mr. Seitter to drive CMVs in this country without a U.S. State-issued CDL, subject to the following terms and conditions: (1) The driver and carrier must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350-399); (2) the driver must be in possession of the exemption document and a valid German commercial license; (3) the driver must be employed by and operate the CMV within the scope of his duties for Daimler; (4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled; (5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and (6) Daimler must notify FMCSA in writing if this driver is convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) Mr. Seitter fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with

this exemption with respect to a firm or person operating under the exemption.

Issued on: November 25, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015-30804 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2010-0166]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Bendix Commercial Vehicles Systems LLC

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

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA renews an exemption that enables motor carriers to mount lane departure warning system cameras and collision mitigation system cameras lower in the windshield of a commercial motor vehicle (CMV) than is currently permitted by the Agency's regulations. The Agency has concluded that granting this exemption renewal will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. However, the Agency requests comments on this issue, especially from anyone who believes this standard will not be maintained.

DATES: This decision is effective November 18, 2015. Comments must be received on or before January 6, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA-2010-0166 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- *Hand Delivery:* Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and docket number for this notice. 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 <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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 <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the "help" section of the <http://www.regulations.gov> Web site as well as the DOT's <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the

level that would be achieved absent such exemption" (49 CFR 381.305(a)).

Basis for Renewing Exemption

On November 18, 2011 (76 FR 71619), FMCSA published a notice of final disposition granting exemption applications from Con-way, Takata, and Iteris to allow the placement of lane departure warning system sensors lower in the windshield than is currently permitted by the Agency's regulations. In 2011, Iteris completed the sale of its vehicle sensors business to Bendix Commercial Vehicles Systems LLC (Bendix), which continued to sell the Iteris-developed lane departure warning systems. In May 2013, Bendix applied for a renewal of the November 2011 exemption. On November 25, 2013, FMCSA published a notice renewing this exemption until November 18, 2015 (78 FR 70396). While the November 2011 exemption granted relief to motor carriers using only the Takata and Iteris lane departure warning systems, the November 2013 exemption renewal extended the scope of the exemption to encompass motor carriers using any lane departure warning system provided that the sensor that is mounted in the windshield is (1) the same size or smaller than the Takata and Bendix sensors, and (2) mounted in the windshield in accordance with the provisions of the original exemption. Bendix is seeking renewal of the 2013 exemption, and requests that the scope of the exemption be extended to include its comparably-sized camera-based collision mitigation system.

The FMCSA has determined preliminarily that it is appropriate to renew the exemption for another two-year period pending a review of public comments in response to the application. The Agency believes that granting the exemption renewal to continue allowing the placement of lane departure warning system sensors lower in the windshield than is currently permitted by the Agency's regulations will provide a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the lane departure warning system sensors would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal

sightline will be reasonable and enforceable at roadside. The Agency is unaware of any incidents wherein a crash involving vehicles equipped with these lane departure warning systems could be attributed to the minimal visual intrusion of the devices into the drivers' field of vision. In addition, the Agency believes that the use of lane departure warning systems—and collision mitigation systems—by fleets is likely to improve the overall level of safety to the motoring public.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a two-year period, ending November 17, 2017. During the temporary exemption period, motor carriers using lane departure warning systems and collision mitigation systems with sensors measuring 2 inches by 3.5 inches or smaller must ensure that the sensors are mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Request for Comments

Interested parties possessing information that would demonstrate that CMVs operated by motor carriers using lane departure warning systems or collision mitigation systems are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: November 30, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015-30800 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0113]

Parts and Accessories Necessary for Safe Operation; Denial of an Exemption Application From the Entertainer Motorcoach Council

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

ACTION: Denial of exemption application.

SUMMARY: FMCSA denies an exemption application from the Entertainer Motorcoach Council (EMC) to allow its members to operate certain vehicles that do not meet the emergency exit requirements in the Federal Motor Carrier Safety Regulations (FMCSR). The FMCSRs require buses with a gross vehicle weight rating (GVWR) of more than 10,000 pounds, manufactured on or after September 1, 1994, to meet the emergency exit requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 217, "Bus Emergency exits and window retention and release," in effect on the date of manufacture. FMVSS No. 217 requires side exits and at least one rear exit, but when the bus configuration precludes installation of an accessible rear exit, a roof exit is required in the rear half of the bus to provide a means of egress when the bus is overturned on either side. While EMC contends that "Entertainer Coaches" that do not have a rear or roof exit have emergency exit windows that open manually at the rear sides of the vehicle that provide openings large enough to admit unobstructed passage, it did not provide evidence to enable the Agency to conclude that motor carriers operating such vehicles could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-0676; Federal Motor Carrier Safety Administration, 1200

New Jersey Avenue SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) [Pub. L. 105-178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the FMCSRs. On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an 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 381.315(c) and 49 CFR 381.300(b)).

EMC Application for Exemption

EMC applied for an exemption from 49 CFR 393.62(a) to allow motor carriers to operate certain "Entertainer Coaches" that do not comply with the regulation's emergency exit requirements. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.62(a) of the FMCSRs requires buses with a GVWR of more than 10,000 pounds, manufactured on or after September 1, 1994, to meet the emergency exit requirements of FMVSS No. 217 in effect on the date of manufacture. FMVSS No. 217 requires all buses (other than school buses) to provide unobstructed openings for emergency exit which collectively amount, in total square centimeters, to at least 432 times the number of designated seating positions on the bus.

At least 40 percent of the total required area of unobstructed openings shall be provided on each side of a bus. However, in determining the total unobstructed openings provided by a bus, no emergency exit, regardless of its area, shall be credited with more than 3,458 square centimeters of the total area requirement.

For buses with a GVWR of more than 10,000 pounds, FMVSS No. 217 requires that the unobstructed openings requirements be met by providing side exits and at least one rear exit. The rear exit must meet the requirements of S5.3–S5.5 of the standard when the bus is upright and when the bus is overturned on either side, with the occupant standing facing the exit. When the bus configuration precludes installation of an accessible rear exit, a roof exit that meets the requirements of S5.3–S5.5 of the standard when the bus is overturned on either side, with the occupant standing facing the exit, shall be provided in the rear half of the bus.

Neither the FMVSSs nor the FMCSRs define the term “Entertainer Coach.” In its application, EMC describes these vehicles as “motor vehicles constructed on a bus or MPV chassis which provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking, refrigeration, self-contained bathroom, heating and/or air conditioning, a potable water supply including a faucet and sink, and a separate 110–125 volt electric power supply. This definition generally tracks the definition of ‘motor home’ in the FMVSS and appropriately describes coaches that are built as temporary residential accommodations for the entertainment industry.”

In support of its application, EMC states:

EMC seeks this exemption because the rear exit and roof hatch requirements in FMVSS 217 and FMCSR 393.62(a) preclude the efficient and effective operation of Entertainer Coaches. As required by 49 CFR part 381.310(c)(5), Entertainer Coaches provide an equivalent level of safety when equipped with emergency exit windows at the rear sides of the vehicle that open manually and provide openings large enough to admit unobstructed passage. Entertainer Coaches are designed and used to provide temporary residential accommodations and, because the occupants are celebrities, their families and their staff, require an additional level of security to ensure security and protection for their occupants.

The requirement for rear exits in buses over 10,000 lbs. GVWR is intended to ensure a sufficient amount of rear egress for vehicles that carry a large number of passengers. The typical motorcoach is 45 feet in length and carry as many as 59 passengers. Entertainer Coaches, in contrast, typically carry less than 15 passengers, and many carry less than 10

passengers. EMC recognizes the importance of assuring access through the rear of the vehicles, even when the number of passengers is small. Such egress, however is readily available—as applied to Entertainer Coaches—by the emergency exit windows that come standard on the chassis generally used by the Entertainer Coach industry, the Prevost Entertainer 2000. Those windows allow for an egress area of 17” tall by 24” wide. The Prevost roof hatch allows for a similar egress area, 23” x 23”. As a practical matter, the egress area is equivalent. As a result, Entertainer Coaches with emergency exit windows offer an equivalent level of safety as those with a roof hatch . . .

Entertainer Coaches have an exemplary safety experience. Unlike the typical motorcoach passengers, these vehicle occupants are well acquainted with the vehicle. In particular, they are fully aware of the location and need for fast exit in the event of an emergency. Although fires can and do occur on these vehicles, the small number of occupants ensures safe exit from either the front or the back of the vehicle without the need for additional roof hatches. Such fires, furthermore, typically come from the back of the bus and occur when the bus is upright, further offsetting the practical need for a rear exit that meets the specific requirements of FMVSS 217.

EMC states that “If the exception is not granted, the entertainers will suffer serious disruption to their tour schedules. Denial of the exemption will also lead to significant economic impacts due to the failure of the entertainers to be able to appear as scheduled. The substantial disruption is not merited by any insistence on the strict construction of any overly broad requirement that does not take the unique circumstances of Entertainer Coaches into account.”

Public Comments

On May 1, 2015, FMCSA published a notice of the EMC application and asked for public comment (80 FR 25002). The Agency received five comments, all opposed to EMC’s exemption application.

The National Transportation Safety Board (NTSB), Advocates for Highway and Auto Safety (Advocates), the Commercial Vehicle Safety Alliance (CVSA), the United Motorcoach Association (UMA), and an anonymous commenter all cited similar concerns in opposing the exemption application. The commenters noted that EMC had failed to demonstrate that an equivalent level of safety would be maintained in certain crash scenarios with only side emergency exit windows, but no rear and/or roof exits as required by FMVSS No. 217, specifically in a rollover crash scenario. For example, the NTSB stated “A vehicle lying on its side with exits located only on the sides would be difficult to evacuate from because the

only available emergency exits would be above the occupants. This could require an occupant to climb or be lifted as high as the width of the vehicle. The NTSB does not consider that emergency exits on two sides of a vehicle provide an alternative for emergency evacuation equivalent to the current requirements, which include either roof or rear emergency exits.” Similarly, CVSA stated “In the event of a crash that leaves the bus on its side, the side window emergency exits and the entry door (which is usually counted as an emergency exit) will likely be unusable, which is why the National Highway Traffic Safety Administration’s (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS) require the rear window or roof emergency exits. The exemption request from EMC does not effectively demonstrate how an equivalent level of safety can be maintained.” The Advocates stated that “[t]he Applicants have not met the statutory and regulatory requirements for the exemption, including failing to provide an analysis of the safety impacts the requested exemption may cause and failing to provide information on the specific countermeasures to be undertaken to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.”

FMCSA Response: On October 14, 1967, the Federal Highway Administration published an advance notice of proposed rulemaking (ANPRM) concerning the possible establishment of a standard regarding bus side and rear windows, push-out type windows, and emergency exits (32 FR 14278). On August 15, 1970, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) proposing a standard that would require buses to meet minimum requirements in the above areas (35 FR 13025). The NPRM proposed that each bus, except school buses, have side and rear push-out windows which, when fully open, provide unobstructed openings for emergency exit. There were no provisions regarding roof exits in the NPRM.

On May 10, 1972, NHTSA adopted FMVSS No. 217, a new motor vehicle safety standard establishing minimum requirements for bus window retention and release to reduce the likelihood of passenger ejection in accidents and enhance passenger exit in emergencies (37 FR 9394). While the 1970 NPRM did not include provisions regarding roof exits, the final rule permitted installation of an alternate roof exit when the bus configuration precludes

provision of a rear exit, providing that the roof exit meets the release, extension, and identification requirements of the standard. Specifically, the final rule noted “The NHTSA has established this alternative in order to allow design flexibility *while providing for emergency egress in rollover situations*” [Emphasis added]. Notably, the emergency exit requirements for buses with a GVWR of more than 10,000 pounds have remained largely unchanged since the establishment of FMVSS No. 217 more than 40 years ago.

FMCSA agrees with the commenters. The EMC application did not provide sufficient evidence to demonstrate that an Entertainer Coach without rear and/or roof emergency exits would be able to provide an equivalent level of safety when compared to a compliant vehicle, specifically in a rollover crash scenario. The intent of the requirements for rear and roof emergency exits in S5.2.2.2 of FMVSS No. 217 is quite clear, in that those exits are required to meet the emergency exit release, opening, and identification requirements of the standard “when the bus is overturned on either side, with the occupant standing facing the exit.” Without the required rear and/or roof exits, emergency egress in rollover crash scenarios will likely be limited, possibly leading to increased numbers of fatalities and injuries in such crashes.

FMCSA Decision

Based on the above, FMCSA denies the EMC exemption application. FMCSA is unable to determine—as required for an exemption by 49 CFR 381.305(a)—that motor carriers would be able to maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

Issued on: November 30, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015–30802 Filed 12–4–15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0326]

Parts and Accessories Necessary for Safe Operation; Denial of an Exemption Application From Atwood Forest Products, Inc.

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

ACTION: Denial of exemption application.

SUMMARY: FMCSA denies an exemption application from Atwood Forest Products, Inc. (Atwood) to allow the use of a camera system installed at the sides and rear of up to 15 of its commercial motor vehicles (CMV) in lieu of rear-vision mirrors as specified in the Federal Motor Carrier Safety Regulations (FMCSR). Section 393.80 of the FMCSRs requires every bus, truck, and truck tractor to be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear along both sides of the vehicle. All such mirrors must, at a minimum, meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 111, “Rearview mirrors,” in effect at the time the vehicle was manufactured. While Atwood wanted to install the camera system on its vehicles for use in an evaluation study to evaluate the safety and economic benefits of eliminating outside mirrors, it did not provide evidence to enable the Agency to conclude that motor carriers operating vehicles without any rear-vision mirrors could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5370; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the FMCSRs. On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with 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)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an 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 381.315(c) and 49 CFR 381.300(b)).

Atwood Application for Exemption

Atwood applied for an exemption from 49 CFR 393.80 to allow the use of a camera system installed at the sides and rear of CMVs in lieu of rear-vision mirrors as specified in the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80 of the FMCSRs currently requires every bus, truck, and truck tractor to be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear along both sides of the vehicle. All such mirrors must, at a minimum, meet the requirements of FMVSS No. 111 in effect at the time the vehicle was manufactured. The purpose of FMVSS No. 111 is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.

In its application, Atwood states:

Atwood Forest Products, Inc. is making this request because we are coordinating device development and installation of rear cameras in up to fifteen (15) commercial motor vehicles and trailers. The camera equipment to be installed is going to be located at rear of trailers and at sides of motor vehicles. A monitor is to be located in the cab . . . Regulations currently require that mirrors be installed on each side of [a] tractor. Our system will remove outside mirrors and install cameras at the rear of trailers and cabs and motor vehicles with monitors inside the cabs of tractors.

Atwood contends that without the proposed temporary exemption, it will not be able to deploy cameras and monitors in its vehicles because they will be fined for violating the current

regulation, which requires rear-vision mirrors. With the exemption, Atwood states that it “will be able to install the camera systems in a location which will offer the best opportunity to optimize the data and evaluate the benefits of such a system” which would eliminate the need for the currently required outside mirrors.

Public Comments

On August 28, 2014, FMCSA published a notice of the Atwood application and asked for public comment (79 FR 51391). The Agency received four comments.

Advocates for Highway and Auto Safety (“Advocates”) opposed the exemption application, stating:

Atwood provides absolutely no analysis of the safety impacts the exemption may have. Atwood provides no actual data regarding safety performance at all. In fact, the applicant failed to provide even a rudimentary study to confirm that the proposed systems would provide performance in accordance with FMVSS 111.

Atwood has provided no evidence that their proposed exemption would ensure safety and mitigate the concerns regarding rearview visibility which spurred the FMCSR requirement and the underlying FMVSS. Likewise, the applicant fails to cite any research on the performance of the proposed systems, the visibility coverage offered, the possibility of driver distraction, or even usability studies to confirm that the proposed monitor and camera systems would allow a driver to operate a vehicle as safely as while using traditional, compliant, mirrors.

The Application is, therefore, insufficient on its face, as Atwood neither performed nor included any form of safety analysis in their application nor provided any form of explanation as to how the applicant would ensure that the proposed exemption will achieve an equivalent level of safety as required by both the statute and regulation. The requirement for a safety analysis is part of the statute and regulations governing the granting of exemptions precisely to ensure that exemptions which increase risk and decrease safety are not permitted.

Two anonymous commenters opposed the exemption application, citing concerns that the camera-based system may be prone to operational failure in the event of electrical outages. One of the commenters stated that the camera-based system could be used “IN ADDITION to rearview mirrors, but not IN LIEU of” the required mirrors.

The Owner-Operator Independent Drivers Association (OOIDA) stated “This system quite possibly could have additional safety benefits when utilized by a well-trained driver. However, there are significant questions regarding this application, both in terms of the technology proposed by Atwood, and the method that Atwood and Safety

Track would use to evaluate the performance of the camera systems. As such, OOIDA urges the FMCSA to only move forward with granting the exemption request under significant restrictions.”

OOIDA—like the anonymous commenters—noted concerns regarding the reliability of the camera-based system due to its reliance on electronic components. OOIDA encouraged FMCSA to consider mandating some type of redundancy in the system if the exemption application is granted. OOIDA stated:

Mandating the inclusion of one external mirror on each side of the cab (even if smaller than current standards) could provide a level of protection against electronics failure. Requiring redundancy in the electronics system might provide an acceptable level of protection. Rather than one monitor, two monitors with independent wiring systems may accomplish a lower risk of failure.

While current mirrors are susceptible to environmental conditions that lessen their effectiveness (rain, road, spray, fog) they never fail completely. We encourage the consideration of this exemption request to utilize appropriate technology, but caution against complete reliance on technology (without redundancy)—at least until a suitable time where the technology has proven reliability in the very harsh conditions that a CMV operates within.

In addition, OOIDA echoed Advocates’ concerns that Atwood had failed to provide “any detailed description of the proposed analysis of the effectiveness of the system.”

FMVSS No. 111; NHTSA Rulemaking

Specifically with respect to CMVs, FMVSS No. 111 requires vehicles with a GVWR of more than 10,000 pounds (excluding trailers) to have mirrors installed on both sides of the vehicle, located so as to provide the driver a view to the rear along both sides of the vehicle and adjustable both in the horizontal and vertical directions to view the rearward scene. On April 7, 2014, and to satisfy the mandate of the Cameron Gulbransen Kids Transportation Safety Act of 2007 (“K.T. Safety Act”), the National Highway Traffic Safety Administration (NHTSA) published a final rule amending FMVSS No. 111 to expand the required field of view for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles with a GVW of less than 10,000 pounds (79 FR 19178). Specifically, the rule specifies an area behind the vehicle which must be visible to the driver when the vehicle is placed into reverse and other related performance requirements. NHTSA noted that it anticipates vehicle

manufacturers will use rearview video systems and in-vehicle visual displays in the near term to meet the requirements of the rule.

However, the K.T. Safety Act specifically excluded all vehicles with a GVWR greater than 10,000 pounds, motorcycles, and trailers. NHTSA declined to extend scope of the rule in response to public comments recommending that the rule cover larger vehicles not contemplated by the K.T. Safety Act. NHTSA stated:

Finally, we also decline to extend today’s final rule to cover trailers, garbage trucks, and other vehicles not contemplated by the K.T. Safety Act. While we acknowledge that many of these vehicles may also have significant blind zones, we have concentrated our research and rulemaking efforts on the vehicles mandated by Congress. We believe that, by focusing on the vehicles types covered in the K.T. Safety Act, this rulemaking is able to more appropriately address the types of crashes that Congress sought to avoid. To include and accommodate vehicles with a GVWR of 10,000 lbs or more (many of which are used for commercial purposes), the agency may be required to utilize a significantly different approach with different requirements and test procedures that may not be as closely tailored to avoiding the types of crashes contemplated by the K.T. Safety Act. Further, we note that backover crashes involving vehicles with a GVWR less than 10,000 lbs represent a significant majority of both fatalities and injuries. As this rulemaking has continuously focused exclusively on vehicles covered by the K.T. Safety Act, to introduce requirements regarding other vehicles in today’s final rule would raise questions regarding the sufficiency of the scope of notice of this rulemaking. Thus, today’s final rule declines to introduce such requirements at this time.

FMCSA Decision

The purpose of FMVSS No. 111 is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear. While both Advocates and OOIDA note that the use of camera-based technology for rear visibility may have merit for use in CMVs, and such technologies will be used by light vehicle manufacturers to meet the newly adopted requirements of FMVSS No. 111, the Atwood application did not provide sufficient evidence to demonstrate that the use of a camera system installed at the sides and rear of CMVs *in lieu of* rear-vision mirrors as specified in the FMCSRs would be able to provide an equivalent level of safety when compared to a compliant vehicle.

Based on the above, FMCSA denies the Atwood exemption application. FMCSA is unable to determine—as required for an exemption by 49 CFR

381.305(a)—that Atwood would be able to maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

FMCSA notes that while Atwood's use of the camera-based system in lieu of the rear vision mirrors required via § 393.80 is denied, § 393.3 of the FMCSRs expressly permits the use of additional equipment and accessories (such as the camera-based rear vision system), not inconsistent with or prohibited by the FMCSRs, provided that such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

Issued on: November 30, 2015.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2015-30803 Filed 12-4-15; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 746X)]

CSX Transportation, Inc.— Abandonment Exemption—in Grant County, W. Va.

On November 17, 2015, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 0.66-mile rail line between milepost BUA 15.72 and milepost BUA 16.38, the end of the line, on the Mt. Storm Railroad Track, in Grant County, W. Va. (the Line). The Line includes the station of OP5L 56150 (FSAC 76373), which will remain open, and traverses United States Postal Service Zip Code 26739.

According to CSXT, the Western Maryland Railway Company, a predecessor to CSXT, leased approximately 16.38 miles of track and land (between mileposts BUA 0.0 and 16.38), from the predecessor of the Virginia Electric and Power Company

(VEPCO), the only shipper on the Line, in order to serve VEPCO's Mt. Storm Power Station. CSXT states that, even though it does not own the Line, it is the only common carrier operating over the Line, and it is seeking to abandon the Line in order to terminate its common carrier obligation.

Further, CSXT states that VEPCO operates over the industry track east of milepost BUA 16.38. In addition, CSXT and VEPCO have agreed to amend their lease agreement, excluding the final 0.66 miles of the Line from the lease in order for VEPCO to construct and operate a new coal yard and rapid coal dumper. CSXT states that, upon a grant of abandonment authority, CSXT will reclassify the Line as yard track for VEPCO's use, and the land and track will be returned to VEPCO. Finally, CSXT states that it will not salvage the Line.¹

According to CSXT, the Line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 4, 2016.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,600 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under

¹ CSXT states it will continue to provide service to VEPCO beginning at milepost BUA 15.72.

49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 24, 2015. Each trail request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 746X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001; and (2) Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204. Replies to the petition are due on or before December 24, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245-0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at WWW.STB.DOT.GOV.

Decided: December 1, 2015.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2015-30769 Filed 12-4-15; 8:45 am]

BILLING CODE 4915-01-P



FEDERAL REGISTER

Vol. 80

Monday,

No. 234

December 7, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Wildlife and Plants; 12-Month Finding for 7 Foreign Species of Elasmobranchs Under the Endangered Species Act; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 150909839–5839–01]

RIN 0648–XE184

Endangered and Threatened Wildlife and Plants; 12-Month Finding for 7 Foreign Species of Elasmobranchs Under the Endangered Species Act

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

ACTION: Proposed rule; 12-month petition finding; request for comments.

SUMMARY: We, NMFS, have completed comprehensive status reviews under the Endangered Species Act (ESA) for seven foreign marine elasmobranch species in response to a petition to list those species. These seven species are the daggernose shark (*Isogomphodon oxyrinchus*), Brazilian guitarfish (*Rhinobatos horkelii*), striped smoothhound shark (*Mustelus fasciatus*), narrownose smoothhound shark (*Mustelus schmitti*), spiny angel shark (*Squatina guggenheim*), Argentine angel shark (*Squatina argentina*), and graytail skate (*Bathyrja griseocauda*). Based on the best scientific and commercial information available, and after taking into account efforts being made to protect these species, we have determined that the daggernose shark (*I. oxyrinchus*), Brazilian guitarfish (*R. horkelii*), striped smoothhound shark (*Mustelus fasciatus*), and Argentine angel shark (*S. argentina*) meet the definition of an endangered species under the ESA. We have determined that the narrownose smoothhound shark (*M. schmitti*) and spiny angel shark (*S. guggenheim*) meet the definition of a threatened species under the ESA. Therefore, we propose to list these six species under the ESA. Additionally, we have determined that the graytail skate (*B. griseocauda*) does not warrant listing under the ESA at this time. We are not proposing to designate critical habitat for any of the species proposed for listing because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are currently essential to the conservation of any of these species. We are soliciting comments on our proposal to list these six foreign marine elasmobranch species.

DATES: Comments on this proposed rule must be received by February 5, 2016. Public hearing requests must be made by January 21, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0161, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/

- *Mail:* Submit written comments to NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

- *Mail:* Submit written comments to NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

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 personally identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

You can find the petition, status review report, **Federal Register** notices, and the list of references electronically on our Web site at <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources (OPR), (301) 427–8403 or Chelsey Young, NMFS, OPR, (301) 427–8491.

SUPPLEMENTARY INFORMATION:**Background**

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species as threatened or endangered under the Endangered Species Act (ESA). This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 27 of the 81 species and announced the initiation of status reviews for each of the 27 species (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). This document

addresses the findings for 7 of those 27 species: daggernose shark (*Isogomphodon oxyrinchus*), Brazilian guitarfish (*Rhinobatos horkelii*), striped smoothhound shark (*Mustelus fasciatus*), narrownose smoothhound shark (*Mustelus schmitti*), spiny angel shark (*Squatina guggenheim*), Argentine angel shark (*Squatina argentina*), and graytail skate (*Bathyrja griseocauda*). The status of, and relevant **Federal Register** notices for, the other 20 species can be found on our Web site at <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we consider first whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (the DPS Policy; 61 FR 4722). The DPS Policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the DPS Policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted. Based on the scientific information available we determined that the daggernose shark (*I. oxyrinchus*), Brazilian guitarfish (*R. horkelii*), striped smoothhound shark (*M. fasciatus*), narrownose smoothhound shark (*M. schmitti*), spiny angel shark (*S. guggenheim*), Argentine angel shark (*S. argentina*), and graytail skate (*B. griseocauda*) are “species” under the ESA. There is nothing in the scientific literature indicating that any of these species should be further divided into subspecies or DPSs.

Section 3 of the ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as

one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term “foreseeable future.” It is appropriate to interpret “foreseeable future” as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any of the following factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. Under section 4(b)(1)(A), we are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species’ status and after taking into account efforts being made by any state or foreign nation to protect the species.

Status Reviews

Status reviews for the petitioned species addressed in this finding were conducted by a contractor for the NMFS Southeast Fisheries Science Center and are available at <http://www.nmfs.noaa.gov/pr/species/petition81.htm> or on the respective species pages found on the Office of

Protected Resources Web site (<http://www.nmfs.noaa.gov/pr/species/index.htm>). These status reviews compiled information on each species’ biology, ecology, life history, and threats from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. The draft status review reports (Casselberry and Carlson 2015 a–g) were submitted to independent peer reviewers and comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the draft report. The peer review report is available at http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html. These status reviews did not include extinction risk analyses for the species; thus, the extinction risk analyses for the seven species are included in this 12-month finding. In addition to the status review reports, we considered information submitted by the public in response to our petition finding as well as information we compiled to assess the extinction risk of the species to make our determinations.

Extinction Risk Analyses

We considered the best available information and applied professional judgment in evaluating the level of risk faced by each of the seven species. For each extinction risk analysis, we evaluated the species’ demographic risks (*demographic risk analysis*), such as low abundance and productivity, and threats to the species including those related to the factors specified by the ESA section 4(a)(1)(A)–(E) (*threats assessment*), and then synthesized this information to estimate the extinction risk of the species (*risk of extinction*).

The demographic risk analysis, mentioned above, is an assessment of the manifestation of past threats that have contributed to the species’ current status and informs the consideration of the biological response of the species to present and future threats. For this analysis, we considered the demographic viability factors developed by McElhany *et al.* (2000). The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped and great hammerhead sharks, and black abalone (see <http://www.nmfs.noaa.gov/pr/species/> for links to these reviews). In this approach, the collective condition of individual populations is considered at the species

level according to four demographic viability factors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

In conducting the threats assessment, we identified and summarized the section 4(a)(1) factors that are currently operating on the species and their likely impact on the biological status of the species. We also looked for future threats (where the impact on the species has yet to be manifested) and considered the reliability to which we could forecast the effects of these threats and future events on the status of these species.

Using the findings from the demographic risk analysis and threats assessment, we evaluated the overall extinction risk of the species. Because species-specific information (such as current abundance) is sparse, qualitative “reference levels” of risk were used to describe extinction risk. The definitions of the qualitative “reference levels” of extinction risk were as follows: “Low Risk”—a species is at a low risk of extinction if it exhibits a trajectory indicating that it is unlikely to be at a moderate level of extinction risk in the foreseeable future (see description of “Moderate Risk” below). A species may be at low risk of extinction due to its present demographics (*i.e.*, stable or increasing trends in abundance/population growth, spatial structure and connectivity, and/or diversity) with projected threats likely to have insignificant impacts on these demographic trends; “Moderate Risk”—a species is at moderate risk of extinction if it exhibits a trajectory indicating that it will more likely than not be at a high level of extinction risk in the foreseeable future (see description of “High Risk” below). A species may be at moderate risk of extinction due to its present demographics (*i.e.*, declining trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience) and/or projected threats and its likely response to those threats; “High Risk”—a species is at high risk of extinction when it is at or near a level of abundance, spatial structure and connectivity, and/or diversity that place its persistence in question. The demographics of the species may be strongly influenced by stochastic or compensatory processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.*, confinement to a small geographic area; imminent destruction,

modification, or curtailment of its habitat; or disease epidemic) that are likely to create such imminent demographic risks.

Below we summarize information from the status review reports and information we compiled on the seven foreign marine elasmobranch species, analyze extinction risk of each species, assess protective efforts to determine if they are adequate to mitigate existing threats to each species, and propose determinations based on the status of each of the seven foreign marine elasmobranch species.

Daggernose Shark (*Isogomphodon oxyrhynchus*)

Species Description

The daggernose shark (*Isogomphodon oxyrhynchus*) is the only species in the genus *Isogomphodon*, in the family Carcharhinidae (Compagno 1988). It has a uniform gray or gray-brown color and white underside (Compagno 1984; Compagno 1988; Grace 2001), and is identified by its prominent, elongated snout. The pectoral fins of the species are very large and paddle-shaped (Compagno 1984; Compagno 1988; Grace 2001).

Range and Habitat Use

The daggernose shark occurs in the central western Atlantic Ocean and Caribbean Sea and has been reported along the coasts of Venezuela, Trinidad, Guyana, Suriname, French Guiana, and northern Brazil (Lessa *et al.* 2006a). The Brazilian range includes the states of Amapá, Pará, and Maranhão, with Tubarão Bay in Maranhão as its easternmost limit (Silva 2004; Lessa *et al.* 1999a). The daggernose shark has one of the smallest ranges of any elasmobranch species (Lessa *et al.* 2000). It is a coastal species that is commonly found in estuaries and river mouths in tropical climates and is most abundant in these areas during the Amazonian summer (*i.e.*, the rainy season) (Compagno 1984; Compagno 1988; Lessa 1997; Lessa *et al.* 1999a; Lessa *et al.* 2006b; Grace 2001). These sharks are often found in association with mangrove coastlines, occur in highly turbid waters and in low lying and indented coastlines that can have tide changes that vary as much as 7 meters (m) (Martins-Juras *et al.* 1987; Lessa *et al.* 1999a). Daggernose sharks occur in water depths between 8 m and 40 m, temperatures ranging from 21.5 °C to 31.5 °C and salinities between 13.96 and 33.60 ppt (Lessa 1997; Lessa *et al.* 1999a, b). Salinity is considered a determining factor for the distribution of the species, but does not prevent the

capture of daggernose sharks in shallow waters during the rainy season when waters are less saline (Lessa 1997). Specific winter habitats of the daggernose shark are unknown.

Diet and Feeding

Little is known about the diet and feeding of the daggernose shark. Bigelow and Schroeder (1948) and Compagno (1984) suggest that they feed on schooling fishes, such as clupeids, sciaenids, herring, anchovies, and croakers. It is speculated that their small eyes and elongated snout emphasize the use of their rostral sense organs over eyesight when hunting in turbid waters (Compagno 1984). In Marajó Bay in Brazil, daggernose sharks were found eating catfish (Family Ariidae) (Barthem 1985).

Growth and Reproduction

Growth rates of daggernose sharks are similar between males and females, with an estimated growth rate from birth to age 1 calculated to be approximately 14 cm/year (Lessa *et al.* 2000). This rate then slows to approximately 10 cm/year from age 1 to 5–6 for males and age 1 to 6–7 for females (Lessa *et al.* 2000). Thus, estimated ages at maturity are 5–6 years for males and 6–7 years for females. In terms of size, male daggernose sharks begin maturing between 90 cm and 110 cm total length (TL), with fully adult males observed at sizes larger than 119 cm TL in the field (Lessa *et al.* 1999a). According to von Bertalanffy growth parameters, size at maturity is 103 cm TL for males and about 115 cm TL for females (Lessa *et al.* 2000), although the smallest pregnant female recorded was 118 cm long (Lessa *et al.* 1999a). After maturity is reached, growth rates decrease to less than 10 cm/year (Lessa *et al.* 2000). Maximum age is estimated to be approximately 20 years based on converting the length of a 160 cm TL female with parameters from the von Bertalanffy growth equation, although the largest male caught was 144 cm TL, corresponding to an age of 13 years old, and the oldest aged individuals from vertebrae analyses were of a 7 year old male and a 12 year old female (Lessa *et al.* 2000).

The reproductive cycle of daggernose sharks in Brazil is synchronized with the rain cycle. The rainy season runs from January to June and the dry season runs from July to December. A study by Lessa *et al.* (1999a) found that 70 percent of the pregnant females collected during the study in the rainy season were carrying a recently fertilized egg or very small embryo, suggesting that the ovulation period

takes place at the end of the dry season or at the beginning of the rainy season (Barthem 1985). The gestation period is approximately 12 months, with a protracted birthing period throughout the 6-month rainy season (Lessa *et al.* 1999a; Lessa *et al.* 2006b). Mature females captured with flaccid uteri and white follicles indicate that there is a break in follicle development between two successive pregnancies, which indicates a 2-year reproductive cycle (Lessa *et al.* 1999a). Mating and gestation periods can also be postponed to compensate for climate variability and changing environmental conditions across years (Lessa *et al.* 1999a). Female fecundity is low, commonly ranging between 3 to 7 embryos per female, with the largest litter observed containing 7 embryos, and one report of a female with 8 embryos (Bigelow and Schroeder 1948; Barthem 1985; Lessa *et al.* 1999a). There is no significant relationship between female size and litter size in daggernose sharks (Lessa *et al.* 1999a).

Genetics and Population Structure

Studies examining the genetics of the species or information on its population structure could not be found.

Demography

Based on the above life history parameters, and following methods in Cortés (2002) for estimating survivorship, Casselberry and Carlson (2015a) estimated productivity (as intrinsic rate of population increase, “*r*”) at 0.004 year⁻¹ (median) within a range of –0.040–0.038 (5 percent and 95 percent percentiles) (Carlson unpublished). Median generation time was estimated at 10.6 years, the mean age of parents of offspring of a cohort (μ_1) was 10.7 years and the expected number of replacements (R_0) was 1.05. Lessa *et al.* (2010) estimated annual population growth to be $r = -0.048$ under natural mortality rates (of 0.28 using the Hoenig (1984) method and 0.378 using the Pauly (1980) method), and a generation time of 9 years. If fishing mortality rates were incorporated, the annual population growth was estimated to be $r = -0.074$, with a generation time of 8.4 years (Lessa *et al.* 2010). These demographic parameters place daggernose sharks towards the slow growing end of the “fast-slow” continuum of population parameters calculated for 38 species of sharks by Cortés (2002), which means this species generally has a low potential to recover from exploitation.

Historical and Current Distribution and Population Abundance

In Brazil, daggernose sharks were historically found in the states of Amapá, Pará, and Maranhão, and were first formally recorded in surveys from the 1960s in the state of Maranhão (Lessa 1986). In 1999, daggernose sharks were documented as occurring in two Marine Conservation Areas in northern Brazil, the Parque Nacional Cabo Orange in Amapá, and the Reentrâncias Maranhenses in Maranhão (Lessa *et al.* 1999b). However, in recent years, the absence of daggernose sharks in areas where they were previously common has been noted. For example, in the Bragança fish market in northern Brazil (State of Pará), daggernose sharks were once among the most common shark species sold in the market. However, a genetic analysis of shark carcasses collected from this fish market between 2005 and 2006 found no evidence of daggernose sharks being sold in the market (Rodrigues-Filho *et al.* 2009). Although the species' absence in fish markets could indicate obedience of Brazilian law, which prohibited the catch of daggernose sharks in 2004, it has been noted that these laws are poorly enforced and frequently ignored (see discussion of *Inadequacy of Existing Regulatory Mechanisms* below). Additionally, while daggernose sharks were once caught abundantly in Maranhão prior to 1992, they were notably absent in research surveys conducted from November 2006 to December 2007 (Almeida *et al.* 2011). Based on the species' life history parameters and rates of fishing mortality, population abundance was estimated to have declined by 18.4 percent per year for 10 years from the mid-1990s to mid-2000, resulting in a total population decline of over 90 percent (Santana and Lessa 2002; Rosa and Lima 2005; Kyne *et al.* 2012).

Very little information is available on the distribution and abundance of the daggernose shark outside of Brazil. While undated catch records exist across the entire coastline of French Guiana, records are scarce throughout Suriname, Guyana, and Trinidad and Tobago (Bigelow and Schroeder 1948; Springer 1950; Compagno 1988; Global Biodiversity Information Facility (GBIF) 2013). Additionally, although Lessa *et al.* (1999a) includes Venezuela as part of the daggernose shark range (citing Cervigón 1968), no other information could be found regarding the present existence of the daggernose shark in Venezuela. Given the species' sensitive biological traits to exploitation and evidence of high artisanal fishing

pressure, it is assumed that dramatic population declines have occurred in the last decade throughout this part of the species' range, similar to the levels documented in Brazil, but scientific data on population trends are severely lacking for this region (Kyne *et al.* 2012).

Summary of Factors Affecting the Daggernose Shark

We reviewed the best available information regarding historical, current, and potential threats to the daggernose shark species. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be exacerbated by the species' natural biological vulnerability to overexploitation, which has led to significant declines in abundance and subsequent extirpations from areas where the species was once commonly found. We find current regulatory measures inadequate to protect the species from further overutilization. Hence, we identify these factors as additional threats contributing to the species' risk of extinction. We summarize information regarding these threats and their interactions below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction or modification, disease, predation or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015a) for discussion of these ESA section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on historical catch data and trends, the primary threat to daggernose sharks is overutilization in artisanal fisheries. Given its rather shallow depth distribution, in Brazil, the species is bycaught in the artisanal gillnet fisheries for Spanish mackerel (*Scomberomorus brasiliensis*) and king weakfish (*Cynoscion acoupa*), which operate inside or near estuary mouths. Historically, the species was caught in large numbers along the northern Brazilian coastline and represented a significant component of the artisanal gillnet bycatch. For example, in the State of Pará, daggernose sharks represented close to 70 percent of the artisanal catch in the 1980s during the Amazonian summer (Lessa *et al.* 2010). Farther south, off the Maranhão coast, harvest of daggernose sharks would begin in October and peak in January, with the catch per unit effort (CPUE) of

these sharks in gillnets ranging from 6.04 kilogram (kg)/km/hour up to 71 kg/km/hour (during the peak in the rainy season) in the early 1990s. However, due to the species' sensitive life history traits, this high level of fishing mortality was found to be unsustainable, causing the daggernose shark population to decrease by 18.4 percent per year in the 1990s. By 1999, the percentage of daggernose sharks in the artisanal gillnet bycatch along the Brazilian coast had significantly decreased, with daggernose sharks comprising only around 7–10 percent of the elasmobranch incidental catch (Lessa *et al.* 1999b; Lessa *et al.* 2000). By 2004 and 2006 the species was no longer observed or recorded in the states of Pará (Lessa *et al.* 2010) or Maranhão (Almeida *et al.* 2011), respectively, based on data from research surveys conducted in these regions.

Artisanal fisheries operating off Brazil continue to exert significant fishing pressure on the daggernose shark, which is likely contributing to fishing mortality rates that historically resulted in the substantial decline of the species. As such, overutilization continues to be a threat to the species as these fisheries are still highly active throughout its range. In fact, in the North region of Brazil (which includes the States of Amapá and Pará), the artisanal sector accounts for more than 80 percent of the total landings from this region and represents around 40 percent of the total artisanal landings for the entire country. These fisheries tend to be concentrated in areas where the daggernose shark would most likely occur, including the Amazon River estuary, small estuaries and bays, and shallow coastal waters within the extensive mangrove area that covers the northern coast of Brazil (Vasconcello *et al.* 2011). In the Northwest region of Brazil (which includes the States of Maranhão south to Bahia), the artisanal sector is also the dominant fishing sector, accounting for more than 60 percent of the total landings from this region. The king weakfish fishery, which was noted as one of the main artisanal gillnet fisheries responsible for bycatching daggernose sharks, remains one of the most important fisheries in Brazil as evidenced by the fact that the species was the 4th most landed marine fish in terms of volume in 2011 (21,074.2 t; Ministério da Pesca e Aquicultura (MPA) 2011). Together, the artisanal landings from these regions represent over 80 percent of the total artisanal landings for the entire country (Ministério do Meio Ambiente/Instituto Brasileiro do Meio Ambiente e dos

Recursos Naturais Renováveis (MMA/IBAMA) 2007).

These artisanal fishing practices and effort levels, which caused declines in daggernose shark populations off Brazil, are likely similar in Venezuela, Trinidad and Tobago, Guyana, Suriname, and French Guiana (which comprises the other half of the species' range). These countries have a substantial artisanal fishing sector presence, with catches from artisanal fishing comprising up to 80 percent of the total fish landings. In French Guiana, sharks alone comprised 40.4 percent of the annual artisanal landings for the local market (Harper *et al.* 2015). However, as noted in the *Inadequacy of existing regulatory mechanisms* section, due to minimal controls of these artisanal fisheries, including lack of enforcement capabilities of existing regulations, the available data indicate that many of these country's coastal marine resources are fully to overexploited (Food and Agriculture Organization of the United Nations (FAO) 2005a, 2005b, 2006, 2008). In Trinidad and Tobago, for example, it is estimated that the artisanal fleet catches between 75 and 80 percent of the total landings from these islands (FAO 2006). Of concern, as it relates to overutilization of the daggernose shark, is the fact that Trinidad and Tobago have an open access fishery for the artisanal sector, which means there are no restrictions on the numbers and types of vessels, fishing gear, or trips (FAO 2006; Mohammed and Lindop 2015). In other words, any local vessel is allowed to enter the fishery and catch as much they can handle, with no restriction on fishing effort (FAO 2006). Similarly, Guyana also operates an open access fishery for its artisanal gillnet sector. Given that artisanal fishing for groundfish in Guyana, which comprises one of the country's two main fishing activities (the other being direct exploitation of shrimp by trawlers), is predominantly conducted using gillnets, open access fisheries cover a significant portion of the fishery sector for the country (FAO 2005a).

As noted above, this essentially unregulated artisanal fishing throughout the Atlantic Caribbean, employing unselective net gear and concentrated in inshore coastal waters where daggernose sharks would primarily occur, has led to the overexploitation of many marine species, including sharks. However, there is virtually no information available on daggernose shark catches from the Caribbean countries in the daggernose shark range. These countries report general shark landings to the FAO but, in addition to these catches

being significantly underestimated (on the order of 2.6 times for Trinidad and Tobago (Mohammed and Lindop 2015); 1.6 times for Guyana (Macdonald *et al.* 2015); 3.4 times for Suriname (Hornby *et al.* 2015); and 4 times for French Guiana (Harper *et al.* 2015)), daggernose sharks are not specifically identified in the catches (Shing 1999). However, historical and more recent information suggests daggernose sharks were and may still be utilized. Although the value of daggernose shark fins is low, its meat has been sold in markets from artisanal fisheries for decades (Lessa *et al.* 2006a), with Bigelow and Schroeder (1948) recording daggernose shark meat in markets in Trinidad and Tobago and noting its likelihood in markets in Guyana. Therefore, given the evidence of utilization of the species, as well as the significant fishing effort by artisanal fishing fleets throughout the daggernose shark range, including unregulated access to fishing grounds where the shark occurs, the observed absence of the daggernose shark in recent years can likely be attributed to overutilization of the species to the point where overutilization is significantly contributing to its risk of extinction.

Inadequacy of Existing Regulatory Mechanisms

Throughout the species' range, species-specific protection for daggernose sharks is only found in Brazil. In 2004, the daggernose shark was first listed in Annex I of Brazil's endangered species list: "Lista Nacional Oficial de Espécies da Fauna Ameaçadas de Extinção—Peixes e Invertebrados Aquáticos" (Silva 2004). An Annex I listing prohibits the catch of the species except for scientific purposes, which requires a special license from the Brazilian Institute of Environment and Renewable Resources (IBAMA) (Silva 2004). This protection was renewed in December 2014, when the daggernose shark was listed as "critically endangered" on the most recent version of the Brazilian endangered species list approved by the Ministry of the Environment (Directive No 445). "Critically endangered" on this list is defined as a species that presents an extremely high risk of extinction in the wild in the near future due to profound environmental changes or high reduction in population, or significant decrease in the taxon's range. In addition to the landing prohibition, daggernose sharks also receive protection when they occur within two of Brazil's marine protected areas (MPAs): The Parque Nacional Cabo Orange and the Reentrâncias Maranhenses (Lessa *et al.* 1999b);

however, the last time they were reported in these areas was in 1999.

Although Brazil has a number of regulations in place to protect endangered or threatened species, like the ones described above for daggernose sharks, it is generally recognized that these regulations are poorly enforced, particularly within artisanal fisheries (Lessa *et al.* 1999b; Amaral and Jablonski 2005; Almeida *et al.* 2011; Rodrigues-Filho *et al.* 2012). Poverty, lack of education within the artisanal fisheries sector, and increased artisanal fishing effort, especially in the State of Maranhão, have already contributed to the decline of many elasmobranch populations, including the daggernose shark (Lessa *et al.* 1999b), despite the existence of protective legislation and marine protected areas. As such, effective conservation appears to be lacking in Brazil (Lessa *et al.* 1999b; Amaral and Jablonski 2005), with existing regulatory mechanisms likely inadequate to protect the daggernose shark from further fishery-related mortality.

In December 2014, the Brazilian Government's Chico Mendes Institute for Biodiversity Conservation approved an FAO National Plan of Action (NPOA) for the conservation of sharks (hereafter referred to as FAO NPOA-sharks) for Brazil (No. 125). The plan considers the daggernose shark to be one of the country's 12 species of concern and recommends a moratorium on fishing with the prohibition of sales until there is scientific evidence in support of recovery (Lessa *et al.* 2005). Additionally, it proposes the expansion of the Reentrâncias Maranhenses (where daggernose sharks were observed in 1999) to include the marine coastal zone and banks, providing additional protection to the sharks from potential fishery-related mortality. The plan recommends increased effort monitoring of vessels using nets in the area and increased education to encourage the release of live daggernose sharks and prevent the landing of the species. In general the plan sets short term goals for improved data collection on landings and discards, improved compliance and monitoring by the IBAMA, supervision of elasmobranch landings to ensure fins are landed with carcasses, the creation of a national port sampler program, and intensified on-board observer monitoring programs. Mid-term goals include increased monitoring and enforcement within protected areas as well as the creation of new protected areas based on essential fish habitat for the 12 species of concern. It also calls for improved monitoring of fishing from beaches in coastal and estuarine

environments. Long term goals call for improved ecological data and stock assessments for key species as well as mapping of elasmobranch spatiotemporal distributions. This data will be used to better inform the creation of protected areas and seasonal fishing closures. However, as stated above, the plan was only just approved as of December 2014, and will not be fully implemented for another 5 years. Even if the recommendations outlined in the plan are implemented in the future, it remains uncertain if they will be effective as the best available information suggests that current regulatory measures in Brazil to protect vulnerable species are poorly enforced, particularly within artisanal fisheries.

Outside of Brazil, there is limited information on shark fishing regulations or their adequacy for protecting daggernose sharks from overutilization. In Guyana and Trinidad and Tobago, gillnet fisheries are restricted to using nets of 900 ft or less with no more than a 15-foot depth; however, currently, there are no minimum size restrictions or catch quotas for sharks in either country (Shing 1999). As mentioned previously, both countries have open access fisheries (however, in Guyana the open access fishery only applies to the artisanal gillnet fishery) (FAO 2005a, 2006). In the late 1990s a fisheries management plan was drafted for Trinidad and Tobago, which prohibited the use of monofilament gillnets less than 4.75" stretch mesh and developed a licensing system (Shing 1999); however, no further details about the plan, including effectiveness or enforcement of these regulations, could be found. According to Casselberry and Carlson (2015a), in the summer of 2013, Guyana's Fisheries Department within the Ministry of Agriculture passed a 5-year Fisheries Management Plan for Guyana to run from 2013 to 2018, with one aspect of this plan meant to address shark fishing, but no further details could be found at this time. Enforcement of existing fishery regulations is also lacking due to insufficient resources, with minimal control over the fisheries resulting in increasing competition and conflicts among fishermen and between fishing fleets and, consequently, overfishing of marine resources (FAO 2005a, 2005b, 2006, 2008). No other pertinent information could be found on shark fishing regulations or their adequacy in controlling the exploitation of sharks, and more specifically daggernose sharks.

Extinction Risk

Although accurate and precise population abundance and trend data for the daggernose shark are lacking, best available information provides multiple lines of evidence indicating that this species currently faces a high risk of extinction. Below, we present the demographic risk analysis, threats assessment, and overall risk of extinction for the daggernose shark.

Demographic Risk Analysis

Abundance

There is a significant lack of abundance information for *I. oxyrinchus* throughout its range. In northern Brazil, the relatively recent (2004–2009) absence of the species in fish markets where they were once abundantly sold, in addition to their absence in fishery-independent research surveys in areas where they were commonly caught prior to 1992, suggests the species has suffered significant declines in population abundance. Based on the daggernose shark's life history parameters and rates of fishing mortality, the population abundance in northern Brazil is estimated to have declined by 18.4 percent per year from the mid-1990s to mid-2000, resulting in a total population decline of at least 90 percent in approximately half of the species' known range. Although abundance information from the other parts of the species' range, including off Venezuela, Trinidad, Guyana, Suriname and French Guiana, is presently unavailable, it is thought that these populations have suffered similar declines based on the species' biological vulnerability and susceptibility to artisanal fisheries operating in these areas. Given the continued artisanal fishing pressure throughout the species' range, coupled with the species' present rarity and its potential extirpation in areas where it was previously abundant, it is likely that the species is still in decline, with current abundance trends and levels contributing significantly to its risk of extinction.

Growth Rate/Productivity

The daggernose shark has extremely low productivity. Litter sizes range from 2–8 pups, with a 1-year gestation period and a year of resting between pregnancies. In other words, annual fecundity averages only 1–4 pups because of the species' biennial reproductive periodicity. Using these life history parameters, Casselberry and Carlson (2015a) estimated a productivity (as the intrinsic rate of population increase) of $r = 0.004 \text{ year}^{-1}$ (median)

within a range of -0.040 – 0.038 (Carlson unpublished). Under natural mortality rates, Lessa *et al.* (2010) estimated annual population growth to be negative, with an $r = -0.048$ and a generation time of 9 years. When fishing mortality was considered, the estimate of r decreased even further, to -0.074 , with a generation time of 8.4 years. Considering the daggernose shark has already undergone substantial population declines, and is still susceptible to fishing mortality in the active artisanal fisheries throughout its range, the species' extremely low productivity (with estimates of negative annual population growth rates) is likely significantly contributing to its risk of extinction.

Spatial Structure/Connectivity

Very limited information is available regarding spatial structure and connectivity of the daggernose shark populations. The best available information suggests the daggernose shark has a very restricted range, one of the smallest of any elasmobranch species, and, as such, an increased vulnerability to extinction from environmental or anthropogenic perturbations. In addition, the substantial declines in the Brazilian population and subsequent absence of the species in areas it was previously known to occur, as well as its rarity throughout the rest of its range, suggest the species likely exists as patchy and small populations, which may limit connectivity. However, there is not enough information to identify critically important populations to the taxon as a whole, or determine whether the rates of dispersal among populations, metapopulations, or habitat patches are presently posing a risk of extinction.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. Although it is unknown if *I. oxyrinchus* has experienced a loss of diversity, the significant decline estimated for the population in northern Brazil (comprising approximately half of its known range), as well as the likely small populations elsewhere throughout its range, suggest the species may be at an increased risk of random genetic drift and could experience the fixing of

recessive detrimental genes, reducing the overall fitness of the species.

Threats Assessment

The primary threat to the daggernose shark is overutilization in artisanal fisheries. In Brazil, the species is bycaught in the artisanal gillnet fisheries for Spanish mackerel and king weakfish. Historically, the species comprised up to around 70 percent of the artisanal catch during the Amazonian summer in the State of Pará, and was caught in large numbers by the artisanal gillnet fisheries operating on the Maranhão coast in Brazil. However, given the extremely low productivity of the species and vulnerability to depletion, this level of exploitation resulted in substantial declines (estimated at over 90 percent) to the point where the species is no longer found in fish markets or observed in trawl and research survey data. The artisanal gillnet fisheries that were responsible for this decline are still active throughout the species' range and likely exerting similar fishing pressure that historically resulted in the substantial decline of the daggernose shark populations. In fact, together, the artisanal landings from the North region of Brazil (which includes the States of Amapá and Pará) and Northwest region (which includes the States of Maranhão south to Bahia), the areas where daggernose sharks were once historically abundant, represent over 80 percent of the total artisanal landings for the entire country, indicating the importance and, hence, likely continuation of this type of fishing in these regions. Notably, the king weakfish fishery, which was reported as one of the two main artisanal gillnet fisheries responsible for bycatching daggernose sharks, remains one of the most important fisheries in Brazil.

Artisanal gillnet fisheries are also active in the other parts of the species' range, including Venezuela, Trinidad and Tobago, Guyana, Suriname, and French Guiana, with likely similar fishing practices. Although landings data from these countries are unknown, the available information suggests that artisanal fishing pressure is high and that the species has been taken in small numbers by local fishermen in these countries, with daggernose sharks historically sold in markets in Trinidad and likely Guyana. Given the species' susceptibility to depletion from even low levels of fishing mortality, it is highly likely that overutilization by artisanal fisheries operating throughout the species' range is a threat that is significantly contributing to its risk of extinction.

In 2004, the daggernose shark was listed on Brazil's endangered species list, and as of 2014, was classified as "critically endangered." Additionally, it is listed as one of 12 species of concern under Brazil's FAO NPOA-sharks. However, the implementation and effectiveness of the recommendations outlined in this plan remain uncertain, with the best available information indicating that current regulatory measures in Brazil to protect vulnerable species are poorly enforced, particularly in artisanal fisheries (the fishery sector that poses the biggest threat of overutilization of the species). In addition, there appears to be a lack of adequate fishing regulations to control the exploitation of the daggernose shark in the other parts of its range, and, as such, the inadequacy of existing regulatory measures is a threat that further contributes to the extinction risk of the species.

Risk of Extinction

Although there is significant uncertainty regarding the current abundance of the species, the species' population growth rate and productivity estimates indicate that the species has likely suffered significant population declines (of up to 90 percent) throughout its range and will continue to decrease without adequate protection from overutilization. The species' restricted coastal range, combined with its recent (2004–2009) absence in areas where it was once commonly found, as well as its present rarity throughout the rest of its range (with the last record of the species from 1999) indicate potential local extirpations and suggest an increased likelihood that the species is strongly influenced by stochastic or compensatory processes. This vulnerability is further exacerbated by the present threats of overutilization and inadequacy of existing regulatory measures that will significantly contribute to the decline of the existing populations (based on its demographic risks) into the future, compromising the species' long-term viability. Therefore, based on the best available information and the above analysis, we conclude that *I. oxyrinchus* is presently at a high risk of extinction throughout its range.

Protective Efforts

With the exception of the recommendations within Brazil's FAO NPOA-sharks (discussed above), we were unable to find any other information on protective efforts for the conservation of daggernose sharks in Brazil, Venezuela, Trinidad and Tobago, Guyana, Suriname, or French Guiana that would potentially alter the

extinction risk for the species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the daggernose shark is presently in danger of extinction throughout its range. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory mechanisms throughout its range. The species' natural biological vulnerability to overexploitation and present demographic risks (e.g., low and declining abundance, negative population growth rates, small, fragmented and likely isolated populations, extremely restricted distribution, and very low productivity) are currently exacerbating the negative effects of the aforementioned threats, placing this species in danger of extinction. We also found no evidence of protective efforts for the conservation of daggernose shark that would reduce the level of extinction risk faced by the species. We therefore propose to list the daggernose shark as an endangered species.

Brazilian Guitarfish (*Rhinobatos horkelii*)

Species Description

The Brazilian guitarfish (*Rhinobatos horkelii*) is a member of the order Rajiformes and the family Rhinobatidae (Lessa and Vooren 2007). The species within the family Rhinobatidae are very similar morphologically, which can make them difficult to distinguish from each other (De-Franco *et al.* 2010). The Brazilian guitarfish has long nostrils with transversely flat or a slightly convex crown and has a median row of tubercles (nodules) on its dorsal surface that are large and thorn-like (Lessa and Vooren 2005). The disc width is about 5/6 of the body length, with dorsal fins that are triangular and similar in size (Bigelow and Schroeder 1953). The dorsal side of the Brazilian guitarfish is olive grey or chocolate brown in color and lacks light or dark markings. Additionally, its snout has a "sooty" oval patch (Lessa and Vooren 2005).

Range and Habitat Use

The Brazilian guitarfish is found along the coast of South America in the southwestern Atlantic from Bahia, Brazil to Mar del Plata, Argentina (Figueiredo 1977; Lessa and Vooren 2005, 2007; GBIF 2013). Newborns and

juveniles live year round in coastal waters less than 20 m deep. Adults coexist with immature individuals in shallow waters between November and March, when pupping and mating occur, but spend the rest of the year offshore in waters greater than 40 m depth. In the winter, individuals can be found in water temperatures as low as 9 °C, while in the summer, individuals are found in average water temperatures of 26 °C (Lessa and Vooren 2005). Brazilian guitarfish are commonly found in salinities ranging from 24–28 ppt in northern Argentina (Jaureguizar *et al.* 2006).

Diet and Feeding

There is very little information on the diet or feeding behavior of Brazilian guitarfish. Refi (1973) recorded the stomach contents of six individuals caught in Mar del Plata, Argentina and found that stomachs contained the Patagonian octopus (*Octopus tehuelchus*), shrimp (*Hymenopeneus muelleri*), decapods, isopods, and polychaetes. No other information on diet or feeding could be found.

Growth and Reproduction

Based on a yearly vertebral annulus formation in September, Vooren *et al.* (2005a; citing Lessa (1982)) report the von Bertalanffy growth rate (*k*) for Brazilian guitarfish to be 0.0194, with a theoretical maximum size of 135.5 cm TL and age at maturity between 7 and 9 years for females and 5 and 6 years for males. Similar results were estimated by Caltabellota (2014), with a theoretical maximum size of 121.71 cm TL and *k* = 0.21. No significant differences were found in growth between the sexes. Using two different methods, Caltabellota (2014) also estimated theoretical longevity of 18.24 and 14.17 years for females, and 13.86 and 10.90 years for males. Vooren *et al.* (2005a) found longevity to be longer for both females and males, with estimates of 28 years and 15 years, respectively.

Size at maturity for Brazilian guitarfish is between 90 cm and 120 cm TL for both sexes; the smallest pregnant females recorded were between 91–92 cm TL, and all captured females larger than 119 cm TL were pregnant (Lessa *et al.* 2005a; Lessa and Vooren 2005). The Brazilian guitarfish has an annual reproductive cycle, with lecithotrophic development (*i.e.*, larva depend on the egg's yolk reserve supplied by the mother), and a gestation period lasting approximately 11–12 months (Lessa *et al.* 2005a; Lessa and Vooren 2005). Gravid females live at depths greater than 20 m for most of the year, but migrate into the shallows in the spring

and summer to give birth. Litter sizes range from 4–12 pups and increase with female size (Lessa and Vooren 2005).

Genetics and Population Structure

Studies examining the genetics of the species or information on its population structure could not be found.

Demography

Total natural mortality for Brazilian guitarfish was estimated by Caltabellota (2014) using an age at maturity of 5 years (*i.e.*, an earlier age of maturity than what was reported by Vooren *et al.* (2005a)), and found the estimated total natural mortality from catch curves to be 0.692 for males and 0.751 for females. Modeling of various exploitation scenarios found that under natural conditions, with no fishing mortality, the population would increase by 9 percent each year, with a population doubling time of 7.41 years (Caltabellota 2014). In the presence of fishing mortality and an age at first capture of 2 years, the Brazilian guitarfish population would decline by 25 percent every 2.73 years; however, if the age at first capture was after the age at first maturity (assumed to be 5 years for these models), the population would increase by 4 percent each year (Caltabellota 2014). Based on the life history parameters discussed previously, these demographic parameters indicate that the Brazilian guitarfish generally has a low potential to recover from exploitation, particularly if the species is experiencing fishing pressure on neonates and juveniles.

Historical and Current Distribution and Population Abundance

The Brazilian guitarfish is distributed along the coast of South America, from Bahia, Brazil to Mar del Plata, Argentina. The species' center of distribution lies between 28° and 34° S. and also corresponds to the area where it is most abundant. This area is known as the Plataforma Sul, which includes the continental shelf of southern Brazil and extends from Cabo de Santa Marta Grande (28°36' S.) to Arroio Chuí (33°45' S.). In historical bottom trawl surveys between latitudes 28°00' S. and 34°30' S., *R. horkelii* was common across the Plataforma Sul south of latitude 29°40' S. (Vooren *et al.* 2005a). Annual catch of Brazilian guitarfish in this area was approximately 636 t–1803 t from 1975–1987 (Miranda and Vooren 2003). Research surveys conducted between Chuí and Solidão (Rio Grande do Sul, Brazil) in February 2005 found an average CPUE of 1.68 kg/hr (Vooren

et al. 2005b), but no follow-up surveys were conducted after 2005.

Throughout the rest of its range, there is little information on the abundance of *R. horkelii*, with the species considered to be a rare occurrence. In northern Argentina (34° S.–43° S.), estimated mean biomass of Brazilian guitarfish was 0.1240 t/nm² between 1981 and 1999, with *R. horkelii* comprising only 0.44 percent of the biomass of demersal fish on the northern Argentine continental shelf (Jaureguizar *et al.* 2006). In 1981, biomass of Brazilian guitarfish was calculated to be 0.010 t/nm² in 1981. Estimated biomass then peaked at 0.441 t/nm² in 1994 before falling steadily to 0.007 t/nm² in 1999 (Jaureguizar *et al.* 2006). Biomass estimates reported in Argentina's FAO NPOA-sharks for the coast of Buenos Aires province and Uruguay were 2,597 t in 1994, 661 t in 1998, and 91 t in 1999 (Argentina FAO NPOA-sharks 2009). Along the oceanic coast of Uruguay, *R. horkelii* occurs with low density, with annual catches around 3 t in 2000 and 2001 (Meneses 1999; Paesch and Sunday 2003).

Summary of Factors Affecting the Brazilian Guitarfish (*Rhinobatos horkelii*)

We reviewed the best available information regarding historical, current, and potential threats to the Brazilian guitarfish species. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be exacerbated by the species' natural biological vulnerability to overexploitation, which has led to significant declines in abundance of all life stages, particularly neonates. We find current regulatory measures inadequate to protect the species from further overutilization. Hence, we identify these factors as additional threats contributing to the species' risk of extinction. We summarize information regarding these threats and their interactions below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction or curtailment, disease, predation or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015b) for discussion of these ESA section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on historical catch data and trends, the primary threat to Brazilian guitarfish is overutilization in industrial and artisanal fisheries. Before landings were prohibited in Brazil in 2004, the Brazilian guitarfish was considered to be the only economically important species of the order Rajiformes in southern Brazil, where they were fished and caught in otter trawls, pair trawls, shrimp trawls, beach seines, and bottom gillnets (Haimovici 1997; Mazzoleni and Schwingel 1999; Martins and Schwingel 2003; Lessa and Vooren 2005). Commercial catches of the Brazilian guitarfish primarily occurred between 28° S.–34° S. in Brazil, where the species is most heavily concentrated (Martins and Schwingel 2003; Lessa and Vooren 2005). The pair and simple trawl fleets, which operate on the inner continental shelf and outer shelf, respectively, were responsible for the majority of the commercial *R. horkelli* catch in the 1970s and 1980s (Vooren *et al.* 2005a). Based on historical data, CPUE for the pair trawling fleet was highest from December to March, when adults of the species would concentrate in coastal waters during the summer for birthing and reproduction purposes (making them, as well as their young, more susceptible to being caught in large numbers by the trawlers) (Miranda and Vooren 2003; Vooren *et al.* 2005a). In the winter (April to September), the simple trawl fleet saw an increase in CPUE as both juvenile and adult Brazilian guitarfish migrated to the outer shelf; however, as the species was able to spread out more on the outer shelf, the CPUE of the simple trawl fleet tended to be half of what the pair trawling fleet experienced (Miranda and Vooren 2003; Vooren *et al.* 2005a). Regardless, given the effort and complementary spatial and temporal operations of these fleets, the adult population of Brazilian guitarfish was under high fishing pressure year-round. Consequently, this level of exploitation led to significant decreases in the abundance of the species, as evidenced by the substantial declines in landings and CPUE from both of these fleets. From 1975 to 1986, Brazilian guitarfish were common in the landings of these two fleets that were operating from Rio Grande do Sul, averaging more than 100 t annually in the simple trawl fleet and more than 200 t annually in the pair trawl fleet (Klippel *et al.* 2005). The simple trawl fleet saw maximum landings of Brazilian guitarfish in the years 1976 (228 t) and 1984 (219 t) and

the pair trawl fleet landed a Brazilian industrial fishing record amount of 1,014 t of *R. horkelli* in 1984 (Klippel *et al.* 2005). However, both fleets saw a significant drop in landings and CPUE after 1986. After 1987, landings oscillated between 50 t and 200 t annually for the pair trawl fleet, and from 1991–2000, annual landings did not exceed 10 t for the single trawl fleet (Klippel *et al.* 2005). In terms of CPUE, the simple trawl fleet saw an 84 percent decline between 1975–1986 and 1993–1999, with CPUE decreasing from 0.55 t/trip (range: 0.41–0.94) to 0.09 t/trip (range: 0.04–0.15) for the respective time periods (Vooren *et al.* 2005a). Similarly, the pair trawl fleet CPUE decreased from 1.07 t/trip (range: 0.43–2.38) to 0.18 t/trip (range: 0.09–0.30), an 83 percent decline between the two time periods (Vooren *et al.* 2005a). Based on these landings and CPUE data, the Brazilian guitarfish population on the Plataforma Sul is thought to have collapsed after 1986, with the abundance of the species after 1993 estimated to be around 16 percent of its 1986 level (Vooren *et al.* 2005a).

From 2000 to 2002, increases in CPUE of *R. horkelli* were recorded off Santa Catarina, Brazil, in both pair trawls (from 0.11 t/trip in 2000 to 0.15 t/trip in 2002) and single trawls (from 0.63 t/trip in 2001 to 1.0 t/trip in 2002) (Martins and Schwingel 2003). However, these increases were assumed to be a reflection of changes in operational fishing strategy as opposed to an increase in guitarfish abundance (Martins and Schwingel 2003). In 2000, the single and pair trawl fleets operating out of Itajai (Santa Catarina, Brazil) began fishing in depths of 100 m–200 m on the outer continental shelf and slope between 28° S.–30° S., which was previously unexplored fishing grounds by these trawl fleets (Martins and Schwingel 2003; Vooren *et al.* 2005a). These fleets subsequently caught large amounts of Brazilian guitarfish in the autumn and winter, of which the majority were juveniles (Vooren *et al.* 2005a; Klippel *et al.* 2005). In fact, based on a sample of landings data between 2002 and 2003, juveniles (<90 cm) comprised around 81 to 94 percent of the *R. horkelli* catch from the industrial trawl fleets, and 76 percent in the bottom gillnet fleet (Klippel *et al.* 2005). This increase in *R. horkelli* catch by the industrial fleets was attributed to their fishing in a previously unexplored outer shelf and slope habitat that likely constituted a haven for part of the Plataforma Sul population of Brazilian guitarfish (Martins and Schwingel 2003). Although it was determined that

these fleets were not specifically targeting *R. horkelli* (based on the fact that the species comprised only around 1–2.5 percent of the total catch in 2002 and 2003), decreases in the CPUE of *R. horkelli* between 2002 and 2003 suggest that the population was already being impacted by the increase in fishing pressure in this area (Vooren *et al.* 2005a). Specifically, the *R. horkelli* CPUE of these fleets declined from 663 kg/trip in 2002 to 456 kg/trip in 2003 (Vooren *et al.* 2005a), which equates to a decline of 31 percent and is concerning for a population that has already been fished to such low levels. In fact, in July 2010, the state of São Paulo, Brazil declared the stock of Brazilian guitarfish collapsed due to intense exploitation, with biomass and the stock's reproductive potential at such a level that severely comprises recovery.

In addition to the contribution of the industrial fisheries to the overutilization of the species, artisanal fisheries were also known for catching large quantities of the Brazilian guitarfish in beach seines and fixed nets (Miranda and Vooren 2003; Lessa and Vooren 2005). In fact, before the prohibition of the species, artisanal fisheries, combined with the industrial pair trawl fisheries, caught over 70 percent of the Brazilian guitarfish (Miranda and Vooren 2003). Because these artisanal fisheries operate on the inshore pupping grounds of the species, the guitarfish catch consists primarily of aggregations of pregnant females (around 98 percent of the catch) (Lessa and Vooren 2005). In the 1980s, annual artisanal catches of guitarfish wavered around 600 t–800 t but declined soon after (Lessa, 1982; Miranda and Vooren 2003). In 1992, artisanal landings were estimated at 330 t and by 1997, landings dropped to only 125 t, a decrease that was attributed to a reduction in catches specifically of *R. horkelli* (Miranda and Vooren 2003). Monitoring of 20 artisanal beach seine fishing operations in 2002/2003 documented only a single haul containing *R. horkelli*, and artisanal fishermen now report that catches of Brazilian guitarfish are rare (Vooren *et al.* 2005a). Due to this significant decline in abundance of the species, artisanal fishermen have shifted their focus to fishing for mullet (Vooren *et al.* 2005a). However, they still operate within the *R. horkelli* inshore pupping grounds on the Plataforma Sul, and, as such, the species remains susceptible to incidental capture in beach seines and fixed net fishing gear (Vooren *et al.* 2005a). Recent data also indicate that when Brazilian guitarfish are caught by

artisanal fishermen, the species is not usually released, despite its prohibited status (Vooren *et al.* 2005a; Vieira 2014). For example, from November 2013 to March 2014, Vieira (2014) monitored four artisanal fishing boat operations (off Rio Grande do Sul) that made 50 sets over 20 fishing trips in depths of 5 m to 21 m using primarily gillnets. The Brazilian guitarfish was the second most abundant species caught by gillnets, with 125 individuals captured, representing 17.5 percent of elasmobranch catch. Its frequency of occurrence per fishing trip was 40 percent. The author noted that all of the caught sharks (either as catch or bycatch) were sold, whereas out of all the caught rays, only *R. horkelli* was sold. Additionally, although the CPUE was estimated to be relatively low for the elasmobranchs in the study, given the area where these artisanal fisheries operate, the majority of the *R. horkelli* catch consisted of immature individuals and breeding adults (with observations of pregnant females initiating abortion on the boats) which likely compromises recruitment to the already at risk population (Vieira 2014).

The substantial abundance declines of *R. horkelli* on the Plataforma Sul due to overutilization by fisheries, as indicated by the commercial and artisanal fisheries data, is further confirmed by CPUE data from fishery-independent surveys of the region. On the Plataforma Sul, a number of research cruises dating back to 1972 have surveyed the area using bottom trawl gear (from depths of around 10 m to over 500 m). In an analysis of this time series set, Vooren *et al.* (2005a) note that between the periods of 1975–1986 and 1993–1999, CPUE of *R. horkelli* showed similar declines as those observed in the commercial CPUE over the same period. Based on the CPUE trends, abundance of *R. horkelli* on the Plataforma Sul in depths of 20 m–200 m is estimated to have decreased by about 85 percent between 1975 and 1999 (Vooren *et al.* 2005a).

Overall, based on the above commercial and artisanal fishing data, it is estimated that over the period of 1975–1986, around 100,000 mature *R. horkelli* females and 100,000 mature *R. horkelli* males were caught annually (Vooren *et al.* 2005a). The removal of these reproductively active adults from the population translated to a loss of around 600,000 newborns per year, or 6.7 million newborns over the course of the 11-year period of fishing, and led to recruitment overfishing of the species (Vooren *et al.* 2005a). As a result of this overutilization, abundance of the species on the Plataforma Sul

significantly declined, causing the stock to collapse after 1986.

Overutilization still remains a threat to the species as fishing by the industrial and artisanal fleets continues to occur at high efforts on the Plataforma Sul and especially within important nursery habitats for the species (Vooren *et al.* 2005a; Klippel *et al.* 2005; Vooren and Klippel 2005c). In 2007, the industrial fleets operating off southern Brazil, where *R. horkelli* is most concentrated, and specifically from the States of Parana, Santa Catarina, and Rio Grande do Sul (identified as Brazil's "South Region"), were responsible for landing around 54 percent (151,154 mt) of the total industrial fish catch for all of Brazil (277,364.5 mt). Within Brazil's South Region, the industrial fleet comprised 59.3 percent of the total fish landings from the region (255,080.5 mt). In 2011, the South Region's marine fish landings (not including aquaculture) amounted to 158,515.4 mt, representing 47 percent of the total fish production from that region and 28.6 percent of the national total of marine fish landings. In terms of artisanal fisheries, fishing pressure (and related mortality) on *R. horkelli* is likely high given that the mullet fishery, the target of artisanal fisheries operating within *R. horkelli* nursery habitats, is an important fishery in Brazil. According to Lemos *et al.* (2014), catches of mullets (*Mugil liza*) in Rio Grande do Sul and Santa Catarina between 1997 and 2010 were around 95 percent of the total catch from all other Brazilian states, Uruguay, and Argentina. In 2011, mullets were the 2nd most landed fish (in terms of volume) in the artisanal fisheries in Rio Grande do Sul (IBAMA/Centro de Pesquisa e Gestão dos Recursos Pesqueiros Lagunares e Estuarinos (CEPERG) 2012) and the 5th most landed marine fish species for all of Brazil, with landings totaling 18,045 t (MPA 2011), suggesting that this significant fishing effort by artisanal fisheries in the inshore pupping grounds of Brazilian guitarfish is unlikely to decrease in the foreseeable future. Additionally, the relatively recent expansion and operation of the Rio Grande do Sul and Itajai trawl fleets on the outer shelf and continued operation of the pair trawl fleet on the inner continental shelf suggest overutilization (in the form of bycatch mortality) is still a threat to the species. Areas that previously served as offshore refugia for the Plataforma Sul population from fishing pressure are no longer protected from exploitation, with both juveniles and adults susceptible to

fishery-related mortality over their entire habitat.

Inadequacy of Existing Regulatory Mechanisms

Like the daggernose shark, the Brazilian guitarfish was also listed on Brazil's endangered species list in 2004, and as of 2014, was classified as "critically endangered." In 2007, Lessa and Vooren noted that the 2004 prohibition on catching the species was gradually becoming more effectively enforced, but genetic studies indicate that enforcement was still relatively poor as recently as 2009. Of 267 guitarfish samples that were collected at ports throughout southeastern and southern Brazil between 2008 and 2009, 55.8 percent were genetically identified as Brazilian guitarfish (De-Franco *et al.* 2012). Of the 85 samples from boats operating off Santa Catarina, 100 percent of the guitarfish were Brazilian guitarfish (De-Franco *et al.* 2012). When the fishermen were asked about their landings during sample collection, many of them denied harvest of guitarfish, suggesting that fishermen are aware of the capture prohibition of Brazilian guitarfish (De-Franco *et al.* 2012). However, because fishermen commonly remove the head and gut of any guitarfish before arriving in port, distinguishing the Brazilian guitarfish from the other two guitarfish species in the area (*R. percellens* and *Zapteryx brevirostris*) is difficult, which, when coupled with the lack of adequate government inspections, may be encouraging fishermen to disregard the law for economic gain (De-Franco *et al.* 2012). Similarly, and most recently, a 2013 investigation by Sea Shepherd Brazil into the illegal trade of elasmobranchs by the São Paulo General Warehousing and Centers Company led to the seizure of 700 kg of illegal elasmobranch species by federal police. Included in the illegal haul were Brazilian guitarfish, again suggesting that poor enforcement of present regulations is likely contributing to the continued exploitation and, consequently, overutilization of the species.

Although the Brazilian guitarfish occurs in several MPAs within Brazilian waters, including APA de Cananéia-Iguape-Peruíbe (São Paulo; 234,000 hectares), PARNA do Superagui (Parana; 33,988 hectares), REBIO do Arvoredo (Santa Catarina; 17,600 hectares) and RESEX Marinha do Pirjubaé (Santa Catarina; 1,712 hectares) (Rosa and Lima 2005), these MPAs only protect the species from exploitation when they occur within these areas. In addition, the coverage of these MPAs compared to

the range of the species is very small and also located north of the center of distribution and concentration of the species and, therefore, unlikely to significantly decrease the threat of overutilization to the species.

Another regulation in place in Brazil to control the exploitation of marine resources is a prohibition on trawl fishing within three nautical miles (nm) from the coast of southern Brazil. This prohibition may help decrease fishery-related mortality of *R. horkelli* in the nearshore areas primarily used as nursery habitat by the species; however, according to Chiaramonte and Vooren (2007), enforcement of this prohibition has been noted as difficult. In addition, the species is still susceptible to being caught as bycatch in the legally permitted coastal gillnet fisheries (which also operate in nursery areas) and in the offshore trawl and gillnet fisheries and vulnerable to the associated bycatch mortality (Lessa and Vooren 2007). Therefore, the adequacy of the trawl prohibition in decreasing fishery-related mortality of *R. horkelli* to the point where the extinction risk of the species is significantly lowered is unclear.

Like the daggernose shark, the Brazilian guitarfish is one of Brazil's 12 species of concern identified in their FAO NPOA-sharks. The plan recommends a moratorium on fishing with a prohibition of sales until there is scientific evidence in support of recovery, and proposes a fishing exclusion area over a large region of the coast of Rio Grande do Sul at depths of 20 m to protect nursery areas (No 125, Lessa *et al.* 2005). As noted in the daggernose shark analysis above, this plan will not be fully implemented for another 5 years and it remains uncertain whether the recommendations will be implemented and effective, as the best available information suggests that current regulatory measures in Brazil to protect the Brazilian guitarfish are poorly enforced.

Similar to Brazil, Uruguay also lists the Brazilian guitarfish as a species of high priority in its FAO NPOA-sharks (Domingo *et al.* 2008). The plan sets short-term goals (12–18 months) to investigate distribution and habitat use and generate time-series of effort and catch; mid-term goals (24–30 months) to conduct an abundance assessment and determine maximum sustainable catch limits; and long term goals (36–48 months) to conduct age, growth, reproduction, and diet studies. In its plan, Uruguay made it a priority to: Review current fishing licenses that allow for the catch of Brazilian guitarfish and possibly modify them; no

longer grant new licenses that would allow for such fishing; forbid processing and marketing of the species; and promote safe release if possible.

However, updated results from the goals and priorities of this plan could not be found. As such, their implementation and overall effectiveness at decreasing the threats to the species remains highly uncertain.

Extinction Risk

The best available information provides multiple lines of evidence indicating that the *R. horkelli* currently faces a high risk of extinction. Below, we present the demographic risk analysis, threats assessment, and overall risk of extinction for the Brazilian guitarfish.

Demographic Risk Analysis

Abundance

There is very limited information regarding abundance estimates for *R. horkelli* throughout its range. The majority of the Brazilian guitarfish population and center of distribution is concentrated between 28° S. and 34° S. in southern Brazil, and it is scarce elsewhere. On the northern Argentine continental shelf, between 34° S. and 43° S., which appears to be the southern extent of the species' range, mean biomass of *R. horkelli* has fluctuated over the years. In 1981, biomass was estimated to be 0.010 t/nm². Biomass peaked in 1994 at 0.441 t/nm² before falling to 0.007 t/nm² in 1999 (Jaureguizar *et al.* 2006). This represents a 98 percent decrease from peak biomass between 1994–1999, but only a decrease of around 30 percent from estimates in 1981. While mean abundance estimates from the presumed center of the species' distribution are not available, we can infer significant historical population declines from a variety of fishery effort, catch and landings data from this region. Based on both fishery-independent sampling and commercial fleet CPUE data from 1975–1986 and 1993–2002, the population of Brazilian guitarfish along the southern coast of Brazil has significantly decreased in size. Data from the single and pair trawl fleets operating on the Plataforma Sul indicate that CPUE declined by 61 percent and 74 percent, respectively, between the periods of 1975–1986 and 1993–2002 (Klippel *et al.* 2005). The population is assumed to have collapsed after 1986. Since 1993, the population is estimated to be about 16 percent of its 1986 level. Due to species identification issues, there is some level of uncertainty regarding the accuracy of the available data; however,

based on the best available information (including fisheries-independent survey data), it appears that the species has likely undergone significant declines throughout its range. Given the continued high fishing pressure in the species' nursery grounds and presence of the species in recent landings data despite its prohibited status, abundance has likely continued to decline.

Growth Rate/Productivity

Lessa and Vooren (2005) estimated the growth rate of *R. horkelli* as (k) = 0.194, and more recently, Caltabellota (2014) reported similar results, with an estimated k = 0.21 (with no significant difference in growth rates between sexes). The species is thought to reproduce annually, with a long gestation period (~1 year) and low fecundity (litter sizes range from 4 to 12 pups). Females have also been observed aborting embryos upon capture in fishing gear, further decreasing the reproductive output of the species. In addition, based on the data, it appears that both males and females of the species do not reach reproductive maturity until they have grown to approximately 74–89 percent of their maximum size. These reproductive characteristics suggest the species has relatively low productivity, similar to other elasmobranch species, which likely hinders its ability to quickly rebound from threats that decrease its abundance (such as overutilization).

Under natural mortality, Caltabellota (2014) estimated that the population would increase by 9 percent each year, doubling every 7.41 years. However, if individuals of the species are fished before reaching maturity (assumed to be 5 years), the Brazilian guitarfish population will decline by 25 percent every 2.73 years (Caltabellota 2014). Given the historical declines in CPUE and levels of neonate and juvenile landings, the species was likely subject to this exploitation scenario and subsequently experienced a negative population growth rate to the point where the population collapsed after 1986. With the continued fishing pressure by the mullet fisheries operating in the nursery habitats and the industrial fisheries on the Plataforma Sul, the available data on growth rate and productivity of the species indicates that current exploitation levels will likely continue to cause population declines in the species, with no information to suggest this trend is reversing.

Spatial Structure/Connectivity

The species is thought to have a continuous distribution along the

Plataforma Sul (where the species is most abundant) (Vooren *et al.* 2005a); however, there is no information on the connectivity among other *R. horkelii* populations throughout the rest of its range, including the importance of the Plataforma Sul population to the taxon as a whole. Based on the available data, there is not enough information to identify critical populations or determine whether the rates of dispersal among populations, metapopulations, or habitat patches are posing a risk of extinction to the species.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. Although it is unknown if *R. horkelii* has experienced a loss of diversity, the significant reduction in population size on the Plataforma Sul, as well as the likely small populations elsewhere throughout its range, suggest the species may be at an increased risk of random genetic drift and could experience the fixing of recessive detrimental genes, reducing the overall fitness of the species.

Threats Assessment

Present threats to the species include overutilization by fisheries and inadequate regulatory mechanisms. The artisanal and industrial fisheries that historically contributed to the decline in *R. horkelii* are still active throughout the species' range and significantly contribute to national marine fish production. In fact, in Brazil in 2007, the industrial fleets were responsible for landing over half of the marine fish from the country's South Region, where *R. horkelii* is most concentrated, with artisanal fisheries responsible for 10 percent. The most recent statistics from 2011 show that marine fish landings from the South Region represent almost half of the fish production from that region and 28.6 percent of the Brazilian national total of marine fish landings. Because these artisanal and industrial fleets primarily operate in locations where *R. horkelii* would occur, and use rather unselective fishing gear, their operations are likely contributing significantly to the fishery-related mortality rates of the species and impacting the status of the species.

Although trawl fishing in Brazil is prohibited within 3 nm of the coast (<10

m depth), the shallow nursery areas, where neonates are found year-round and where adults are concentrated during the pupping and mating season, are still accessible to and heavily fished by artisanal fisheries using gillnets and beach seines. For example, in the mullet fishery, fishermen use beach seines to trap the mullets; however, due to the low selectivity of the fishing gear, these seines may also catch large numbers of juvenile and pregnant female guitarfish as evidenced by the historical data from beach seine operations on the coast of Rio Grande do Sul (Miranda and Vooren 2003; Lessa and Vooren 2005; Vooren *et al.* 2005a). The mullet fishery remains an important fishery in Brazil and in 2011, mullets were the 2nd most landed fish in the Rio Grande do Sul artisanal fisheries and the 5th most landed marine fish in all of Brazil. Additionally, the artisanal gillnet fisheries operating off Rio Grande do Sul are also known to bycatch and sell pregnant females, mature males, and juvenile Brazilian guitarfish, despite its prohibited status. Based on the modeled exploitation scenarios and resultant population growth rates described in the demographic analysis above, continued fishing pressure by both artisanal fisheries targeting mullet, as well as other gillnet fisheries, and subsequent fishery-related mortality of immature Brazilian guitarfish, is likely contributing to the significant decline of the species and is a threat that places the species at a high risk of extinction.

In addition to the threat from artisanal fishing operations, juveniles and adults of the species are also at risk of bycatch-related mortality by the industrial trawl and gillnet fleets operating off Rio Grande do Sul and Santa Catarina. These fleets focus trawling efforts on the inner and outer continental shelf (between 29° S. and 34° S.), essentially covering the entire seasonal adult migratory corridor. Of concern is the fact that the *R. horkelii* catch from these industrial fleets are predominantly juveniles, with estimates of juveniles comprising around 76 to 94 percent of the landings from these fleets. Again, based on the modeled exploitation scenarios, this level of juvenile catch is likely contributing to significant declines in the population. Additionally, the relatively recent expansion and operation of the Rio Grande do Sul and Itajai trawl fleets into previously unexplored depths of 100 m–200 m on the outer shelf 28° S.–30° S., and the subsequent large catches of Brazilian guitarfish, also suggest that areas that previously served as offshore refugia for the Rio Grande do Sul

population from fishing pressure are no longer protected from exploitation.

In July 2010, the State of São Paulo, Brazil, declared the stock of Brazilian guitarfish collapsed due to intense exploitation. Despite the species' listing under Brazil's endangered species list since 2004, which effectively prohibits catching this species, *R. horkelii* continues to be brought into ports throughout southeastern and southern Brazil. In both Brazil and Uruguay, *R. horkelii* is considered a species of high priority under the country's respective FAO NPOA-sharks. However, the implementation and effectiveness of the recommendations outlined in these plans remain uncertain, with the best available information indicating that current regulatory measures to protect vulnerable species are poorly enforced, particularly within artisanal fisheries. Overall, the best available information suggests heavy exploitation of *R. horkelii*, particularly in the area where it was historically most abundant, and a significant lack of adequate regulatory mechanisms to protect the species from overutilization throughout its range.

Risk of Extinction

Although there is significant uncertainty regarding the current abundance of the species, the best available information indicates that the species has suffered significant historical population declines, with no indication that these trends have stabilized or reversed. Based on the species' demographic risks, without adequate protection, these severely depleted populations are likely to be strongly influenced by stochastic or compensatory processes. This vulnerability is further exacerbated by the present threats of overutilization and inadequacy of existing regulatory measures that continue to contribute to the decline of the existing populations, compromising the species' long-term viability. Therefore, based on the best available information and the above analysis, we conclude that the *R. horkelii* is presently at a high risk of extinction throughout its range.

Protective Efforts

With the exception of the recommendations within Brazil and Uruguay's FAO NPOA-sharks plans discussed above, we were unable to find any other information on protective efforts for the conservation of Brazilian guitarfish in Brazil, Uruguay, or Argentina that would potentially alter the extinction risk for the species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the Brazilian guitarfish is presently in danger of extinction throughout its range. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory mechanisms throughout its range. The species' natural biological vulnerability to overexploitation and present demographic risks (e.g., low and declining abundance, negative population growth rates, and likely small and/or isolated populations at an increased risk of random genetic drift) are currently exacerbating the negative effects of the aforementioned threats, placing this species in danger of extinction. We also found no evidence of protective efforts for the conservation of Brazilian guitarfish that would reduce the level of extinction risk faced by the species. We therefore propose to list the Brazilian guitarfish as an endangered species.

Smoothhound Sharks

Smoothhound sharks are members of the family Triakidae and genus *Mustelus*. The *Mustelus* species are often difficult to distinguish due to their conserved morphology and highly variable intraspecific meristic characteristics. This problem is compounded in the southwestern Atlantic, with very few specimens, particularly of larger individuals, leading to a lack of comparative ontogenetic observations that can be used for species diagnosis (Rosa and Gadig 2010). To date, there are at least five species of the genus *Mustelus* that occur with overlapping ranges in the southwestern Atlantic: *M. canis*, *M. higmani*, *M. norrisi*, *M. fasciatus* and *M. schmitti* (Rosa and Gadig 2010). Two of these species, *M. fasciatus* and *M. schmitti*, are elasmobranchs that are being considered for listing in this finding.

Striped Smoothhound Shark (*Mustelus fasciatus*)

Species Description

The striped smoothhound is one of the most distinctive *Mustelus* species. Its head is large, with very small eyes and a sharply pointed snout (Compagno 1984; Rosa and Gadig 2010). Labial folds are present, and are longer on the upper jaw than on the lower jaw (Heemstra 1997; Rosa and Gadig 2010). The striped smoothhound's teeth are small and

uniform in size and are similar in adults and juveniles (Heemstra 1997; Vooren and Klippel 2005b; Rosa and Gadig 2010). The first dorsal fin is short, broad, and triangular with a large base and is located closer to the pelvic fins than the pectoral fins (Compagno 1984; Rosa and Gadig 2010). The second dorsal fin base is generally slightly smaller than the first dorsal fin base, and a dermal ridge is present between the two fins (Vooren and Klippel 2005b). The pectoral and pelvic fins have posterior margins that are nearly straight, and the caudal fin is not well developed, with a small and rounded ventral lobe (Rosa and Gadig 2010). The striped smoothhound is grey or grey-brown on its dorsal side and white on its ventral side (Compagno 1984). Newborns and juveniles have dark bars of irregular widths running across the dorsal surface of their head and body (Heemstra 1997). The distinguishing vertical bars are still present in adults, but are not nearly as defined as they are in juveniles (Sadowski 1977; Heemstra 1997; Lorenz *et al.* 2010; Rosa and Gadig 2010). Overall, the striped smoothhound stands out from the other *Mustelus* species in the southwestern Atlantic because of its triangular dorsal and pectoral fins, underdeveloped caudal fin, unique tooth morphology, wide head, and small eyes (Rosa and Gadig 2010).

Range and Habitat Use

The striped smoothhound is a demersal shark species, found at depths between 1 m and 250 m along the continental shelf and slope of the Southwestern Atlantic in Brazil, Uruguay, and Argentina (Soto 2001). The species has a very restricted coastal distribution, ranging from Santa Catarina in southern Brazil to Bahía Blanca in Buenos Aires Province, Argentina, which covers about 1,500 km of coastline (Lopez Cazorla and Menni 1983; Vooren and Klippel 2005b; Lorenz *et al.* 2010). During the winter, adult biomass is concentrated on the Plataforma Sul between Rio Grande and Chuí off Rio Grande do Sul, Brazil (Vooren 1997; Vooren and Klippel 2005b). During the summer, a portion of the population migrates from Brazil to Uruguay and Argentine waters, while the rest of the population remains on the Plataforma Sul off Rio Grande do Sul as year-round residents (Vooren 1997; Vooren and Klippel 2005b). Outside of Brazil, the striped smoothhound occurs only occasionally, with sporadic observations from the Mar del Plata, Argentina, near the southern boundary of its range (Lopez Cazorla and Menni 1983).

Striped smoothhounds display clear ontogenetic (*i.e.*, life-stage based) depth distributions. In Rio Grande do Sul, neonates are common in inshore areas between Cassino Beach and Chuí in depths less than 20 m, with the greatest frequencies between 2 m–5 m depth from November to January (summer months; Vooren and Klippel 2005b). As such, these shallow areas likely function as important nursery areas for the species (Vasconcellos and Vooren 1991; Soto 2001; Vooren and Klippel 2005b). Adults are found mainly in water depths between 50 m–100 m in autumn and winter but move to shallower depths (≤ 50 m) in spring and summer (Vooren and Klippel 2005b). In the summer, males are much more common at depths between 20 m and 50 m, and are only rarely caught in waters less than 20 m deep, whereas females can be found in waters less than 20 m deep as they move into coastal waters for pupping during the summer months (Vooren and Klippel 2005b). Striped smoothhound are generally found in cooler water temperatures (11 °C–15 °C for juveniles during winter months, and >16 °C for adults; Vooren and Klippel 2005b) and prefer water salinities between 33.3 ppt and 33.6 ppt (Lopez Cazorla and Menni 1983).

Diet and Feeding

Knowledge of the striped smoothhound's diet is limited. Soto (2001) studied the stomach contents of 17 specimens captured off Parcel da Solidão in Rio Grande do Sul, Brazil. Crustaceans were the most abundant prey group, making up 82.4 percent of the diet, while fishes and mollusks were present in lower numbers (11.8 percent and 5.9 percent, respectively). Box crabs (*Heptus pudibundus*) were the most prevalent crustacean, occurring in 52.9 percent of the stomachs examined (Soto 2001).

Growth and Reproduction

There is scant information on striped smoothhound life history. Age and growth studies are not available and conflicting data exist for sizes at birth and maturity in Rio Grande do Sul. For example, one study reported that size at birth is between 39 cm and 43 cm TL, and that sexual maturity is reached at 130 cm and 135 cm TL for males and females, respectively (Vasconcellos and Vooren 1991). More recent studies report smaller sizes, with birth estimated between 35 cm and 38 cm TL and size at maturity estimated at 119 cm TL for males and 121 cm TL for females (Soto 2011; Vooren and Klippel 2005b). The smaller size at maturity seen in the more recent studies could be a

compensatory response to the high levels of fishing mortality the species has experienced since the early 1980s (see *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section). The maximum observed sizes for striped smoothhound are 162 cm TL (17.5 kg) for males and 177 cm TL (29.7 kg) for females (Lorenz *et al.* 2010).

Striped smoothhound have placental viviparous reproduction (Vooren 1997) and a gestation period that lasts between 11 and 12 months (Soto 2001; Lorenz *et al.* 2010). Pregnant females migrate into shallow waters (<20 m) along the Rio Grande do Sul coast to give birth from October to December (Vasconcellos and Vooren 1991; Vooren 1997; Lorenz *et al.* 2010). Vooren and Klippel (2005b) report that pupping takes place from November to January, but Soto (2001) reports that it occurs earlier, from September to November. Striped smoothhounds have 4–14 pups per litter, with an average of 8 pups (Vasconcellos and Vooren 1991). Newborns are seen in high frequency in November, along with females with mature follicles and postpartum uteri, suggesting an annual reproductive cycle (Vasconcellos and Vooren 1991). After pupping, females move to deeper waters to mate (Soto 2001; Vooren and Klippel 2005b; Lorenz *et al.* 2010). One study found a positive relationship of litter size and maternal size (Soto 2001); however, two other studies found no correlation (Vasconcellos and Vooren 1991; Heemstra 1997).

Genetics and Population Structure

Studies examining the genetics of the species or information on its population structure could not be found.

Demography

The striped smoothhound is generally thought to have low fecundity, with a long gestation time (~1 year), and an average of only eight pups (range = 4–14 pups). Information regarding natural mortality rates or the intrinsic rate of population increase (r) of the striped smoothhound is unavailable; however, based on the life history parameters described previously, the species likely has low productivity, which may hinder its ability to recover from exploitation.

Historical and Current Distribution and Population Abundance

The striped smoothhound is distributed from Santa Catarina in southern Brazil to the Bahía Blanca in Buenos Aires Province, Argentina. While striped smoothhound were once considered a dominant permanent resident in Rio Grande do Sul in the

early 1970s and 1980s, and displayed predictable abundance changes throughout the year (Vooren 1997), they are now considered sporadic in this area and rare in the northern and southern portions of their range (Soto 2001). Prior to fisheries exploitation, it is thought that the striped smoothhound had naturally low abundance based on their relatively low frequency of occurrence in fishery research surveys (Vooren and Klippel 2005b). For example, in research trawl surveys on the Plataforma Sul, conducted from 1972–2005 with over 1,500 hauls, striped smoothhound occurred at a frequency of only 10 percent in the trawl hauls from the 10 m–100 m depth range (Vooren and Klippel 2005b) and comprised only 2 to 4 percent of the total elasmobranch CPUE for the period of 1980–1984. Despite this low frequency of occurrence, Vooren and Klippel (2005b) note that neonates of the species were relatively abundant in the 1980s in the summer and commonly observed along the 10,688 km of the Rio Grande do Sul coastline. In fact, for the period of 1981–1985, estimated CPUE from artisanal fisheries operating off Rio Grande do Sul ranged from 1.9 individuals/haul for beach seines to 18.5 individuals/haul for gillnet fishing gear. In research trawl surveys conducted in shallow waters of 10 m–20 m depths in 1981 and 1982, juvenile *M. fasciatus* occurred at a frequency of 54–86 percent in trawl hauls with a CPUE of 2.55–3.95 kg/hour. However, in follow-up surveys conducted nearly two decades later, juveniles and neonates were mostly absent from hauls, despite significant sampling in habitats where they had been known to occur. In 2005, neonates were noted as abundant along only 395 km of the Rio Grande do Sul coastline, corresponding to an estimated 95 percent decline in occupied area by neonates between 1981 and 2005 (Vooren and Klippel 2005b).

In Uruguay and Argentina, current catches by fishermen are infrequent. Additionally, trawl surveys conducted along the coastal region of the Bonaerense (Buenos Aires) District of northern Argentina and Uruguay indicate a 96 percent decline in biomass of the species between 1994 and 1999 (Hozbor *et al.* 2004). Striped smoothhounds were also absent from Argentine research surveys conducted in the 1990s and are currently rarely caught by the commercial fleet, suggesting that the Argentine sea represents the periphery of its distribution (Massa 2013).

Summary of Factors Affecting Striped Smoothhound (*Mustelus fasciatus*)

We reviewed the best available information regarding historical, current, and potential threats to the striped smoothhound species. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be exacerbated by the species' natural biological vulnerability to overexploitation, which has led to significant declines in abundance of all life stages, particularly neonates. We find current regulatory measures inadequate to protect the species from further overutilization. Hence, we identify these factors as additional threats contributing to the species' risk of extinction. We summarize information regarding these threats and their interactions below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction, modification or curtailment, disease, predation or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015c) for discussion of these ESA Section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The greatest threat to striped smoothhound is overutilization in commercial fisheries, particularly by those fisheries operating on the Plataforma Sul off Rio Grande do Sul. The Plataforma Sul comprises approximately one-third of the species' geographic distribution and is the area where the species was historically most concentrated. In fact, striped smoothhound were commonly caught as bycatch in the 1970s and 1980s on the Plataforma Sul in Brazil, albeit in low numbers (Soto 2001; Vooren and Klippel 2005b). Estimates of CPUE of *M. fasciatus* on the shelf in the early 1980s varied between 2 kg/hr and 7 kg/hr (in areas of low density) and 8 kg/hr to 33 kg/hr (in areas where the species was more highly concentrated) (Vooren and Klippel 2005b). Although the presumed naturally low abundance of striped smoothhound prohibited a directed fishery from developing for this species on the Plataforma Sul, they were and continue to be caught as part of the multispecies smoothhound fisheries and as bycatch in fisheries for other species such as drums, flounders, and mullets (Haimovici and Mendonça 1996; Vooren and Klippel 2005b). Striped

smoothhounds have been reported in landings from the industrial pair and double-rig trawl fleets, bottom longline and gillnet fleets and artisanal fisheries (Mazzoleni and Schwingel 1999). When caught, large striped smoothhound weighing more than 4 kg are generally retained and those less than 4 kg are discarded (Haimovici and Maceira 1981), but the rate of discard mortality is unknown. However, as both industrial and artisanal fishing intensified on the Plataforma Sul in the 1980s and continued through the 1990s, with the heavy use of trawls, gillnets and beach seines within the habitat of the striped smoothhound shark, the rates of fishery-related mortality experienced by the species clearly led to dramatic declines in its abundance (Soto 2001; Hozbor *et al.* 2004).

The intense coastal commercial and artisanal fishing off Rio Grande do Sul that takes place in nearshore waters along the coast (see additional discussion of these fisheries in the Brazilian guitarfish assessment) has likely had, and continues to have, the greatest impact on the species. These coastal fisheries primarily use beach seines, gillnet and trawl gear in the nearshore locations where striped smoothhound neonates and juveniles are found year-round. This level of fishing effort exerts constant pressure on the species before it reaches maturity (Soto 2001; Vooren and Klippel 2005b), and consequently, affects the recruitment of juvenile sharks into the population (Vooren 1997). Significant declines in neonate and juvenile populations have already been observed. Between the areas of Chuí and Torres of Rio Grande do Sul, Brazil, for example, neonates were abundant in the summer in the 1980s, along the coast from depths of 2 m–20 m, representing an area of occupancy of about 10,688 km². According to Hozbor *et al.* (2004), gillnets set off beaches in this area would capture neonate striped smoothhound in large numbers (10–100 per set) in the 1980s; however, by 2003, this level of removal had led to substantial declines in the population, with striped smoothhound currently caught only sporadically and in much smaller numbers. Similarly, off of Cassino Beach (located close to the mid-point between Chuí and Torres) Vooren and Klippel (2005b) estimated that CPUE of neonate striped smoothhound decreased by up to 99 percent in the artisanal fisheries during this time period. Specifically, the CPUE of neonate striped smoothhound and frequency of its occurrence in the artisanal gillnet fishery sets went from

18.5 (individuals/set) and 75 percent, respectively, in 1981–1985 to 0.2 (individuals/set) and 13 percent in 2002–2003. In 2005, neonates remained common only in the inner edge of their former 10,688 km² occupied area, in depths between 2 m–5 m: An area of only 395 km². This significant reduction in occupied area translates to an estimated 95 percent decline in neonate production and is likely a result of the intense artisanal and industrial fishing pressure and overutilization of the species within this area. Trawl surveys conducted in the same area but in depths of 10 m–20 m showed a similar decline in the CPUE of juvenile striped smoothhounds, from 2.55 kg/hour in 1981 and 3.95 kg/hour in 1982 to 0.02 kg/hour in 2005, an estimated 99 percent decrease in abundance (Vooren and Klippel 2005b).

In addition to the coastal artisanal and industrial fisheries, the intense fishing by the Plataforma Sul trawl fisheries that operate between the coastal waters and inner continental shelf (see description of the pair trawl fleet in the Brazilian guitarfish assessment) also affected and continues to impact the reproductive capacity of the striped smoothhound population in southern Brazil. These trawl fisheries, whose area of operation intersects with the spring migration of female *M. fasciatus*, incidentally catch both pregnant females and adult male striped smoothhounds on the inner shelf (Haimovici and Mendonça 1996; Vooren and Klippel 2005b). As such, all life-stages of the species as well as both sexes are subject to constant fishing pressure year-round, which Vooren and Klippel (2005b) point to as the primary cause for the significant decline and present rarity of the resident striped smooth population on the Plataforma Sul. As discussed in the Brazilian guitarfish assessment, fishing by the industrial and artisanal fleets continues to occur at high efforts on the Plataforma Sul and especially within the important coastal nursery and inner shelf habitats for the species (which overlap with *R. horkelli*). In fact, total marine fish landings from Rio Grande do Sul (where striped smoothhound are most concentrated on the Plataforma Sul) have increased substantially in recent years, from 23,594 t in 2007 to 34,385 t in 2011 (an increase of 46 percent over 4 years) (MMA/IBAMA 2007; IBAMA/CEPERG 2012). Out of the 27 Brazilian States, Rio Grande do Sul reports the 6th highest level of marine fish landings and Santa Catarina (which represents the northern periphery of the species' range in Brazil) reports the

highest level of marine fish landings (121,960 t in 2011) (IBAMA/CEPERG 2012). Based on the trends in the available fishing data, it is unlikely that the industrial and artisanal fishing on the Plataforma Sul, and particularly off the coast of Rio Grande do Sul within striped smoothhound habitat, will decrease in the foreseeable future, indicating that overutilization (in the form of bycatch mortality) is still a threat to the species.

Outside of Brazil, off Uruguay and Argentina, striped smoothhound are caught sporadically as bycatch in gillnets, bottom longlines, and trawls in fisheries targeting Brazilian flathead (*Percophis brasiliensis*), Argentinian sandperch (*Pseudoperca semifasciata*), apron rays (*Discopyge tshudii*), striped weakfish (*Cynoscion guatucupa*) and whitemouth croaker (*Micropogonias furnieri*) (Chiaramonte 1998; Lasta *et al.* 1998; Domingo *et al.* 2008). Bycatch levels and the associated fishery-related mortality of striped smoothhound in these fisheries have resulted in marked declines in the population, with trawl surveys conducted in the coastal region of the Bonaerensean District of northern Argentina and Uruguay indicating a 96 percent decline in the biomass of striped smoothhound between 1994 and 1999 (Hozbor *et al.* 2004). In the early 2000s, annual landings of smoothhounds (primarily *M. schmitti*, but also *M. fasciatus* and *M. canis*) in Uruguay increased dramatically, from fewer than 350 t in the 1990s to a peak of 1,300 t in 2000 and remained above 1,000 t through 2005; however, the cause for this reported increase in landings is unknown and, since 2000, landings have progressively declined (Domingo *et al.* 2008). In Uruguay's latest 2013 Fishery Statistics Bulletin, there were no reported landings of *M. fasciatus* (Dirección Nacional de Recursos Acuáticos (DINARA) 2014). Similarly, in Argentina, striped smoothhounds are also currently a rare occurrence (Casselberry and Carlson 2015c).

Inadequacy of Existing Regulatory Mechanisms

Like the daggernose shark and Brazilian guitarfish, the striped smoothhound is also listed as critically endangered under Annex I of Brazil's endangered species list. Aside from authorized conservation research purposes, the capture, transport, storage, and handling of striped smoothhounds is prohibited. There is also a prohibition of trawl fishing within three nautical miles of the coast of southern Brazil, although the enforcement of this prohibition has been noted as difficult

(Chiaramonte and Vooren 2007). In addition, the species is still susceptible to being caught as bycatch in the legally permitted coastal gillnet fisheries and offshore trawl and gillnet fisheries and vulnerable to the associated bycatch mortality (Lessa and Vooren 2007). While the striped smoothhound is not listed as one of the 12 species of concern under Brazil's FAO NPOA-sharks, the plan does call for a fishing exclusion area over a large region of the coast of Rio Grande do Sul at depths of 20 m to protect nursery areas (which would include the striped smoothhound nursery habitat) (Lessa *et al.* 2005). The plan also proposes a fishing closure between 32° S. and 34° S., where adults of the species now seem to be found in greatest abundance (Vooren and Klippel 2005b). However, as mentioned previously, the plan was only just approved as of December 2014, and will not be fully implemented for another 5 years. Thus, the implementation and effectiveness of the recommendations outlined in the plan remain uncertain, with the best available information indicating that current regulatory measures in Brazil to protect vulnerable species are poorly enforced.

In contrast to Brazil, Uruguay's FAO NPOA-sharks does list the striped smoothhound as a species of high priority (Domingo *et al.* 2008), and, as stated previously, has set goals to collect the necessary information on its priority species in order to conduct abundance assessments, review current fishing licenses, and promote public awareness to release captured individuals. However, no updated results from the goals and priorities of this plan could be found. As such, their implementation and overall effectiveness at decreasing the threats to the striped smoothhound remains highly uncertain. Additionally, in 2013, the National Directorate of Aquatic Resources (DINARA), the state agency responsible for regulating and controlling fishing and aquaculture in Uruguay, passed a resolution authorizing fishing with gillnets and longlines in the Rio de la Plata and Atlantic Ocean at a distance less than 300 m from the coast, between March 1 and October 31 of each year. This type of fishing was previously prohibited in 2008; however, due to concerns brought forth by the artisanal fishermen, primarily of the socio-economic nature, DINARA revised the prohibition to allow for this seasonal fishing (Resolution No. 24/04/2013 MGAP). Although this seasonal restriction should provide some protection for the population of migrating pupping females (which moves inshore to pup

primarily from October to December), it does little to decrease fisheries-related mortality of young striped smoothhounds which remain in these coastal waters following birth. In other words, given that the depth distribution of *M. fasciatus* extends from shallow coastal waters out to 100 m depths, and fishery records from Uruguay show that the species is primarily bycaught in the artisanal longline and gillnet fisheries (Domingo *et al.* 2008), this new resolution is unlikely to adequately decrease the threat of overutilization to striped smoothhounds.

Extinction Risk

The best available information provides multiple lines of evidence indicating that the *M. fasciatus* currently faces a high risk of extinction. Below, we present the demographic risk analysis, threats assessment, and overall risk of extinction for the striped smoothhound shark.

Demographic Risk Analysis

Abundance

While there are no quantitative abundance estimates available for *M. fasciatus*, qualitative information and historical catch data can provide some insight into the current abundance of the species. Based on data from research trawl surveys, it is thought that the striped smoothhound naturally occurred at low abundance before they were exploited in fisheries (Vooren and Klippel 2005b), and were once considered a dominant permanent resident species on the Plataforma Sul. However, presently, the species is rarely observed anywhere in its range and caught only sporadically. Historical data from artisanal gillnet and beach seine fisheries suggest neonate production on the Plataforma Sul has decreased by 95 percent since the 1980s. Additionally, research trawl survey data estimate a decline in juvenile striped smoothhounds in these coastal waters of around 99 percent over this same period. Considering adult female striped smoothhounds follow a spring migration into these same coastal areas for pupping purposes, and, thus, are also susceptible to these artisanal fisheries, the significant declines in neonate and juvenile abundance likely correspond to declines in the number of reproductively active females in the population as well, as overutilization of the species through the direct removal of young striped smoothhound shark recruits.

Although CPUE data are lacking from other parts of the species' range, with catches of striped smoothhound

characterized as sporadic and rare in Uruguay and Argentina, respectively, survey data suggest that the migratory population has also experienced similar declines. Based on trawl survey data collected from along the Bonaerensean District of northern Argentina and Uruguay, the population of striped smoothhounds suffered an estimated 96 percent decline in biomass between 1994 and 1999. No other information on abundance or trends was available from this portion of the species' range. However, considering the species was of naturally low abundance prior to exploitation, and fishing pressure has historically been high (particularly on neonates in nursery areas and juvenile and adults on the inner shelf, including on both the resident and migratory populations) with no indications that this pressure has ceased, it is likely that the species has continued to suffer declines throughout its range.

Growth Rate/Productivity

Very little information is known about the life history of *M. fasciatus*. Age and growth studies are unavailable for the species, and there is conflicting information reported from the literature regarding the species' size at birth and size at maturity from Rio Grande do Sul, Brazil. Estimates of size at maturity range from 119 to 130 cm TL for males and 121 to 135 cm TL for females, with the smaller and more recent size estimates a possible compensatory response to fishing mortality. Size at birth ranges from 35 to 48 cm TL. The species is generally thought to have low fecundity, with a long gestation time (~1 year) and an average of only 8 pups per litter. These reproductive characteristics suggest the species has relatively low productivity, similar to other elasmobranch species, which has likely hindered its ability to quickly rebound from threats that decrease its abundance (such as overutilization).

Spatial Structure/Connectivity

The striped smoothhound has a very restricted coastal range of only 1,500 km. On the Plataforma Sul off southern Brazil, there is thought to be a permanent, year-round resident population. Vooren and Klippel (2005b) note that the area occupied by this population represents one third of the species' total range, and that the conservation of this resident population is integral to the conservation of the taxon as a whole, indicating the relative importance of this population to the species' survival. However, there is also thought to be a migratory population that is present on the Plataforma Sul in the winter that returns to Uruguay and

Argentina in the summer concurrent with changes in water temperature. No information exists on the connectivity between the resident and winter migrant *M. fasciatus* populations found on the Plataforma Sul; however, based on the significant decline of the population off the Buenos Aires Province, it seems likely that the increased fishing pressure on the migratory population while they winter on the Plataforma Sul may be negatively impacting the populations found in other parts of the species' range.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. Although it is unknown if *M. fasciatus* has experienced a loss of diversity, high fishing pressure on neonates and reproductively active adults in coastal waters has negatively affected recruitment rates of neonates into the population, resulting in a significant depletion of the resident population on the Plataforma Sul. This reduction of the important resident population in Brazil, combined with the likely small populations elsewhere throughout its range, suggest the species may be at an increased risk of random genetic drift and could experience the fixing of recessive detrimental genes, reducing the overall fitness of the species.

Threats Assessment

The primary threat to striped smoothhounds is overutilization in commercial fisheries. Although not targeted in any fisheries throughout its range, due to its presumed naturally low abundance, striped smoothhounds are caught as part of the multispecies smoothhound fisheries and as bycatch in fisheries for other species such as drums, flounders, and mullets. While adult striped smoothhounds were once commonly caught as bycatch in the 1970s and 1980s in Brazil, albeit in low numbers, they are now considered rare in commercial catches. Additionally, intensive fishing by gillnet and trawl fisheries in shallow coastal areas where juveniles and neonates occur results in constant fishing pressure on the species before it reaches maturity, negatively affecting recruitment of neonates into the population. In fact, the historical data on the abundance of newborns in

coastal waters provide strong evidence that a 95 percent reduction in annual production of neonates occurred from 1984 to 2005 as a result of constant fishing pressure in important coastal nursery areas. Adult striped smoothhounds are also susceptible to these fisheries during their spring migration into these same coastal areas for pupping, and are at risk of being caught as bycatch by the industrial gillnet and trawl fleets operating on the inner shelf throughout the rest of year. In fact, the level of fishing mortality on the migratory wintering population on the Plataforma Sul may have led to the observed declines in the striped smoothhound population found off the coast of northern Argentina. Thus, the intense fishing effort by the commercial and artisanal fisheries on the Plataforma Sul appear to be negatively affecting the reproductive capacity and growth of the population throughout its range.

In 2004, the species was listed on Brazil's endangered species list, which effectively prohibited the capture of this species. As of 2014, the species was classified as "critically endangered" on this list. Although the species is not identified as one of 12 species of concern under Brazil's FAO NPOA-sharks, the plan calls for fishing closures in areas of <20 m deep that would provide protection to neonates and juveniles, as well as other closures to protect adult aggregations. In Uruguay, the striped smoothhound is listed as a species of high priority on its FAO NPOA-sharks (Domingo *et al.* 2008); however, as mentioned previously, the implementation and effectiveness of the recommendations outlined in both the Brazilian and Uruguayan plans remain uncertain, with the best available information indicating that current regulatory measures in both countries are inadequate to protect the species from further overutilization.

Given the continued and significant fishing effort by the industrial trawl fleet and artisanal gillnet on the Plataforma Sul, contributing to the fishing mortality of the resident population as well as the wintering migratory population, and inadequacy of existing regulatory measures to control the exploitation of the marine resources throughout the species' range, the best available information suggests that overutilization of the species by industrial and artisanal fisheries is a threat significantly contributing to its risk of extinction.

Risk of Extinction

Although there is significant uncertainty regarding the current status of the species, the best available

information indicates that the species has suffered significant declines throughout its range due to overutilization in industrial and artisanal fisheries. The species' very restricted coastal range, with data to suggest it has undergone a decline of over 90 percent in one third of this range, combined with its present rarity throughout the rest of its range, make it particularly susceptible to local extirpations and significantly increases its risk of extinction from environmental and anthropogenic perturbations or catastrophic events. With no indication that abundance trends have stabilized or reversed in recent years, nor any indication that regulatory measures have been implemented or are adequately enforced to protect the Plataforma Sul neonates in important nursery areas, the local reproducing adult population, or the migratory population from unsustainable fishing mortality levels, it is likely that the species continues to suffer from population declines. Based on the species' demographic risks, these severely depleted populations are likely to be strongly influenced by stochastic or compensatory processes without adequate protection. This vulnerability is further exacerbated by the present threats of overutilization and inadequacy of existing regulatory measures that continue to contribute to the decline of the existing populations, compromising the species' long-term viability. Therefore, based on the best available information and the above analysis, we conclude that *M. fasciatus* is presently at a high risk of extinction throughout its range.

Protective Efforts

With the exception of the recommendations within Brazil and Uruguay's FAO NPOA-sharks, we were unable to find any other information on protective efforts for the conservation of striped smoothhound sharks in Brazil, Uruguay, or Argentina that would potentially alter the extinction risk for the species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the striped smoothhound is presently in danger of extinction throughout its range. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory

mechanisms throughout its range. The species' natural biological vulnerability to overexploitation and present demographic risks (*e.g.*, significantly reduced and declining abundance levels, decreases in neonate production and recruitment, low productivity, restricted range with likely small and/or isolated populations at an increased risk of random genetic drift) are currently exacerbating the negative effects of the aforementioned threats, placing this species in danger of extinction. We also found no evidence of protective efforts for the conservation of striped smoothhound that would reduce the level of extinction risk faced by the species or otherwise alter its current status. We therefore propose to list the striped smoothhound shark as an endangered species.

Narrownose Smoothhound Shark (*Mustelus schmitti*)

Species Description

The narrownose smoothhound shark has a slender body, similar in form to other triakids, and a short head (Compagno 1984; Rosa and Gadig 2010). The species has large eyes and a snout that is bluntly angular (Compagno 1984) with a narrow internostril distance (Rosa and Gadig 2010). Like *M. fasciatus*, labial folds are present on the mouth and are longer on the upper jaw than on the lower jaw (Compagno 1984; Heemstra 1997; Rosa and Gadig 2010). Narrownose smoothhounds are grey with numerous small white spots on their dorsal side and solid white coloration on their ventral side (Compagno 1984; Heemstra 1997). The trailing edges of both dorsal fins have exposed ceratotrichia (slender soft or stiff filaments of an elastic protein that superficially resembles keratin), a distinctive characteristic for the species (Rosa and Gadig 2010). The pectoral and pelvic fins are both relatively small, (Compagno 1984) and the ventral lobe of the caudal fin is poorly developed (Heemstra 1997).

Range and Habitat Use

The narrownose smoothhound is found in the southwestern Atlantic from southern Brazil to southern Argentina between 22° S. and 47°45' S. (Belleggia *et al.* 2012). Rio de Janeiro, Brazil, is the northernmost limit of the species' range (Oddone *et al.* 2007) and Ría Deseado, Argentina is the southernmost limit (Chiaramonte and Pettovello 2000). Narrownose smoothhound occurs at depths up to 120 m in Argentina and has been captured as deep as 195 m in Brazil (Belleggia *et al.* 2012). In Argentinian waters, narrownose

smoothhound is found in waters with surface temperatures of 8 °C–11.7 °C and bottom temperatures of 5.5 °C–11 °C (Menni 1985; Chiaramonte and Pettovello 2000) and salinity that is generally 22.4 practical salinity units (psu) and higher (Molina and Cazorla 2011).

Like striped smoothhounds, a portion of the narrownose smoothhound population is migratory. In the winter, juveniles, adults, and gravid females migrate north into Brazilian waters and remain there from April to November (Haimovici 1997; Vooren 1997; Oddone *et al.* 2005; Massa *et al.* 2006). This migration is thought to be triggered by cold water moving north into their Argentinian range (Haimovici 1997). Water temperatures in the wintering grounds are usually between 12 °C and 20 °C (Massa *et al.* 2006). In the spring, summer, and autumn (December to April) narrownose smoothhounds are most common in waters off Uruguay (Vooren 1997; Oddone *et al.* 2005) and Argentina, with highest abundance in Argentinian waters noted off Buenos Aires Province and northern Patagonia (Molina and Cazorla 2011).

Diet and Feeding

Olivier *et al.* (1968) first characterized the diet of the narrownose smoothhound as carcinophagous (*i.e.*, eats crabs and other crustaceans), benthic infaunal (*i.e.*, eats animals that live in the substrate), and ichthyophagous (*i.e.*, eats fish). The narrownose smoothhound is an opportunistic predator that generally feeds on epifaunal benthic organisms and the diet appears to vary geographically and ontogenetically (Capitoli *et al.* 1995). For example, in Río de la Plata and El Rincón, Argentina, the diet is generally dominated by crustaceans, fishes, and polychaetes; however, as narrownose smoothhounds increase in body size, the consumption of polychaetes declines and is replaced by more fishes and crustaceans. The shift to crustaceans occurs around 60 cm TL, while narrownose smoothhounds around 85 cm TL feed primarily on fish (Belleggia *et al.* 2012). Temporal and ontogenetic variations in diet were also found for *M. schmitti* in Anegada Bay, Argentina, where neonates are more specialized feeders and predominantly consume decapods, and adults more commonly consume polychaetes, decapods, bivalves, and occasionally cephalopods (Molina and Carzorla 2011). Smaller scale diet studies in Argentina also found the diet to be dominated by epifaunal benthic organisms, including decapod crabs,

fishes, isopods, and polychaetes, and, to a lesser extent, some teleosts and cephalopods (Chiaramonte and Pettovello 2000; Van der Molen and Caille 2001).

Growth and Reproduction

The narrownose smoothhound has an estimated lifespan of 20.8 and 24.7 years for males and females, respectively (Hozbor *et al.* 2010). In general, narrownose smoothhound females grow faster and grow to a larger size than males (Chiaramonte and Pettovello 2000; Sidders *et al.* 2005; Segura and Milessi 2009). Maximum recorded size for *M. schmitti* is 110 cm TL, with a modal TL in Brazil of 60 cm for males and 72 cm for females ((Massa *et al.* 2006; Molina and Cazorla 2011). Size at maturity varies throughout the narrownose smoothhound's range, with estimates for male size at 50 percent maturity ranging from 55 cm TL to 59 cm TL and for females ranging from 56 to 72 cm TL (Chiaramonte and Pettovello 2000; Oddone *et al.* 2005; Segura and Milessi 2009; Colautti *et al.* 2010). Age at first breeding in Brazil is 4 years for females and 3 years for males, while it is 6.5 years for females and 5.7 years for males in Argentina (Casselberry and Carlson 2015d).

Narrownose smoothhound sharks are non-placental and reported to be yolk-sac viviparous (Hamlett *et al.* 2005; Galíndez *et al.* 2010). Their reproductive cycle is annual with a gestation of 11 months followed by immediate ovulation and mating (Chiaramonte and Pettovello 2000). In the spring, females move inshore to pup and mate, and then migrate offshore in late summer to early autumn (Colautti *et al.* 2010). Reproduction occurs at different times, ranging from late November in northern Argentina to mid-December at the southern extent of its range (Molina and Cazorla 2011). Litter size varies between 2 and 14 pups (Massa *et al.* 2006), with an average litter size of around 4 to 5 pups (Sidders *et al.* 2005; Galíndez *et al.* 2010). Litter size increases significantly with maternal length (Oddone *et al.* 2005; Cortés 2007), but larger females do not produce larger offspring (Sidders *et al.* 2005). Nursery grounds for the narrownose smoothhound shark in Argentina (based on higher abundance of neonates and juveniles within these areas) are found in the El Rincón area (including Bahía Blanca and Anegada Bay) and the Río de la Plata (including Samborombón Bay) (Chiaramonte and Pettovello 2000; Molina and Cazorla 2011).

Genetics and Population Structure

In terms of population structure, only one genetics study has been conducted to determine if multiple stocks occur throughout the species' range (Pereyra *et al.* 2010). Results of this study indicate that *M. schmitti* comprises a single demographic unit in the Río de la Plata area and its maritime front (area separating Uruguay and Argentina), suggesting high connectivity and genetic homogeneity over this geographic range (Pereyra *et al.* 2010). The authors attribute this genetic homogeneity to the likely high dispersal and migration rates of the species (based on tagging studies of related species *M. antarcticus* and *M. lenticulatis*; Francis 1988) and lack of obvious dispersal barriers in the study area. The study also found that nucleotide diversity in *M. schmitti* was lower than that reported for other elasmobranchs. These results may indicate that narrownose smoothhound experienced a genetic bottleneck, recent expansion, or selection, which potentially occurred during the Pleistocene Era (Pereyra *et al.* 2010).

Demography

The annual population growth rate for narrownose smoothhound in Brazil was calculated to be 1.058 between 1980 and 1994 (Massa *et al.* 2006). More recently, using life history parameters from individuals collected off Mar del Plata, Argentina, Cortés (2007) determined the intrinsic rate of increase (r) for narrownose smoothhound to be 0.175 per year when the population is not subject to exploitation (lower 95 percent confidence limit = 0.030; upper 95 percent confidence limit = 0.314). Because of this relatively high intrinsic rate of increase, Cortés (2007) concluded that narrownose smoothhound could withstand higher levels of exploitation than other coastal sharks in the Buenos Aires coastal region, with sustainable exploitation rates equivalent to an annual removal rate of about 10 percent of the population. Natural mortality rates of the species ranged from 0.139 to 0.412 (Cortés 2007). These demographic parameters place narrownose smoothhound toward the faster growing end of the "fast-slow" continuum of population parameters calculated by Cortés (2002), which means this species generally has a higher potential to recover from exploitation.

Historical and Current Distribution and Population Abundance

The narrownose smoothhound is the most abundant and widely distributed triakid in the Argentine Sea (Van der Molen and Caille 2001), with densities

off Río de la Plata as high as 44 t/nm² in 1994 (Cousseau *et al.* 1998). Throughout the rest of the Argentine-Uruguayan Common Fishing Zone (AUCFZ) [an area that extends 200 nm off the coast from the border of Uruguay and Brazil to just south of Necochea, Argentina] densities of narrownose smoothhounds ranged between 1 and 10 t/nm², with some areas supporting densities as high as 22 t/nm² (Cousseau *et al.* 1998). Based on data from research surveys conducted in the spring in Argentine maritime waters (covering coastal Buenos Aires and waters off Uruguay from 35° S.–41° S.), abundance of *M. schmitti* in this area increased from 82,000 t in 1978 to 184,302 t in 1994. In 1999, *M. schmitti* abundance on the continental shelf and slope from 34° S.–48° S. was estimated to be 191,722 t (Argentina FAO NPOA-sharks 2009). Although recent abundance estimates could not be found, Massa *et al.* (2006), citing unpublished data, indicate that between 1998 and 2002, biomass of the species declined by 22 percent in main fishing areas along the coast of Buenos Aires Province (Argentina) and the Bonaerensean region (Uruguay) and national landings in Argentina decreased by 30 percent. By 2003, abundance of *M. schmitti* (between 35° S.–41° S.) had fallen to 88,500 t (Argentina FAO NPOA-sharks 2009). Declines in abundance continued to be seen in Argentine waters through 2005 (Massa and Hozbor 2008). Similarly, in Brazil, based on CPUE data, abundance of the winter migrant population of *M. schmitti* is estimated to have declined by 85 percent between 1985 and 1994 (Miranda and Vooren 2003), and Massa *et al.* (2006) note that a small local breeding population that was relatively common in the 1980s in southern Brazil has seemingly been extirpated from the area.

Summary of Factors Affecting Narrownose Smoothhound (*Mustelus schmitti*)

We reviewed the best available information regarding historical, current, and potential threats to the narrownose smoothhound shark. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be reduced by the species' natural biological ability to withstand higher levels of exploitation. However, we find that historical and present levels of utilization have exceeded the species' biological capacity to quickly recover from exploitation, and have subsequently led to significant declines in abundance. We also find that current regulatory measures are inadequate to

protect the species from further overutilization. Hence, we identify these factors as additional threats contributing to the species' risk of extinction. We summarize information regarding these threats and their interactions below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction or modification, disease, predation or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015d) for discussion of these ESA section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The primary threat to the narrownose smoothhound is overutilization in commercial and artisanal fisheries as the species is intensely fished throughout its entire range, including within its nursery grounds. In Argentina, *M. schmitti* is considered the most important elasmobranch in Argentine fisheries, making up 9–12 percent of the total landings from coastal fleets (Galíndez *et al.* 2010), and is the most heavily exploited shark species in artisanal fisheries. As bycatch in Argentine commercial bottom trawls, narrownose smoothhounds comprise around 20 percent of the coastal harvest from these fisheries (Colautti *et al.* 2010). In the 1990s, fishing for the species increased in the directed industrial shark fisheries (Massa *et al.* 2004a), with the narrownose smoothhound being the main shark caught in the Argentine Sea (based on an extracted biomass of 10,200 t for that time period), and the second most consumed domestic fish (Van der Molen *et al.* 1998; Chiaramonte 1998). Between 1981 and 1991, commercial catches of *M. schmitti* ranged from 5,000 t–8,000 t, with peak landings of 13,000 t in 1988 (Cousseau and Perrotta 2000 cited in Massa *et al.* 2004a; FAO Global Capture Production Database). From 1992 to 1997, total catch of narrownose smoothhound remained fairly stable, hovering between 6,000 t and 8,000 t (Massa *et al.* 2004a), whereas the number of Argentine fishing vessels catching *M. schmitti* increased from 216 to 298 (Massa and Hozbor 2003). This increase in vessels and associated fishing pressure on the species consequently led to significant declines in the abundance of the species off the Argentine coast over this time period. Specifically, between 1992 and 1998, CPUE declined by 50 percent for the fishing fleet comprised of small-sized

vessels (<20 m) operating on the Argentine shelf, whereas the larger vessels (>20 m) that fished in deeper waters saw a decrease in CPUE of 78 percent (Massa and Hozbor 2003). The larger fishing vessels also reported a decrease in the mean length of landed narrownose smoothhounds, from 59 cm in 1994 to 55 cm in 1999, a size smaller than estimated size at 50 percent maturity (Colautti *et al.* 2010). The decline in biomass and CPUE of the species, as well as the decrease in the average size of narrownose smoothhounds in the landings, all point to evidence of the significant historical overutilization of the species off the Argentine coast. In 2003, reported landings of narrownose smoothhound in Argentine ports reached 7,899 t, which exceeded the recommended maximum catch limit of 7,200 t for that year (Massa *et al.* 2004b), but between 2003 and 2007, mean values of CPUE of the species steadily increased, from 37.72 kg/h in 2003 to 42.3 kg/h in 2007 (Perez *et al.* 2011). However, Perez *et al.* (2011) cautions that the increase in CPUE does not necessarily reflect an increase in abundance of the species. Rather the CPUE increase appears to be influenced by greater accessibility to the species (with the data indicating an increase in directed fishing effort for *M. schmitti* or a greater overlap of the species with other targeted species) (Perez *et al.* 2011).

In the artisanal fisheries in Argentina, the narrownose smoothhound is a highly targeted shark, particularly in the coastal areas between 36° S. and 41° S. latitudes. In Anegada Bay, a known nursery area for the shark, the smoothhound artisanal fishing season used to operate from October 15 to December 15, with fishermen exclusively using bottom gillnets to catch the sharks. In 2004, *M. schmitti* comprised 96 percent of artisanal landings from Anegada Bay; however, due to the selectivity of the artisanal gillnet sizes, only 1.8 percent of the fish captured were juveniles and 36.8 percent corresponded to pre-adults or young adults (Colautti *et al.* 2010). The catches ranged in size from 52–75 cm TL, which is generally below the recommended size for sustainable exploitation of this species (Cortés 2007), although size at maturity in Anegada Bay has been estimated at 61 cm for males and 64 cm for females (Colautti *et al.* 2010). Since 2008, the smoothhound fishery in this bay has been closed as an additional level of protection for the species; however, Colautti *et al.* (2010) note that extensive coastal commercial fishing still occurs

year-round in the surrounding El Rincón area in the southwest Buenos Aires province, which contains a number of nursery habitats for the species in addition to Anegada Bay. Because trawl nets are the predominant commercial gear used throughout the El Rincón area, a high proportion of the narrownose smoothhound catch in the coastal commercial fisheries are juveniles (Cousseau *et al.* 1998; Massa *et al.* 2004a; Pereyra *et al.* 2008; Molina and Cazorla 2011). In addition, catches from this area comprise a significant proportion of the total Argentinian narrownose smoothhound landings, with El Rincón landings making up 37–53 percent of the national total of *M. schmitti* landings from 2003 to 2008 (Colautti *et al.* 2010). Colautti *et al.* (2010) suggests that this heavy coastal commercial fishing pressure on narrownose smoothhounds in the El Rincón area, especially in the nursery areas of the species, is not only leading to overfishing of the sharks in the region but is also contributing to a potential loss of genetic diversity, as individuals with the highest growth rate are preferentially removed from the population during fishing operations. Declines in the biomass of the species have already been reported from the El Rincón area, with estimates of up to 50 percent between 1994 and 2003 (Colautti *et al.* 2010).

In Uruguay, landings of smoothhounds (primarily *M. schmitti*, but also *M. fasciatus* and *M. canis*) increased dramatically between 1999 and 2000, reaching 1,300 t, and then began to steadily decline, reaching approximately 850 t by 2005 (Domingo *et al.* 2008). According to data reported to the FAO, these estimates may be underestimated as the landings from Uruguay show peaks of 2,156 t and 3,212 t of narrownose smoothhound in 1998 and 1999, respectively (FAO Global Capture Production Database). True species composition of shark catches in Uruguay can be difficult because catch is often reported by common name and the same common name is used for multiple species (Nion 1999). However, similar to the Domingo *et al.* (2008) estimates, the FAO landings also decreased after 2001, with 892 t estimated in 2005. By 2009, the narrownose smoothhound was considered overfished in the coastal regions of Uruguay (Defeo *et al.* 2009).

In the AUCFZ, narrownose smoothhounds are the most heavily exploited shark (Segura and Milesi 2009). Though maximum permitted catch limits in the AUCFZ are set by both countries (Argentina and Uruguay), population declines have been seen

throughout this portion of the narrownose smoothhound's range, mostly due to increased fishing effort on juveniles of the population (Colautti *et al.* 2010; Molina and Cazorla 2011). For example, samples taken in the port of Mar del Plata, where the largest percentage of the species is landed, indicate that in 2001, nearly half of *M. schmitti* landings consisted of juveniles, with the average size of the landings estimated at 61.5 cm TL (Izzo and Rico 2003 cited in Massa *et al.* 2004b). In 2002, the percentage of juveniles landed increased to 81.7 percent, and the average size of the narrownose smoothhound sharks in the landings decreased to 52.5 cm TL (Izzo and Rico 2004 cited in Massa *et al.* 2004b), a value below the size at maturity of the species (*i.e.*, 55 to 60 cm TL). In other words, this level of utilization of the species, including the apparent removal of larger individuals from the population, led to a decrease in the average size of narrownose smoothhound sharks in landings, with the majority of the landings comprised of immature individuals. As litter sizes are correlated with maternal length, this removal of larger individuals from the population may significantly reduce the reproductive output of the species. Additionally, focusing fishing effort on primarily juveniles of the population can also have significant negative effects on recruitment (Vooren 1997) and may lead to further declines in the species. In fact, landings of the species in the AUCFZ have decreased in recent years, from 4,480 t in 2010 to 2,921 t in 2014, a decline in catch of around 35 percent (CTMFM 2015). In addition, the estimated size at maturity of narrownose smoothhounds in the AUCFZ has chronologically decreased since the 1970s, which is also indicative of overutilization of the species in this area. Specifically, in 1978, the size at maturity for males and females was estimated to be 60 cm and 62 cm TL, respectively (Menni *et al.* 1986). In 1997, Diaz de Astarloa *et al.* (1997) calculated size of maturity using data from a 1993 winter coastal fishing cruise to be 54.9 and 60.5 cm TL for males and females, respectively. Similarly, estimates calculated in 1998 determined the size at maturity to be 57.6 cm for males and 59.9 cm for females (Cousseau *et al.* 1998). More recently, Cortés (2007) estimated the total size of maturity of the species to be 56.04 cm TL, which is lower than estimates in previous studies (Menni *et al.* 1986; Diaz de Astarloa *et al.* 1997; Cousseau *et al.* 1998) and is consistent with a declining population trend. Finally,

since 2008, total landings of *M. schmitti* reported by Argentina and Uruguay to the FAO have decreased by over 57 percent and 63 percent, respectively, although no corresponding effort information is available. Despite the multiple indicators of overutilization of the species, in 2013, Argentina landed a total of 4,379 t of *M. schmitti* and Uruguay landed 194 t (FAO Global Capture Production Database), suggesting the species is still considered valuable catch and bycatch in these countries.

In Brazil, *M. schmitti* occurs as winter migrants on the Plataforma Sul off Rio Grande do Sul and, similar to *R. horkelli* and *M. fasciatus*, is caught by the trawl and oceanic gillnet fleets operating on the continental shelf. From 1975 to 1997, *M. schmitti* was one of two species that made up the majority of demersal shark landings in the port of Rio Grande (the other being the school shark, *Galeorhinus galeus*; Miranda and Vooren 2003). Targeted fishing for the species is thought to have increased from the mid 1970s through the 1980s, as evidenced by the near tripling of CPUE values of *M. schmitti* in the single trawl fleet, from 2.48 t/trip in 1975 to 7.31 t/trip in 1987 (Miranda and Vooren 2003). Likewise, the CPUE of *M. schmitti* by pair trawls from 1975 to 1987 reflected a similar trend, increasing from 0.35 t/trip to 2 t/trip (Miranda and Vooren 2003). However, CPUE values for both fleets decreased rapidly after 1987, with values in 1994 (1 t/trip for single trawl and 0.3 t/trip for pair trawl) indicating an approximate 85 percent decline in abundance of *M. schmitti* from 1985 numbers (Miranda and Vooren 2003). Despite the decline, *M. schmitti* was still being landed at the port of Rio Grande from April to October in 1994 and 1995 by single trawl and oceanic gillnet fleets, with peak CPUE from these fleets corresponding with the seasonal occurrence of the species on the Plataforma Sul.

Similar to the trends seen in the striped smoothhound within the coastal waters off southern Brazil, neonates of *M. schmitti* have also declined in abundance, a likely result of the intense coastal commercial and artisanal fishing along the Brazilian coast (see additional discussion of these fisheries in the assessments for Brazilian guitarfish and striped smoothhound). As mentioned previously, these coastal fisheries primarily use beach seines, gillnet and trawl gear in the nearshore locations off Rio Grande do Sul, habitat for narrownose smoothhound neonates and juveniles. Consequently, neonate *M. schmitti* populations that were once

abundant in the 1980s have since seemingly disappeared, with data that show an absence of neonate individuals from artisanal beach net catches in 2003 and coastal trawl surveys conducted in 2005 (Vooren *et al.* 2005b). Further, Massa *et al.* (2006) report that a small local population of narrownose smoothhounds that was known to give birth in south Brazil in November and remain through February may have been extirpated, but additional information to confirm this potential extirpation is unavailable.

As discussed in both the Brazilian guitarfish and striped smoothhound assessments, fishing by the industrial and artisanal fleets continues to occur at high efforts on the Plataforma Sul, and especially within the important coastal nursery and inner shelf habitats for the species (which overlap with both *R. horkelli* and *M. fasciatus*). This heavy fishing pressure may have led to the apparent extirpation of the local breeding population of narrownose smoothhound in southern Brazil (Massa *et al.* 2006 citing Vooren and Lamónaca unpublished data) and is likely contributing to the fishing mortality of the wintering migratory population. Based on the trends from available fisheries data (see *R. horkelli* and *M. fasciatus* assessments), it is unlikely that the industrial and artisanal fishing on the Plataforma Sul, and particularly off the coast of Rio Grande do Sul within narrownose smoothhound habitat, will decrease in the foreseeable future, indicating that overutilization (in the form of bycatch mortality) will continue to be a threat to the species leading to further declines in the wintering migratory population.

Inadequacy of Existing Regulatory Mechanisms

In Argentina, there are few regulations in place to protect narrownose smoothhound nursery habitat. For example, Ría Deseado (~40 km; 47°45' S.; 65°55' W.), the southernmost limit of the narrownose smoothhound's range, is designated as a nature preserve and protects the local population from fishery-related mortality (Chiaromonte and Pettovello 2000). It has been identified as a nursery area, where breeding adults, neonates, and juveniles enter Ría Deseado waters in the late spring and stay until late summer (Chiaromonte and Pettovello 2000). Anegada Bay (39°50'51" S. to 40°43'08" S. and 62°28'44" W. to 62°03'00" W.), Argentina, another known narrownose smoothhound nursery area, is also protected from fishing operations. The bay was previously designated as a multiple use zone reserve in 2000,

which did little to protect the *M. schmitti* population from fishing mortality as a smoothhound fishery operated within the bay waters. However, in 2004 and 2008, fishing was banned in the bay due to concern over the conservation of the bay's natural resources, and since 2008, the smoothhound fishery in Anegada Bay has remained closed (Colautti *et al.* 2010). However, as Anegada Bay is surrounded by the larger El Rincón area, which also includes a number of other nursery habitats for the species and is open to fishing, it is unclear how effective the protections in Anegada Bay will be in decreasing the extinction risk of the species from overutilization. While these specific areas provide important protection for the species during critical life stages, they comprise a very small portion of the species' range and it is unclear to what extent the species relies on these small nursery areas for recruitment to the population.

In Uruguay, regulations that likely contribute to decreasing the fishery-related mortality of the species include a summer trawling ban in 25 m to 50 m depths between La Paloma and Chuy and specific fishery area closures in the spring, summer, and autumn on the Uruguayan continental shelf, designated to protect juvenile hake (*Merluccius hubbsi*) but which also correspond with high use areas of the narrownose smoothhound population (Pereyra *et al.* 2008).

Both Argentina and Uruguay list the narrownose smoothhound as a high priority species within their respective FAO NPOA-sharks (Domínguez *et al.* 2008; Argentina FAO NPOA-sharks 2009). These plans, as stated previously, set goals to collect the necessary information on its priority species in order to conduct abundance assessments, increase research and improve management of the species, review current fishing licenses, and promote public awareness to release captured individuals. However, no updated results from the goals and priorities of these plans could be found. As such, the implementation and overall effectiveness of these plans at decreasing the threats to the narrownose smoothhound remains highly uncertain.

In the AUCFZ, the area where current fisheries information indicates narrownose smoothhounds may likely be most abundant and heavily targeted, the Comisión Técnica Mixta del Frente Marítimo (CTMFM) is in charge of managing fish stocks and does so through the implementation of catch limits and fishery closures. For example, every year, the CTMFM implements a prohibition against

demersal trawling in an area that covers a large section of the common fishing zone, extending across the continental shelf, in order to protect vulnerable chondrichthyans from fishery-related mortality. This prohibition, which is usually in place between November and March, helps to decrease fishery-related mortality of the narrownose smoothhound shark during at least part of the year. The CTMFM also establishes additional area closures to trawling gear throughout the year in the AUCFZ, including within the Rio de la Plata (where historical estimates of narrownose smoothhound were as high as 44 t/nm²; Cousseau *et al.* 1998), in order to protect whitemouth croaker (*Micropogonias furnieri*) and juvenile hake from overexploitation by the fisheries. As these areas correspond with high use by the narrownose smoothhound population, the trawling bans will also directly help to protect the narrownose smoothhound from additional fishery-related mortality.

In terms of the direct management of *M. schmitti* sharks, from 2002 to 2010, the CTMFM has set the total permissible catch limit for all *Mustelus spp.* at 4,850 t. In 2011, this limit was lowered to 4,000 t (Res. N° 5/11, Res. N° 5/02), and in 2012, the CTMFM set a species-specific total permissible catch limit for narrownose smoothhound at 4,500 t (Res. N° 11/13, Res. N° 9/12). This catch limit remained at this level until 2015, when it was reduced to 3,500 t (Res. N° 6/15). However, despite these maximum allowable catch levels for *Mustelus spp.* that have been set since 2002, McCormack *et al.* (2007) reports that elasmobranch quotas and size regulations are largely ignored in Argentina and poorly enforced. This may explain why population declines continued to occur in this part of the species' range even after regulations were implemented to sustainably manage the species. Due to a lack of abundance data since 2003, it is unclear whether the catch limits for *Mustelus spp.* have positively affected the population since 2002, though it is worth noting that since 2010, catches of *M. schmitti* in the AUCFZ have been below the total allowable levels and on a decline (CTMFM 2015). However, perhaps the recent decline in *M. schmitti* landings prompted the reduction in catch limits in 2015.

In Brazil, the narrownose smoothhound is listed on Annex 1 of Brazil's endangered species list and classified as critically endangered (Directive N° 445). As described in previous species assessments, an Annex 1 listing prohibits the catch of the species except for scientific purposes,

which requires a special license from IBAMA. There is also a prohibition of trawl fishing within three nautical miles from the coast of southern Brazil, although the enforcement of this prohibition has been noted as difficult (Chiaromonte and Vooren 2007). In addition, the species is still susceptible to being caught as bycatch in the legally permitted coastal gillnet fisheries and offshore trawl and gillnet fisheries and vulnerable to the associated bycatch mortality (Lessa and Vooren 2007). Additionally, unlike the striped smoothhound, the narrownose smoothhound is listed as one of the 12 species of concern under Brazil's FAO NPOA-sharks and would also benefit from the proposed fishing closures and other management measures outlined in the plan. However, as mentioned previously, the plan was only just approved as of December 2014, and will not be fully implemented for another 5 years. Thus, the implementation and effectiveness of the recommendations outlined in the plan remain uncertain, with the best available information indicating that current regulatory measures in Brazil to protect vulnerable species are poorly enforced.

Extinction Risk

The best available information provides multiple lines of evidence indicating that the *M. schmitti* currently faces a moderate risk of extinction. Below, we present the demographic risk analysis, threats assessment, and overall risk of extinction for the narrownose smoothhound shark.

Demographic Risk Analysis

Abundance

There is limited information available regarding quantitative abundance estimates of narrownose smoothhound throughout its range. However, biomass estimates as well as trends in commercial landings and CPUE data can provide some insight into the abundance of the species. The narrownose smoothhound is the most abundant and widely distributed triakid in the Argentine Sea. In Argentina, the narrownose smoothhound is mainly landed by the commercial fleet operating in the Buenos Aires coastal region, and represents up to 14.5 percent of landings (Carozza *et al.* 2001 cited in Massa *et al.* 2004b). Between 1992 and 1997, landings of the species in Argentina were fairly stable, on the order of 6,000–8,000 t; however, CPUE values decreased by upwards of 78 percent during this time period, indicating a likely decline in the abundance of the species. From 1998 to

2002, biomass of *M. schmitti* reportedly declined in the main fishing areas along the coast of Buenos Aires Province and the surrounding region by approximately 22 percent (Massa *et al.* 2006). National landings also decreased in Argentina by 30 percent during this same time period and have continued to decline based on FAO landings data through 2013. It is important to note that the decrease in landings is not due to falling market values as *M. schmitti* continues to fetch a high price in the Argentine domestic market (Massa *et al.* 2004b). In 2003, the spring time abundance of *M. schmitti* from coastal Buenos Aires and Uruguay (between 34° S.–41° S.) was estimated to be 88,500 t, which represents a 50 percent and 39 percent decline from estimated values in 1994 and 1999, respectively (Massa *et al.* 2004a). Additionally, based on estimates calculated in 2007, size at maturity of the species has chronologically decreased since the 1970s, a strong indication of overutilization of the species and declining abundance.

In Uruguay, there is conflicting information regarding the trend in catches of *M. schmitti*. Landings of smoothhounds in Uruguay are aggregated at the genus level because catch is often reported by common name and the same common name is used for multiple species. Thus, identifying the true species composition of shark catches in Uruguay is problematic. According to Domingo *et al.* (2008), landings of smoothhounds in Uruguay (primarily *M. schmitti*) increased dramatically between 1999 and 2000, reaching 1,300 tons, and then steadily declined to approximately 850 tons by 2005. Based on landings data reported to the FAO, catches of *M. schmitti* have continued to decline, with only 194 t reported in 2013. However, without corresponding effort information, it is unclear if the decrease in landings is a result of decreases in abundance in the species.

In Brazil, *M. schmitti* occurs as winter migrants on the Plataforma Sul and is caught by the trawl and oceanic gillnet fleets operating on the continental shelf. Based on CPUE data from these fleets, the wintering population has likely suffered significant declines in abundance. The CPUE values from both the single and pair trawl fisheries showed an increase from the mid 1970s to the late 1980s; however, after 1987, CPUE values for both fleets decreased rapidly, and in 1994, these CPUE values showed an approximate 85 percent abundance decline of *M. schmitti* from 1985 values (Miranda and Vooren 2003). Massa *et al.* (2006) also cites

unpublished data that indicate the likely extirpation of a local breeding population of narrownose smoothhound in Brazil as a result of fishing in inshore pupping and nursery areas. Although no further information was given regarding this population, survey and fisheries data suggest significant declines in newborn *M. schmitti* from a local nursery area off the coast of Rio Grande do Sul. Once abundant in the 1980s in the coastal waters off Casino Beach, Rio Grande do Sul, neonates of this local population have since seemingly disappeared, with data that show an absence of individuals from artisanal beach nets in 2003 and coastal trawl surveys in 2005 (Vooren *et al.* 2005b). This absence of neonates, compared to data from the 1980s, is likely a sign of decline of this population and may even suggest a potential extirpation.

Overall, best available information suggests the species is likely in decline in parts of its Argentine and Uruguayan range, and has experienced a significant decrease in abundance in its winter migrant population in Brazil. Although present abundance estimates are unknown, the significant declines in both CPUE and landings of the species throughout its range, as well as the chronological reduction of the species' average size (based on landings data) and size of maturity, suggest overexploitation of the species and a declining abundance trend. Targeting of the species will continue, given its demand in the market and importance in both the artisanal and commercial fisheries in the region and, combined with the high fishing pressure in the species' nursery areas, the species may continue to experience population declines throughout its range, with abundance levels that will likely contribute significantly to its extinction risk in the foreseeable future.

Growth Rate/Productivity

The narrownose smoothhound has an estimated lifespan of 20.8 years and 24.7 years for males and females, respectively, with a maximum recorded size of 110 cm TL. Information regarding size and age of maturity estimates vary throughout the species' range, but the most recent estimate from Hozbor *et al.* (2010) suggests an age at maturity of 4 years for both sexes. Although *M. schmitti* has an annual reproductive cycle with a lengthy gestation period (11 months) and an average of only 4–5 pups per litter, the species' intrinsic rate of population increase is relatively high, at 0.175 per year. Natural mortality rates ranged from 0.139 to 0.412 (Cortés 2007). These estimates indicate that *M. schmitti* has

a higher potential to recover from exploitation compared to other coastal sharks, and could withstand annual removal rates of up to approximately 10 percent of the population. However, based on confirmed chronological reductions in both average size (from landings data) and total length at maturity in the species, it is apparent that removal rates of the species have been exceeding the 10 percent sustainable removal rate. The reduction in mean size and size at maturity is particularly concerning due to the positive relationship between maternal length and litter size (*i.e.*, litter size increases significantly with maternal length) in which a decrease in maximum size has the potential to reduce the species' reproductive output. As such, these reductions likely compromise the species' growth rate and productivity, and consequently, hinder its ability to recover from exploitation.

Spatial Structure/Connectivity

Very limited information is available regarding spatial structure and connectivity of *M. schmitti* populations. Tagging studies of related species *M. antarcticus* and *M. lenticulatis* found that they have high dispersal capacities (Francis 1988), but no such studies have been conducted specifically for *M. schmitti*. If narrownose smoothhound populations are connected, then the significant fishing pressure on the migratory population while they winter on the Plataforma Sul may be negatively impacting the populations found in other parts of the species' range (perhaps contributing to the observed declines off Argentina and Uruguay). However, based on the available data, there is not enough information to identify critical populations or determine whether the rates of dispersal among populations, metapopulations, or habitat patches are posing a risk of extinction.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. In terms of population structure, only one genetics study has been conducted to determine if multiple stocks occur throughout the species' range (Pereyra *et al.* 2010). Results of this study indicate that *M. schmitti*

comprises a single demographic unit in the Río de la Plata area and its maritime front (area separating Uruguay and Argentina), with no distinct population structure found between or within the Río de la Plata, the Atlantic coast or its outer shelf. These findings indicate high connectivity and suggest genetic homogeneity over this geographic range, which is attributed to the likely high dispersal and migration rates of the species (Pereyra *et al.* 2010). However, a lack of genetic structure can also result from many other factors, including large effective population sizes and/or the presence of shared ancestral polymorphisms due to recent population divergence.

In addition to genetic homogeneity, the study found that nucleotide diversity in *M. schmitti* was lower than that reported for other elasmobranchs. These results may indicate that narrownose smoothhound experienced a genetic bottleneck, recent expansion, or selection, which potentially occurred during the Pleistocene Era (Pereyra *et al.* 2010). However, it is difficult to unambiguously discern between evidence for natural selection and demographic population expansion. Overall, the low genetic diversity values found for the species and evidence that fishing pressure may have already altered the genetic characteristics of the population (*i.e.*, smaller average size and size at maturity, which in turn can alter reproductive fitness and fecundity) raise considerable concern over the species' status. This information indicates that *M. schmitti* may be at an increased risk of inbreeding depression or random genetic drift, and could experience the fixing of recessive detrimental genes, reducing the overall fitness of the species.

Threats Assessment

The primary threat to narrownose smoothhounds is overutilization in commercial and artisanal fisheries, with the species both targeted and bycaught throughout its range. In Argentina, *M. schmitti* is considered the most important elasmobranch for Argentine fisheries; however, data suggest that the majority of narrownose smoothhounds caught by Argentine fishermen are juveniles (*e.g.* up to 81.7 percent of the landings in 2002), indicating significant fishing pressure in important nursery areas. Declines in both CPUE and biomass of *M. schmitti* in Argentina occurred throughout the 1990s and early 2000s; however, mean values of CPUE have shown a slight upward trend from 2003–2007. However, as noted previously, these values should be interpreted with caution as they could

be the result of increased directed fishing pressure on *M. schmitti* or an increase in overlap of fishing vessels in areas where *M. schmitti* has higher concentrations. Further, the chronological reduction in mean size and size of sexual maturity since the 1970s indicates overfishing of the species, suggesting exploitation rates are higher than what the species can presently sustain.

In the AUCFZ, where *M. schmitti* is most heavily exploited, fishing regulations currently set total permissible catch of *M. schmitti* at 3,500 t (which is a reduction from the 4,500 t limit that was in place since 2012). Additionally, trawling is banned within 5 nm of the coast, which coincides with the pupping and breeding areas of the species. While there is no information to indicate whether these regulatory mechanisms are positively affecting the status of the narrownose smoothhound, particularly since species-specific catch limits for *M. schmitti* have only been implemented since 2012, these regulations may help reduce fishing pressure in this important part of the species' range. Since 2010, catches of *M. schmitti* in the AUCFZ have been below the total allowable levels (for *Mustelus spp.* and *M. schmitti*) and on a decline; however, it should be noted that despite total allowable catch, minimum sizes, and annual quotas in place for many elasmobranchs in Argentina, they are largely ignored and poorly enforced (McCormack *et al.* 2007).

In Uruguay, narrownose smoothhounds are both targeted in artisanal fisheries and caught as bycatch. Despite the difficulties in identifying species composition of shark catches and discrepancies in catch information, data indicate landings of *M. schmitti* have declined in Uruguay, and in 2009, the species was classified as overfished in coastal regions of Uruguay and considered a high priority under the country's FAO NPOA-sharks.

In southern Brazil, the intensive fishing effort on the Plataforma Sul has likely led to overutilization, and consequently, significant declines in the winter migrant population of *M. schmitti* and potential extirpation of a local breeding population. Bottom trawl fishery CPUE data provide evidence that abundance of the winter migrant population of *M. schmitti* decreased by 85 percent due to intensive fishing effort from 1985 onwards. The absence of neonates from coastal waters, where they were once abundant in the 1980s, also suggest that intense fishing effort, especially in important nursery areas, has led to significant declines in local populations and potential extirpation of

a small population of Brazilian migrants that was known to give birth in south Brazil in November and remain through February (Massa *et al.* 2006). Since 2004, the species has been listed on Brazil's endangered species list, which prohibits fishers from catching this species. The species is also listed as one of 12 species of concern under Brazil's FAO NPOA-sharks, which calls for fishing closures in areas of <20 m deep that would provide protection to neonates and juveniles, as well as other closures to protect adult aggregations; however, the implementation and effectiveness of the recommendations outlined in the plan remain uncertain, with the best available information indicating that current regulatory measures in Brazil to protect vulnerable species are poorly enforced, particularly in artisanal fisheries.

Based on the best available information, it is evident that *M. schmitti* is heavily exploited and has likely experienced population declines throughout its range as a result of historical and continued overutilization of the species. In limited parts of the species' range, regulatory mechanisms are seemingly adequate to control for overutilization, such as the closures of important nursery areas in Argentina which protect neonates and juveniles from fishing mortality. However, throughout large portions of the species' range, particularly in areas where the species is most heavily exploited, it is evident that regulatory mechanisms are not adequately protecting the species from further decline. For example, in the AUCFZ, continued population declines have been seen in this part of the species' range through 2005 (Massa and Hozbor 2008), despite annual maximum allowable catches for *Mustelus spp.* since 2002. Additionally, while CPUE values in Argentina have shown a slight upward trend from 2003–2007, the cause of this trend is uncertain and may actually reflect increased direct and indirect fishing effort on *M. schmitti*. While species-specific catch limits were implemented for *M. schmitti* in 2012, it is unclear if these levels are adequate to prevent further declines in the species. Although corresponding effort data are unavailable, since 2008, landings of *M. schmitti* reported by Argentina and Uruguay to the FAO have decreased by over 50 percent. Since 2010, catches in the AUCFZ have been below the total allowable catch levels and also on a decline, which may suggest reducing fishing pressure on the species or evidence that catch regulations are potentially being followed. However,

McCormack *et al.* (2007) note that quotas and size regulations are largely ignored and lack enforcement in Argentina. Additionally, since 2006, the total number of vessels in Argentina's fishing fleet has remained fairly stable (OECD 2014), potentially indicating that fishing effort has not decreased substantially in recent years. As such, the decreasing landings, even below total allowable catch limits, may indicate a continued decline in the abundance of the species. Overall, based on the best available information, we find that existing regulatory measures throughout the most heavily exploited areas of the species' range are inadequate to protect the species from overutilization, which is the main threat significantly contributing to the extinction risk of *M. schmitti*.

Risk of Extinction

While there is considerable uncertainty regarding the species' current abundance, the best available information indicates that the species has experienced population declines of significant magnitude throughout its range. Most concerning is the evidence to suggest *M. schmitti* has undergone a chronological decline in average size (based on landings data) and mean size of maturity, as shown in studies from the 1970s through 2007 (Massa *et al.* 2004a; Cortés 2007). Not surprisingly, this decreasing trend corresponds to an increase of fishing operations and provides evidence of the negative impact of historical and current exploitation rates and associated fishing mortality on the biological status of the species. Because of the positive relationship between maternal length and litter size for the species, a decrease in the average size of the population has the potential to reduce the species' reproductive output. Furthermore, a decrease in average size below the species' mean size of maturity can hasten the reduction of biomass and increase the risk of local extinction (Baum and Myers 2004 cited in Massa *et al.* 2004b). Although the species' relatively high intrinsic rate of population increase and ability to withstand moderate levels of exploitation up to 10 percent of the total population provides the narrownose smoothhound shark with some protection from extinction, and is likely the reason why the species remains the most abundant houndshark in the Argentine Sea, the aforementioned decreases in average size and size at maturity as well as population size suggest the species is being exploited at a level exceeding what it can sustain. Thus, based on the best available

information, we conclude that the species is currently at a moderate risk of extinction due to declining trends in abundance and population growth/productivity, which are unlikely to reverse in the foreseeable future because of the continued overutilization of the species in commercial and artisanal fisheries and inadequacy of existing regulatory measures to control this level of exploitation.

Protective Efforts

With the exception of the recommendations within the FAO NPOA-sharks discussed above, we were unable to find any other information on protective efforts for the conservation of narrownose smoothhound in Argentina, Uruguay, or Brazil that would potentially alter the extinction risk for the species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the narrownose smoothhound is not presently in danger of extinction throughout its range, but likely to become so in the foreseeable future. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory mechanisms throughout its range. Due to the species' relatively fast population growth rate (for elasmobranchs) and likely high historical abundance, it can withstand moderate rates of exploitation. However, based on the declining trends in the species' abundance, its low genetic diversity, the observed decreases in average size of the species in catches as well as the decreases in size at maturity in areas where it is most heavily exploited, best available data suggest that the fishing mortality rate is higher than what the species can sustain. Although the species' present level of abundance does not appear to be at such a low level to trigger the onset of compensatory processes, the species' observed downward trend is unlikely to reverse in the foreseeable future as a result of continued overutilization. We therefore conclude that the species is on a trajectory indicating that it will more likely than not be at risk of extinction in the foreseeable future. We also found no evidence of protective efforts for the conservation of narrownose smoothhound that would reduce the level of extinction risk faced by the

species. We therefore propose to list the narrownose smoothhound as a threatened species.

Angel Sharks

Angel sharks are members of the family Squatinidae. Both the spiny angel shark (*Squatina guggenheim*) and Argentine angel shark (*Squatina argentina*), two of the elasmobranchs considered for listing in this finding, can be found in the Southwestern Atlantic Ocean from southern Brazil to Argentina. The taxonomy of angel sharks of the southwestern Atlantic Ocean has been a source of ongoing controversy (Vooren and Chiaromonte 2006). Due to similar morphological characteristics, *S. argentina*, *S. guggenheim*, *S. occulta*, and *S. punctata* have been variously synonymized with each other (Compagno 2005; Vooren and Chiaromonte 2006; de Carvalho 2012). Currently, *S. punctata* is considered a junior synonym of *S. guggenheim* (Vooren and da Silva 1991; de Carvalho *et al.* 2012; Vaz and Carvalho 2013). Extensive studies of the morphotypes that occur in southern Brazil and the southwestern Atlantic concluded that *S. argentina*, *S. guggenheim*, and *S. occulta* are three different species that can be distinguished by morphological differences as well as life history characteristics, such as differences in reproductive patterns, overall size, and depth and temperature preference (Vooren and da Silva 1991; Vaz and Carvalho 2013). An analysis of molecular systematics of angel sharks confirms the validity of *S. guggenheim* and *S. occulta* as separate species (Stelbrink *et al.* 2010).

Spiny Angel Shark (*Squatina guggenheim*)

Species Description

The spiny angel shark (*S. guggenheim*) can be distinguished from its sympatric species by the presence of a median row of spines or tubercles on its dorsal side (Vooren and da Silva 1991; Milessi *et al.* 2001; Schäfer *et al.* 2012; Vaz and Carvalho 2013). There are 30–35 spines, which are short, conical, and slightly recurved, between the head and the first dorsal fin. As females mature, their dorsal spines become less distinct and take the form of flattened tubercles, whereas juveniles less than 35 cm TL of both sexes have spines flanked on each side by a diffuse row of smaller spines (Vooren and da Silva 1991). Adult males have small spines on the outermost tips of the dorsal surface of their pectoral fins that are inclined towards the shark's midline. The outer edges of the pectoral fins are straight

and the posterior corners are located nearer to the origin of the pelvic fin than to the outer corner of the pelvic fins (Vooren and da Silva 1991). The dorsal skin is light to dark brown with several white or creamy-white to yellowish large, rounded blotches that are variable in size and symmetrically distributed on the entire dorsal surface (Vaz and Carvalho 2013).

Range and Habitat Use

The spiny angel shark is found in the southwestern Atlantic Ocean from Espirito Santo, Brazil, to Rawson, Argentina (Milessi *et al.* 2001; Vögler *et al.* 2003; Awruch *et al.* 2008). It is a primarily coastal, bottom dwelling angel shark (Chiaromonte and Vooren 2007; Crespi-Abri 2013). Spiny angel sharks prefer depths between 10 m and 80 m, but have been reported as deep as 150 m off Argentina (Cousseau 1973; Chiaromonte and Vooren 2007), and occur in temperatures between 10 °C and 22 °C (Vooren and da Silva 1991). The species lives in muddy or sandy bottom substrates and is relatively inactive during the day. This nocturnal activity makes the spiny angel shark more vulnerable to gillnet fisheries, which tend to operate at night (Vooren and Klippel 2005a).

Diet and Feeding

Spiny angel sharks are thought to be sit-and-wait predators, lying motionless on the bottom until prey passes closely overhead. The prey is then grasped by an upward bite (Vooren and da Silva 1991). Based on diet studies, the spiny angel shark appears to prefer bony fishes but will also feed on crustaceans, molluscs, and polychaetes (Vögler *et al.* 2003; Colonello 2005; Vögler *et al.* 2009). In the AUCFZ, a study of spiny angel shark trophic ecology found that, numerically, bony fish made up the vast majority of the diet, at 89.7 percent (Vögler *et al.* 2003). Crustaceans (4.8 percent), molluscs (4.4 percent), and polychaetes (0.46 percent) made up the remaining portions (Vögler *et al.* 2003). Spiny angel sharks consumed both pelagic and demersal fishes including *Engraulis anchoita*, *Cynoscion guatucupa*, *Patagonotothen ramsayi*, *Notothenia longipes*, and *Merluccius hubbsi*. The crustaceans consumed were primarily shrimps (Penaeidae), while the squid *Illex argentinus* was the only species of mollusc consumed (Vögler *et al.* 2003, 2009).

Although ontogenetic and seasonal differences in diet have been observed for the species (Vögler *et al.* 2003; Colonello 2005; Vögler *et al.* 2009), bony fish remain the primary prey item for all size classes and during all

seasons, and, generally, as size of the spiny angel shark increases so does its trophic level. Ranging from a minimum trophic level of 3.69 for the smallest length group of spiny angel shark (23–60 cm) to a maximum trophic level of 4.40 for the largest length group (81–91 cm), the entire population of spiny angel sharks in the AUFZC was estimated to have a trophic level of 3.90 (Vögler *et al.* 2003; 2009). For comparison, in aquatic environments, trophic levels tend to range from 2 (for species that are lower on the food chain, such as herbivores and detritivores) to 5.5 (for predators of marine mammals, such as the polar bear and killer whale) (Pauly *et al.* 2014).

Growth and Reproduction

Very few age and growth studies on the spiny angel shark could be found. In terms of length frequency distributions of spiny angel sharks, individuals caught in the San Matías Gulf, Argentina showed a modal peak of 75–90 cm TL for males and 80–95 cm TL for females, with no evidence of size dimorphism (Awruch *et al.* 2008). The largest recorded animals were 95 cm TL for both sexes (Awruch *et al.* 2008). Length at 50 percent maturity for males was reached at 76 cm TL and for females at 73 cm TL (Awruch *et al.* 2008).

Studies of spiny angel sharks farther north, in Rio de la Plata and El Rincón, Argentina, found that males from El Rincón at a given length were significantly heavier than males from Rio de la Plata, while females showed no significant differences in the length-weight relationship (Colonello *et al.* 2007). Both sexes grew larger in El Rincón than in Rio de la Plata (Colonello *et al.* 2007); but, length at 50 percent maturity in males was not significantly different between El Rincón and Rio de la Plata (75 cm TL and 72.45 cm TL, respectively). However, length at 50 percent maturity was significantly different between study areas for females, with estimates of 71.34 cm TL in Rio de la Plata and 77.01 cm TL in El Rincón (Colonello *et al.* 2007).

In southern Brazil, spiny angel sharks reach a maximum length of 92 cm TL and age of 12 years (Vooren and Klippel 2005a). According to the characteristics for the *S. guggenheim* population presented in Vooren and Klippel (2005a), the relative growth rate (k) of the species from the von Bertalanffy growth equation is 0.275 year^{-1} with a theoretical maximum size (L_{∞}) of 94.7 cm TL. Length and age at first maturity is estimated to be 72 cm TL and 4 years,

respectively (Vooren and Klippel 2005a).

In terms of reproduction, the spiny angel shark has only one functional ovary (Vooren and da Silva 1991), with the maturation of ovarian follicles lasting about 2 years before ovulation, followed by gestation (Colonello *et al.* 2007). The female reproductive cycle is thought to be triennial (Colonello *et al.* 2007), with a gestation period that likely lasts 12 months (Colonello *et al.* 2007). Gestation begins in the summer (January–February) and pupping occurs the following spring (November–December) (Sunye and Vooren 1997). Gestation is divided into two stages: Uterine gestation and cloacal gestation. Early gestation (January–April) occurs only in the uteri, which contains recently ovulated eggs and embryos up to 25 mm TL (Sunye and Vooren 1997). During mid-term gestation and parturition (June–November) the uteri undergo a physical reconfiguration, causing the uteri and cloaca to form a heart-shaped chamber where the embryos develop (Sunye and Vooren 1997). According to Sunye and Vooren (1997), because this uterine–cloacal chamber is open to the external environment through a cloacal vent, this anatomical configuration is thought to be the reason why *Squatina* species are observed easily aborting embryos during capture or handling.

Pupping occurs during the spring and summer months (September–March) in depths less than 20 m (Vooren 1997; Miranda and Vooren 2003). Litter sizes for the species range between 2 and 8 pups (Colonello *et al.* 2007; Vooren and Klippel 2005a). For spiny angel sharks in Argentina, Colonello *et al.* (2007) estimated an average of 4.07 pups per litter, with fecundity increasing with female length. In contrast, Vooren and Klippel (2005a) note that spiny angel sharks in southern Brazil frequently have 5 or 6 pups per litter, with the number of pups unrelated to female length. However, given the 3-year reproductive cycle, the range in pup estimates for spiny angel sharks results in a very low annual fecundity for the species (*e.g.*, between 0.67 and 2.67 pups per year) (Colonello *et al.* 2007; Vooren and Klippel 2005a). After pupping, juveniles of the species will remain in the shallow waters for one year before migrating out to the continental shelf (Vooren and da Silva 1991; Vooren 1997; Vooren and Klippel 2005a). In terms of known juvenile habitat, the area of Rio Grande do Sul between 31°50' S. and 33°30' S. at depths less than 20 m is considered a nursery area for spiny angel sharks (Vooren and Klippel 2005a).

Genetics and Population Structure

Recently, Garcia *et al.* (2015) examined the population structure of the spiny angel shark in the middle of its range, in and around the Rio de la Plata estuary. Using mitochondrial DNA (which is maternally-inherited DNA), the authors found that individuals from the outer estuary, surrounding coastal sites, and the outer shelf of the southwestern Atlantic showed no evidence of population genetic structuring. However, examination of nuclear recombinant DNA genes (which are biparentally-inherited) indicated that there was a remarkably high level of population genetic structure between the outer shelf spiny angel sharks and the coastal and outer estuarine angel sharks. In other words, the samples of spiny angel shark from the outer shelf represent an isolated group from the samples of spiny angel shark from the coastal and outer estuarine sites. Additionally, mitochondrial DNA indicated that the number of immigrant females per generation from the outer shelf to the Atlantic coast was much lower (2.8 individuals per generation) than the number of immigrant females per generation between the other populations (with estimates ranging from 12.8–46.9 individuals). All analyses revealed very low values of haplotype and nucleotide diversity from the recombinant DNA genes. Based on the low level of genetic diversity detected in *S. guggenheim*, Garcia *et al.* (2015) suggest the species has either undergone a long-term population decline or experienced a population bottleneck and recent expansion. Either scenario suggests a vulnerability to overexploitation, given the species' longevity and low reproductive potential. However, additional genetic studies are needed to better understand these patterns (Garcia *et al.* 2015).

Demography

Information on natural mortality rates or the intrinsic rate of population increase of the spiny angel shark is currently unavailable.

Historical and Current Distribution and Population Abundance

In northern Argentina, spiny angel sharks are considered to be a eurythermic coastal shelf species with highest abundances on the outer coastal shelf between depths of 28.9 m and 49.6 m (Jaureguizar *et al.* 2006). In the Rio de la Plata estuary, Argentina, spiny angel sharks were present most frequently in the deepest estuarine zone (12.6 m–16 m) with salinities between 25 and 34 psu. They are not considered a

permanent resident of the estuary, with abundances higher in the summer than during the spring and fall (Jaureguizar *et al.* 2003).

In the AUCFZ, spiny angel shark distribution appears to be influenced by temperature, with clear avoidance of water temperatures below 5 °C and above 20 °C (Vögler *et al.* 2008). Specifically, Vögler *et al.* (2008) found that spiny angel sharks concentrate in water temperatures between 13.2 °C and 18.5 °C in the spring and between 7.0 °C and 15.0 °C in the fall. They prefer salinities between 33.4 and 33.5, with avoidance of salinities below 33.0 and above 34.0. Additionally, a strong association was found between spiny angel shark presence and thermal horizontal fronts, which indicates that temperature is the principal environmental variable that influences distribution (Vögler *et al.* 2008). In Rio de la Plata, in the AUCFZ, spiny angel shark densities are particularly high along the Uruguayan coast in the spring, which is thought to be related to the presence of higher salinity waters on the Uruguayan coast than the Argentine coast during this season (Colonello *et al.* 2007).

In southern Brazil, spiny angel sharks are considered a resident species (Vooren 1997). From 1980–1984 spiny angel sharks were common year round on the southern shelf (at depths between 10 m and 100 m) from Solidão to Chuí, with some areas recording CPUE densities as high as 50 kg/h (Vooren and Klippel 2005a). According to Vooren and Klippel (2005a), a portion of the *S. guggenheim* population makes seasonal migrations across the continental shelf, which is related to the 3-year reproductive cycle of the species (*i.e.*, one third of adult females in the population will migrate per year to give birth). Specifically, this inshore migration is into depths between 10 m and 40 m and occurs in the spring and summer (September–March) for pupping and likely mating purposes (as adults of both sexes conduct this migration in addition to pregnant females) (Vooren 1997; Miranda and Vooren 2003). As mentioned previously, newborns remain in these shallow waters (<20 m) for the first year of their life before migrating to deeper waters on the continental shelf. The other, larger portion of the population, which is not moving seasonally and includes both juveniles and adults of both sexes, are most abundant in depths of 40 m to 60 m year-round (Vooren and Klippel 2005a). In fact, research surveys off of Ubatuba, São Paulo, Brazil caught spiny angel sharks in shallow sampling stations around 20 m deep, but found

that they were most abundant near 50 m depths (Rocha *et al.* 1998).

In general, very few abundance estimates are available for the species. According to Chiaramonte and Vooren (2007), the spiny angel shark is likely composed of smaller, localized populations throughout its range. In Argentinian waters, fishery surveys and commercial data provide limited indication of abundance and trends in this part of the species' range. In 1993, for example, the abundance of spiny angel sharks in the San Matías Gulf, Argentina (southern Argentina) was estimated to be 192.53 t (Argentina FAO NPOA-sharks 2009); however, the San Matías Gulf makes up a very small portion (approximately 9.6 percent) of the spiny angel shark's range and no recent abundance estimates could be found. Surveys of the continental shelf in northern Argentina (between 34° S. and 41° S.; approximately 20 percent of the species' range), conducted during the spring when abundance of spiny angel sharks is highest, provided estimates of mean biomass density of 0.518 t/nm² in 1981, 1.305 t/nm² in 1995, and 0.394 t/nm² in 1999 (Jaureguizar *et al.* 2006). Catch rates of the species were also fairly high based on data from trawl research surveys conducted in this same area from October 1997 to June 1998, especially during the inshore spring/summer migration months (September to March). Specifically, CPUE ranged from 25 sharks/30 min of trawling in March to 80 sharks/30 min of trawling in October (Vogler *et al.* 2008). A later study, conducted from 2000–2003 and in the same area, also recorded high densities of the species during the spring months (November–December) with estimates of 750 to <1500 kg/km² (equivalent to 2.58–5.15 t/nm²) (Colonello *et al.* 2007). However, based on fishery-independent data collected during research surveys conducted in the winter of 1993 and 2004, and spring of 1994, 1999, 2003, and 2005, Massa and Hozbor (2008) observed a decrease in the biomass of *S. guggenheim*, mainly between the winter seasons of 1993 and 2004. Trends in biomass for the spring time cruises were less clear, with decreases estimated between 1994 and 1999 and between 2003 and 2005, and increases between 1999 and 2003 (Massa and Hozbor 2008). Declines were also observed in the CPUE of fishing fleets operating on the Argentinian shelf, particularly for the smaller-sized vessels (<28 m) that fish in shallower waters on the shelf and would most likely interact with spiny angel sharks. These vessels saw declines of up to 58 percent in CPUE of *Squatina*

spp. (of which spiny angel sharks are thought to comprise the majority) between the years of 1992 and 1998 (Massa and Hozbor 2003). In the spring of 2003, the estimated biomass of spiny angel sharks for all of coastal Argentina was 23,600 t (Massa *et al.* 2004b). Information about effort was not provided and more recent abundance or biomass estimates could not be found.

In Brazil, there are no biomass estimates for the species and most of the fisheries data for angel sharks is grouped into a general *Squatina* spp. category; however, spiny angel sharks are thought to comprise the majority of the group (Vooren and da Silva 1991; Cousseau and Figueroa 2001; Vooren and Klippel 2005a). Off Rio Grande do Sul (between 35° S. and 28° S.), where spiny angel sharks are primarily exploited in Brazil, mean annual landings of all angel sharks were over 2000 t from 1985 to 1994 but fell to 607 t by 1997. In 1995, mortality rates of *S. guggenheim* exceeded population growth rates leading to an annual population decline rate of 16 percent (Vooren and Klippel 2005a citing Vieira 1996). Based on CPUE data from fisheries operating in this area, the population of *S. guggenheim* is estimated to have declined by 85 percent between 1986 and 2002 (Vooren and Klippel 2005a). Catches of angel sharks have continued to decline; however, landings of both *S. guggenheim* and *S. occulta* have been prohibited in Brazil since 2004, and this could explain why catches have declined.

Summary of Factors Affecting the Spiny Angel Shark

We reviewed the best available information regarding historical, current, and potential threats to the spiny angel shark. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be somewhat reduced by the species' relatively high abundance in the southern portions of its range; however, its demographic characteristics (including very low productivity, limited connectivity, and low genetic diversity) increase the susceptibility of the species to depletion and, with the continued fishing pressure on the species, places it at an increased risk of extinction. We summarize information regarding these threats and their interactions below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction or curtailment, disease, predation or other natural or manmade factors are

operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015e) for discussion of these ESA section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The primary threat to spiny angel sharks is overutilization in commercial and artisanal fisheries as the species is heavily fished throughout its entire range, including within its nursery grounds. As noted previously, the vast majority of fisheries information available on angel sharks from Argentina, Uruguay, and Brazil is reported as *Squatina* spp., which includes *S. guggenheim*, *S. argentina*, and *S. occulta*. All information in this section that refers to angel sharks includes multiple angel shark species, whereas information specific to *S. guggenheim* will specifically reference spiny angel sharks.

In Argentina, there is no directed fishery for angel sharks, but they are captured in multispecies artisanal shark fisheries and are considered a valuable bycatch species (Chiaramonte 1998; Bornatowski *et al.* 2011). The spiny angel shark, in particular, is commercially exploited in local fisheries that occur in the San Matías Gulf, Argentina (Perier *et al.* 2011), which comprises around 10 percent of its range. The species is also commercially exploited by the fisheries operating in the AUCFZ, which, based on survey data, overlaps with areas of higher concentration of the species (Jaureguizar *et al.* 2006; Colonello *et al.* 2007; Massa and Hozbor 2008; Vögler *et al.* 2008) and comprises around 25 percent of the species' range. Angel sharks are widely consumed as fresh product called *pollo de mar* (chicken of the sea) and as dried and salted product called *bacalao argentino* (Argentine cod) (Chiaramonte 1998), and in 2007, angel shark export revenue in Argentina totaled \$2,732,274 U.S. dollars (Argentina FAO NPOA-sharks 2009).

In Argentina, in the 1990s, angel sharks were considered commercially important bycatch, particularly in the Necochea school shark (*Galeorhinus galeus*) gillnet fishery. During the 1980s, the school shark became an important resource for coastal fisheries, and by the 1990s, it was the main shark fishery in the Southwest Atlantic (Chiaramonte 1998). As the school shark was traditionally fished using gillnets, the fishery also landed significant amounts of demersal angel sharks (*S. guggenheim* and *S. argentina*), the majority of which

were gravid females (Chiaramonte 1998). Angel sharks (likely comprised primarily of *S. guggenheim*) became the second most important fish in the Necochea artisanal gillnet fishery (Chiaramonte 1998). In fact, total declared landings of angel sharks in Argentina between 1992 and 1996 steadily rose from 1,358.6 mt to 4,281.1 mt with the majority (66 to 75 percent) of the landings attributed to coastal fishing vessels (Chiaramonte 1998). Massa and Hozbor (2003) report even higher landings figures for the years of 1992 to 1995, with landings over 3,500 mt and totaling more than 14,500 t for that time period. From 1996 to 1998, annual landings of angel sharks reached over 4,000 mt (Massa and Hozbor 2003). Although landings of angel sharks were relatively high and fairly stable throughout the 1990s, there were corresponding decreases in CPUE, signifying a decline in the abundance of angel sharks that can likely be attributed to overutilization of *S. guggenheim*. According to Massa and Hozbor (2003), the small coastal vessels (<20 m in length), which were responsible for the majority of angel shark landings, saw CPUE decline from 12 kg/hour in 1992 to around 5 kg/hour by 1998, a decrease of around 58 percent. The larger fishing vessels (of 20 m–28 m in length and >28 m in length), which focus effort on the inner and outer continental shelf (habitat for larger juveniles and adults of the species), experienced declines in CPUE of angel sharks of around 44 and 50 percent, respectively (Massa and Hozbor 2003).

Current fishing pressure remains high on the spiny angel shark in Argentinian waters. In fact, recent landings of angel sharks, and just from the AUCFZ portion of the species' Argentinian range, suggest total Argentinian landings have likely been of similar magnitude as those totals reported in the 1990s (CTMFM 2015). In 2010, total landings in the AUCFZ amounted to 3,763 t and were over 3,000 t in 2011. In 2012, landings were 2,736 t and by 2013 and 2014 dropped to below 2,300 t (CTMFM 2015). Although landings have remained high in recent years, they also appear to be on a declining trend. Given that catch levels in the 1990s, which resulted in declines of up to 58 percent in the species' abundance, remained at similar levels in 2010 and 2011, suggests that the decrease in landings may likely be a result of a declining spiny angel shark population as opposed to a decrease in fishing effort. In fact, since 2006, the total number of vessels in Argentina's fishing fleet has remained fairly stable (OECD

2014), and, as of June 2014, there were 635 vessels authorized to operate in the AUCFZ, with more than half of these vessels identified as trawlers (CTMFM 2015). Additionally, of the 635 vessels, around 20 percent identified as coastal vessels, suggesting that fishing pressure and associated fishery-related mortality will continue to be a threat to all life stages of the species into the foreseeable future.

In Uruguay, spiny angel sharks are captured by industrial trawling fleets in coastal and offshore waters (Vögler *et al.* 2008). They are bycatch species in bottom longline, estuarine gillnet, and some trawl fisheries, but they are also targeted in oceanic gillnet and bottom trawl fisheries (Domingo *et al.* 2008). The Uruguayan artisanal and industrial trawling fleets primarily operate at depths between 10 m and 200 m, which covers the entire depth range of the spiny angel shark. Annual catches of angel sharks in Uruguay were less than 100 t from 1977 to 1996 and ranged between 200 t and 400 t between 1997 and 2005, with the majority likely spiny angel sharks (Domingo *et al.* 2008). Currently, Uruguay has a fishing fleet of 62 vessels operating within the AUCFZ, with Uruguayan vessels responsible for around 5.6–7.5 percent of the total angel shark landings from this area from 2010 to 2013. In 2014, this proportion sharply increased to 18.4 percent as did the total number of landings (from 26 t in 2012 to 142 t and 158 t in 2013 and 2014, respectively) indicating a potential increasing trend in the exploitation of the spiny angel shark by Uruguayan fishing vessels.

In southern Brazil, spiny angel sharks have been heavily fished by industrial trawlers and gillnet fleets for the past few decades (Haimovici 1998; Vögler *et al.* 2008). In fact, mean annual landings of all angel sharks (of which the majority were likely *S. guggenheim*) were over 2000 t from 1985 to 1994, with a peak of 2,296 t in 1993. Given the depth and distribution of *S. guggenheim* on the Plataforma Sul, (which likely extends from <10 m to up to 150 m depths based on species accounts in Argentina; Cousseau 1973; Vooren and da Silva 1991; Chiaramonte and Vooren 2007), it is highly susceptible to being caught by the various types of industrial fleets operating on the continental shelf, including the pair trawl fleet, which primarily operates off the coast and on the inner continental shelf (up to depths of 100 m), and the simple trawl fleet, which primarily focuses the outer continental shelf (in depths of 50 m to <200 m) (Vooren *et al.* 2005 a; Klippel *et al.* 2005). Although *S. guggenheim* did not appear to be a species of interest

in the mid-1970s, this started to change by the early 1980s. For example, in the simple trawl fleet, which operated out of Rio Grande in depths of 50 m–100 m and engaged in multi-species fisheries directed towards bony fishes (Klippel *et al.* 2005; Vooren and Klippel 2005a), the proportion of angel sharks (*S. guggenheim* and *S. occulata*) in the landings steadily rose from 1975 to 1986. From 1975–1979, the proportion of angel sharks in the landings data was estimated to be 3.5 percent (range: 2.6–4.1 percent) and for the period covering 1980–1986, this had increased to 6.2 percent (range: 5.3–7.2 percent) (Vooren and Klippel 2005a). Although the simple trawl fleet did not specifically target *Squatina* spp., the increase of angel sharks in landings suggests a greater interest in the species and indicates that it was incidentally caught and retained during regular fishing operations (Vooren and Klippel 2005a). In 1987, the proportion of angel sharks in the landings reached a peak of 9.5 percent, which Vooren and Klippel (2005a) suggest may be evidence of a directed fishery for the species in the simple trawl fleet. However, after 1987, the angel shark proportion in the landings significantly decreased, dropping to 5.4 percent in 1990 and 0.5 percent by 2001 (Vooren and Klippel 2005a). The CPUE of angel sharks (*S. guggenheim* and *S. occulata*) by the simple trawl fleets also decreased over this time period, from an average of 2.75 t/trip (range: 2.59–3.02 t/trip) from 1980–1988 to 0.41 t/trip (range: 0.26–0.62 t/trip) over the years 1997–2002. This 85 percent decrease in CPUE of the species suggests that the declining trend in the landings data was likely indicative of overexploitation that led to a decline in the species' abundance in the fishing area where these fleets operate (Vooren and Klippel 2005a). Additionally, given that CPUE of angel sharks (*S. guggenheim* and *S. occulata*) in the Rio Grande pair trawl fleet also declined over this time period, the decrease in abundance of angel sharks was likely widespread over the continental shelf. In the pair trawl fleet, CPUE decreased from 0.94 t/trip (range: 0.34–1.39 t/trip) to 0.12 t/trip (range: 0.08–0.17 t/trip) between the periods of 1980–1988 and 1997–2002, a decline of 87 percent (Vooren and Klippel 2005a). In 1995, it was estimated that the fishing mortality rate of *S. guggenheim* had exceeded its population growth rate, resulting in an annual rate of population decline of 16 percent (Vooren and Klippel 2005a citing Vieira 1996). Based on the above data, as well as data from fishery research surveys, Vooren and

Klippel (2005a) estimate that the *S. guggenheim* population on the Plataforma Sul decreased by around 85 percent between 1986 and 2002, with the decline occurring simultaneously with the increase in fishing effort and caused by overexploitation of the species.

However, spiny angel sharks are not only at risk of fishing mortality from the industrial trawl fleets operating on the Plataforma Sul, but also from the commercial oceanic gillnet fisheries which began expanding in the 1990s. As the trawl fleets saw catches start to decline, due to the overexploitation of the marine resources, many trawlers began converting their boats to gillnet vessels in the early 1990s. These vessels would fish at depths of up to 300 m, with the oceanic bottom gillnet fishermen specifically targeting sharks and, based on CPUE data, potentially *Squatina* species (Miranda and Vooren 2003). The number of gillnet vessels as well as fishing effort increased throughout the 1990s, with annual landings of angel sharks by the oceanic gillnet fleet of more than 800 t between the years 1992 to 1998 (Klippel *et al.* 2005). Mazzoleni and Schwingel (1999; cited by Klippel *et al.* 2005) report that landings of the three angel shark species (*S. guggenheim*, *S. occulta* and *S. argentina*) were common in the Santa Catarina bottom gillnet fleet operating on the Plataforma Sul between 1994 and 1999. However, from 1999 to 2002, annual landings of angel sharks had dropped in half (Klippel *et al.* 2005). The CPUE of the fleet also decreased, from a maximum of 4.3 t/trip in 1992 to values that varied between 0.5 t/trip and 1 t/trip in the following years (from 1994–2002; Klippel *et al.* 2005).

Likely contributing to the decreases in CPUE seen in both the industrial trawl and gillnet fleets is the fact that the majority of landings from these fisheries consist of juvenile angel sharks which, after spending their first year in depths <20 m, migrate out over the continental shelf (see *Historical and Current Distribution and Population Abundance* section). In an examination of landings at the Port of Rio Grande between June 2002 and July 2003, Klippel *et al.* (2005) found that around 70–85 percent of the spiny angel sharks were juveniles (TL <72 cm). The proportion of juveniles was highest in the landings from the double-rig trawl fleet, which is to be expected as the fleet primarily operates in depths <50 m (Klippel *et al.* 2005). However, the proportion of juveniles was still high, around 70 percent, in the landings of the bottom gillnet, pair, and single trawl fleets, which operate from the coast to depths >200 m (Klippel *et al.* 2005).

The removal of primarily juveniles from a population can have significant negative impacts on recruitment, especially for a species with a 3-year reproductive cycle. And, in fact, in a 2005 bottom trawl survey conducted in the coastal waters of the Plataforma Sul between Torres and Chuí, only neonate spiny angel sharks were caught, despite the fact that both juveniles and adults would be expected within the trawled depth range (7 m–20 m) (Vooren *et al.* 2005b). The CPUE of *S. guggenheim* was also low compared to historical estimates, with an estimate of only 0.18 kg/h (Vooren *et al.* 2005b).

Despite the decreases observed in spiny angel shark abundance on the Plataforma Sul, fishing effort remains high. Additionally, all life stages of spiny angel sharks are susceptible to the industrial shelf fisheries as the fleets operate year round covering the entire depth distribution of the species. In fact, in 2002, it was estimated that the fishing effort of the industrial trawl fleet from Rio Grande do Sul and Santa Catarina (the two largest fishing fleets operating on the Plataforma Sul) trawled around 141,000 km², corresponding to approximately 50 percent of the land area of the state of Rio Grande do Sul (Klippel *et al.* 2005). Hypothetically, if the area swept by each trawl vessel was different, the 100,907 km² of the Plataforma Sul would be completely swept every 9 months (Klippel *et al.* 2005). When considering the number of gillnet vessels, nets, and the total length of these nets operating on the Plataforma Sul, it was estimated that the length of these gillnets (combined) would equate to around 8,250 km, which corresponds to approximately the entire length of the Brazilian coast (Klippel *et al.* 2005). In 2002, a total of 892 t of angel sharks were landed, with 62 percent landed in Santa Catarina and 38 percent in the Rio Grande do Sul. The oceanic gillnet fleet was responsible for most of the landings (42 percent), followed by double-rig trawl fleet (25 percent), and the coastal gillnet, pair, and single trawl fleets, which each contributed about 10 percent of the landings (Klippel *et al.* 2005). These fleets, which historically contributed to the decline in *S. guggenheim* on the Plataforma Sul, remain active today.

Furthermore, as previously discussed in the other species assessments, these fleets operate at high efforts on the Plataforma Sul and especially within important coastal nursery and inner shelf habitats for the species. Although landings of the species are currently prohibited, the fleets' extensive operations will continue to contribute to the fishing mortality of all life stages of

the species as the spiny angel shark likely has high discard mortality rates based on rates estimated for similar angel shark species. For example, the at-vessel mortality rate reported for the African angelshark (*S. africana*) is 60 percent in prawn trawlers (Fennessy 1994) and 67 percent in protective shark gillnets (Shelmerdine and Cliff 2006). For the Australian angel shark (*S. australis*), mortality rate estimates of 25 percent and 34 percent have been reported for sharks caught in gillnets (Reid and Krogh 1992; Braccini *et al.* 2012). These two angel shark species have similar life history traits and ecology, including: Reproductive characteristics (ovoviviparous and produce small litters; Compagno 1984; Rowling *et al.* 2010), maturity and maximum sizes (Compagno 1984), depth distribution (continental shelf and upper slope), behavior, and diet (mainly teleosts; Shelmerdine and Cliff 2006; Rowling *et al.* 2010). Given the general similarities, it seems reasonable to infer similar discard survival rates for the spiny angel shark from these other two *Squatina* species. As such, given the sensitive life history traits of the spiny angel shark as well as the evidence of significant population declines, an assumed 60 percent at-vessel mortality rate in trawl fisheries and 25–67 percent mortality in gillnets is likely to significantly contribute to the overutilization of the species and increase its extinction risk.

These industrial trawl and gillnet fleets currently participate in nationally important fisheries and, as such, the threat they pose to *S. guggenheim* is unlikely to decrease in the foreseeable future. In fact, in the oceanic drift gillnet fishery, the fishery responsible for the highest landings of angel sharks, the main fish species targeted (*Umbrina canosai*, *Cynoscion guatucupa*, and *Micropogonias furnieri*) represented around 12.8 percent of the total national marine fish landings in 2011 for all of Brazil. *Micropogonias furnieri* is the second most landed fish nationally, and *U. canosai* is the seventh most landed. Based on the above information, the significant level of fishing effort and associated fishing mortality, especially of juvenile angel sharks, likely caused and will continue to cause substantial declines in the spiny angel shark population.

Inadequacy of Existing Regulatory Mechanisms

In the AUCFZ, the area comprising around one quarter of the species' range, and where survey data suggest the species is likely at highest concentration (Jaureguizar *et al.* 2006; Colonello *et al.*

2007; Massa and Hozbor 2008; Vogler *et al.* 2008), spiny angel sharks are commercially exploited. Similar to the narrownose smoothhound, the CTMFM manages this exploitation through the implementation of catch limits and fishery closures. As stated previously, the CTMFM implements an annual prohibition against demersal trawling in a large section of the AUCFZ, extending across the continental shelf, in order to protect vulnerable chondrichthyans from fishery-related mortality. The CTMFM also establishes additional area closures to trawling gear throughout the year in the AUCFZ to protect other species, with these closures also indirectly protecting spiny angel sharks from further fishery-related mortality from trawl gear. In terms of the direct management of spiny angel sharks, since 2012, the CTMFM has set a total permissible catch limit for all *Squatina* spp. at 2,600 t (Res. N° 8/14, Res. N° 10/13, Res. N° 10/12). In November 2012, this limit was met and landings of *Squatina* spp. were banned for the month of December (Res. N° 13/12). In 2013, an additional reserve of 400 t was proposed to be allowed if the 2,600 t limit was reached; however, total landings had decreased from the previous year to 2,103 t (CTMFM 2015). In 2014 a 10 percent increase in total allowable catch was allowed to be added to the limit if the CTMFM saw fit (Res. N° 10/13, Res. N° 8/14); but this was unnecessary as landings amounted to only 2,281 t (CTMFM 2015). In 2015, the CTMFM kept the same limit that was implemented in 2014 (2,600 t with an allowance of 10 percent increase; Res. N° 07/15). Although McCormack *et al.* (2007) report that elasmobranch quotas and size regulations are largely ignored in Argentina and poorly enforced, *Squatina* landings have been below the maximum catch limit in recent years, providing evidence that regulations are potentially being followed. However, without effort information, it is unclear whether these regulations and the corresponding decreases in landings can be attributed to adequate control of the exploitation of the species or rather reflects the lower abundance of the species from declining populations, or more likely a combination of the two scenarios.

In Uruguay, regulations that likely contribute to decreasing the fishery-related mortality of the species include a summer trawling ban in 25 m to 50 m depths between La Paloma and Chuy and specific fishery area closures in the spring, summer, and autumn on the Uruguayan continental shelf, designated to protect juvenile hake (*Merluccius*

hubbsi) (Pereyra *et al.* 2008). Although the depth distribution of the spiny angel shark in Uruguayan waters is unresolved, in southern Brazilian waters, the species was previously common year-round at depths between 10 m and 100 m. Specifically, adults were frequently found in waters between 40 m and 100 m during the autumn and winter and between 10 m and 40 m in the spring and summer; and both adults and juveniles were abundant in depths of 40 m–60 m year-round (Vooren 1997; Miranda and Vooren 2003; Vooren and Klippel 2005a). In northern Argentina, spiny angel sharks displayed highest abundances on the outer coastal shelf between 29 m and 50 m depths (Jaureguizar *et al.* 2006). Using the above depth distribution in areas just north and south of Uruguay as a proxy for the species' depth distribution in Uruguayan waters, it is likely that the proposed fishery closures and trawling bans will provide some level of protection from fishery-related mortality, especially during the species' spring/summer migration to shallower waters for pupping and potentially mating purposes.

The spiny angel shark is also listed as a species of high priority in Uruguay's FAO NPOA-sharks (Domingo *et al.* 2008). The plan, as stated previously, has set goals to collect the necessary information on its priority species in order to conduct abundance assessments, review current fishing licenses, and promote public awareness to release captured individuals. However, no updated results from the goals and priorities of this plan could be found.

In Brazil, the spiny angel shark is listed on Annex 1 of Brazil's endangered species list and classified as critically endangered (Directive N° 445). As described in previous species accounts, an Annex 1 listing prohibits the catch of the species except for scientific purposes, which requires a special license from IBAMA. There is also a prohibition of trawl fishing within three nautical miles from the coast of southern Brazil, although the enforcement of this prohibition has been noted as difficult (Chiaramonte and Vooren 2007). In addition, the species is still susceptible to being caught as bycatch in the legally permitted coastal gillnet fisheries and offshore trawl and gillnet fisheries and vulnerable to the associated bycatch mortality (Lessa and Vooren 2007). The spiny angelshark is also listed as one of the 12 species of concern under Brazil's FAO NPOA-sharks and would benefit from the proposed fishing closures and other

management measures outlined in the plan. This includes the fishing moratorium and marketing ban, which is proposed to be in effect until there is scientific evidence that supports population recovery of the spiny angel shark. It also suggests that a fishing exclusion area be established in the coastal zone (specifically over a large region of the coast of Rio Grande do Sul at depths of 20 m) to protect important nursery grounds for the species. However, as mentioned previously, the plan was only just approved as of December 2014 and will not be fully implemented for another 5 years. Thus, the implementation and effectiveness of the recommendations outlined in the plan remain uncertain, with the best available information indicating that current regulatory measures in Brazil to protect vulnerable species are poorly enforced.

Extinction Risk

The best available information provides multiple lines of evidence indicating that the *S. guggenheim* currently faces a moderate risk of extinction. Below, we present the demographic risk analysis, threats assessment, and the overall risk of extinction for the spiny angel shark.

Demographic Risk Analysis

Abundance

Spiny angel sharks are likely the most abundant angel shark species from southern Brazil to Argentina; however, current quantitative estimates of abundance of the species throughout its range are unavailable. In Argentina, the abundance of spiny angel sharks in the San Matías Gulf (which comprises around 9.6 percent of the species' range) was estimated to be 192.53 t in 1993. In 2003, the estimated biomass of spiny angel sharks for all of coastal Argentina was 23,600 t. No other population estimates have been calculated for the species. Additionally, between 1981 and 2004, catch rates and density estimates for areas off the Argentine continental shelf have been variable; however, fishing fleets reported declines of up to 58 percent in CPUE between 1992 and 1998.

In Brazil, quantitative information, in the form of CPUE and landings data for the fishing fleets operating on the Plataforma Sul, is available for all angel shark species, of which *S. guggenheim* likely comprises a majority. These data provide insight into trends in abundance of the spiny angel shark in roughly 20 percent of its range. Based on a comparison of the CPUE estimates of angel sharks caught on the Plataforma

Sul in both the single and pair trawl fishing fleets over the time periods of 1980–1988 and 1997–2002, the population of *S. guggenheim* off southern Brazil has declined by around 85 percent since 1985 (Miranda and Vooren 2003; Vooren and Klippel 2005a). More recent landings data from the Santa Catarina oceanic gillnet fishery, covering the years 2001–2010, show a peak in angel shark landings in 2004 of 340 mt before significantly dropping, with only 2.6 mt landed in 2010. However, in 2004, landings of *S. guggenheim* along with *S. occulta* were prohibited and, as such, the decline in landings data after 2004 may be a reflection of this prohibition.

Based on the commercial fishery information, it is likely that spiny angel sharks have experienced varying levels of population decline throughout its range. In the northern half of the species' range (off Brazil), the best available information indicates the species has undergone rather substantial population declines, with evidence of negative population growth rates that led to significant decreases in the overall abundance of the species to the point where catch rates and observations of spiny angel sharks are extremely low. Off Uruguay and Argentina, where reported biomass estimates suggest the species was and is likely still most concentrated, the higher abundance levels may explain why the magnitude of population decline is estimated to be smaller in this portion of the species' range. Therefore, while the species may not be of such low abundance such that it is currently at risk of extinction, given the high exploitation of the species throughout its range and subsequent population decline in the northern half, coupled with the species' low productivity, abundance levels will likely continue to decline through the foreseeable future to the point where it may be a significant contributing factor to the species' overall extinction risk.

Growth Rate/Productivity

There is minimal information on the growth rate and productivity of the species. Based on the estimated von Bertalanffy growth parameters, the spiny angel shark exhibits rather fast growth rates for a shark species (with a growth coefficient (k) of 0.275/year; Vooren and Klippel 2005a). Fast growth rates help protect species from extinction by allowing species to attain larger sizes at earlier ages, protecting it from predation, and also allowing species to attain sexual maturity sooner, thereby contributing to population growth. The fast growth rates of the

spiny angel shark likely led to the species being the most common angel shark found in the southwest Atlantic. However, despite its fast growth rates, the spiny angel shark has a significantly lengthy reproductive cycle of 3 years, with a litter size ranging between 2 and 8 pups and an average of around 4–5 pups/litter. This translates to an annual fecundity between 0.67 and 2.67 pups per year. Spiny angel sharks are also thought to have cloacal gestation during the latter half of pregnancy, which is thought to be the reason why *Squatina* species are observed easily aborting embryos during capture or handling. Given the already low annual fecundity of the species, any further loss of embryos would significantly decrease their already low reproductive output. Overall, these reproductive characteristics suggest the species has relatively low productivity, similar to other elasmobranch species, which may hinder the species' ability to quickly rebound from threats that decrease its abundance (such as overutilization) and render the spiny angel shark more vulnerable to extinction in the face of other demographic risks and threats.

Spatial Structure/Connectivity

The spiny angel shark has a widespread range in the southwest Atlantic but is thought to be comprised of smaller, more localized populations (Chiaromonte and Vooren 2007); however, information to support this is currently unavailable. Information on the connectivity among *S. guggenheim* populations throughout its range is limited. The populations occurring on the Plataforma Sul, off southern Brazil, are assumed to carry out their entire lifecycle within the same area. This behavior indicates that these populations maintain population growth by recruiting within each area without producing a necessary excess of recruits with the potential to migrate to other areas (Vooren and Klippel 2005a). As a result, *S. guggenheim* populations on the Plataforma Sul likely have limited movement and dispersal migration between neighboring populations, with migrants having no impact on the short term abundance of a population. Based on genetic studies, there is also evidence of limited connectivity between populations found in other parts of the species' range. For example, genetic analyses of individuals found around the Rio de la Plata estuary indicate a high level of population genetic structure between the spiny angel sharks that occur on the outer shelf and those that are found in the outer estuarine and coastal waters (with very few immigrants between these

populations) (Garcia *et al.* 2015). In other words, the evidence of limited inter-population exchange observed in the species reduces the recovery potential for the depleted and small local populations found throughout the range, and may increase the risk of local extirpations, possibly leading to complete extinction.

Diversity

A recent genetic analysis using maternally-inherited mitochondrial DNA markers from spiny angel sharks in and around the Rio de la Plata Estuary (approximately mid point of the species' range) found no evidence of population genetic structuring (Garcia *et al.* 2015). However, analyses using biparentally-inherited nuclear recombinant DNA genes indicated that there was a remarkably high level of population genetic structure between spiny angel sharks found on outer shelf and those in the coastal and outer estuarine areas (Garcia *et al.* 2015). The combination of low haplotype and high nucleotide diversity can be indicative of a transient bottleneck in the ancestral population, or an admixture of samples from small, geographically subdivided populations, with the genetic patterns of exchange potentially explained by sex-biased behavior or long term shifts in spatial and temporal environmental variables leading to current displacements (Garcia *et al.* 2015). However, overall, the low levels of genetic diversity in spiny angel shark populations suggest a vulnerability to overexploitation in the southwestern Atlantic Ocean (Garcia *et al.* 2015) and will likely render the spiny angel shark more susceptible to extinction in the face of other demographic risks and threats.

Threats Assessment

The primary threat to *S. guggenheim* is overutilization in artisanal and commercial fisheries. The vast majority of fisheries information on angel sharks is generally reported as "*Squatina spp*" throughout Brazil, Uruguay, and Argentina; however, spiny angel sharks are thought to be the most abundant angel shark species from southern Brazil to Argentina and, therefore, likely comprise the majority of the *Squatina* species that are landed.

In Argentina, although the species is not directly targeted, they are caught incidentally in multispecies artisanal shark fisheries and are considered a valuable bycatch species (Chiaromonte 1998; Bornatowski *et al.* 2011). Fishery-independent research surveys have recorded relatively high densities of the species on the Argentinian shelf; however, based on CPUE data, the

population saw declines of up to 58 percent in the late 1990s. Although exploitation of the species in the AUCFZ, where the species appears to be at highest concentration, has been managed since 2012 with area closures and catch limits, the lack of recent abundance estimates or trends hinders an evaluation of the adequacy of current regulatory measures in preventing the overutilization of the species from this portion of its range. It is important to note that landings prior to 2012 from this area were on the same order of magnitude as those reported for all of Argentina and which subsequently led to the declines observed in the late 1990s. Landings have since decreased since the implementation of the catch limits, and appear to be on a declining trend; however, the number of fishing vessels authorized to operate in the AUCFZ has remained fairly stable, potentially indicating that fishing effort has not decreased substantially in recent years. In other words, the recent declining trend in landings, even below total allowable catch limits, may indicate decreasing abundance of the species in this part of its range.

In Uruguay, spiny angel sharks are both targeted and caught as bycatch by industrial trawling fleets in coastal and offshore waters (Vögler *et al.* 2008; Domingo *et al.* 2008). All life stages of the species are exploited as the fleets operate over the entire depth range of the species (between 10 m and 200 m). Abundance and trends of the species within this region are unknown; however, declines in populations just north and south of this region have been observed, with the species listed as high priority in Uruguay's FAO NPOA-sharks. Additionally, landings of angel sharks by Uruguayan vessels in the AUCFZ have increased in both number and proportion of total angel shark landings in the AUCFZ, indicating a potential increase in fishing effort of this vulnerable species.

In Brazil, spiny angel sharks have been heavily exploited by industrial trawlers and gillnet fleets since the 1980s (Haimovici 1998; Vögler *et al.* 2008). In southern Brazil, angel shark landings are recorded in industrial single trawl, pair trawl, oceanic bottom gillnet, and coastal artisanal fisheries. These industrial and coastal artisanal fleets operate year round in depths that span <20 m to 300 m, including during the sharks' reproductive seasonal migrations, and hence capture all life stages of spiny angel sharks (Vooren and Klippel 2005a). The impact of this fishing pressure and effort led to observed declines in *S. guggenheim* (around 85 percent), with fishing

mortality rates exceeding population growth rates and resulting in an annual rate of population decline of 16 percent for spiny angel sharks in the mid 1990s (Vorren and Klippel 2005a). Although many trawlers began converting their boats to gillnet vessels in the early 1990s (due to decreases in catch), the threat of overutilization remains as the oceanic bottom gillnet fishermen also fish at depths of up to 300 m and now land the majority of angel sharks, of which 70–85 percent are juveniles (Klippel *et al.* 2005). Although spiny angel sharks have been a prohibited species since 2004, the fishing effort (both by trawl and gillnet fleets) on the Plataforma Sul remains high and poorly regulated, and, therefore, the susceptibility of the species' to fishery-related mortality also remains high. The industrial gillnet and trawl fleets, which contributed to the historical decline in the population off southern Brazil, are active today and participate in nationally important fisheries. Given the percentage of juveniles caught by these fisheries coupled with the assumed discard mortality rates, the continued operations of these fleets will likely have significant negative impacts on *S. guggenheim* recruitment to the population, especially for a species with a 3-year reproductive cycle. The present level of fishing effort by the artisanal and industrial fisheries on Brazil's continental shelf will continue to lead to declines in the spiny angel shark population and, hence, contribute to the extinction risk of the species.

Risk of Extinction

There is significant uncertainty regarding the current abundance of the species throughout its entire range. While the Brazilian populations have experienced substantial declines and remain at risk from overutilization by fisheries, the same cannot be concluded with certainty for the populations farther south in the species' range. Based on the available data, the populations off Uruguay and Argentina have likely experienced moderate declines, with recent landings and vessel data potentially indicating a decreasing trend in abundance and stable or increasing trend in fishing effort. The significant demographic risks to the species (*e.g.*, extremely low fecundity, declining population growth rate, and limited connectivity), the decline and subsequent rarity of the species in an area that comprises around half of its range, and the evidence of continued and heavy fishing pressure on the species throughout its entire range, place the species on a trajectory indicating that it will more likely than

not be at a high level of extinction risk in the foreseeable future. Therefore, based on the best available information and the above analysis, we conclude that *S. guggenheim* is presently at a moderate risk of extinction throughout its range.

Protective Efforts

With the exception of the recommendations within the FAO NPOA-sharks discussed above, we were unable to find any other information on protective efforts for the conservation of spiny angel sharks in Argentina, Uruguay, or Brazil that would potentially alter the extinction risk for the species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the spiny angel shark is not presently in danger of extinction throughout its range but likely to become so in the foreseeable future. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory mechanisms throughout its range. Due to the species' relatively fast growth rate (for elasmobranchs) and high biomass in the southern portion of its range, the species has not yet declined to abundance levels that would likely trigger the onset of compensatory processes. However, the species' demographic risks (including very low fecundity, low genetic diversity, and connectivity) coupled with the significant reduction in the population from the northern portion of its range, greatly increases the species' vulnerability to extinction from environmental variation or anthropogenic perturbations. Furthermore, given the evidence of decreasing landings despite stable (or even increasing) fishing effort, we find that the level of exploitation in the area where spiny angel sharks are currently most concentrated is likely contributing to unsustainable fishing mortality rates. We therefore conclude that the species is on a trajectory indicating that it will more likely than not be at risk of extinction in the foreseeable future. We also found no evidence of protective efforts for the conservation of spiny angel sharks that would reduce the level of extinction risk faced by the species. We therefore propose to list the spiny angel shark as a threatened species.

Argentine Angel Shark (*Squatina argentina*)

Species Description

In addition to the spiny angel shark, the Argentine angel shark was petitioned for listing under the ESA. The Argentine angel shark occurs in the Southwest Atlantic and can be distinguished from its sympatric species by its coloration, dental formula, neurocranial features, dorsal surface denticle pattern, and pectoral fin shape. Unlike *S. guggenheim*, the Argentine angel shark lacks a dorsal midline of morphologically distinct denticles (Vaz and Carvalho 2013). Dermal denticles densely cover the entire dorsal surface, except for the posterior margins of unpaired fins and the anterior apex of the pectoral fins. The pectoral fins are large, twice as long as they are wide, with the anterior margins strongly convex, creating a visible "shoulder" area at the base of the head (Vaz and Carvalho 2013). The dorsal coloration is dark to purplish brown with small, round, white spots symmetrically distributed across the entire dorsal surface (Vooren and da Silva 1991; Milessi *et al.* 2001; Vaz and Carvalho 2013). Small individuals are creamy white over the entire ventral surface, while larger animals develop dark beige on the central region of the head, margins of the pectoral fins, origin of the pelvic fins, and the posterior region of the trunk (Vaz and Carvalho 2013). Unlike *S. guggenheim* and *S. occulta*, female Argentine angel sharks have two functional ovaries, which can also serve as an identifying feature (Vooren and da Silva 1991).

Range and Habitat Use

While there is some conflicting information regarding the range of Argentine angel shark, it is clear that they have a restricted range in the Southwest Atlantic, and are present in southern Brazil (from Rio de Janeiro southward), Uruguay, and at least the northern part of Argentina (*i.e.*, Buenos Aires). Argentine angel sharks live on muddy or sandy bottom substrates on the continental shelf and slope at depths between 100 m and 400 m, with a principal depth range of 120 m–320 m (Cousseau 1973; Vooren and da Silva 1991; Vooren and Klippel 2005a). Angel sharks are active mostly at night, and show limited movement and dispersal migration between neighboring populations, with migrants having no impact on the short term abundance of a population (Vooren and Klippel 2005a).

Diet and Feeding

Like the spiny angel shark, the Argentine angel shark is thought to be a sit-and-wait predator, lying motionless on the bottom until prey passes closely overhead. The prey is then grasped by an upward bite (Vooren and da Silva 1991). There is limited information regarding the Argentine angel shark diet. In a study that analyzed stomach contents of 53 individuals, results showed that fish made up 68.33 percent of the diet, and crustaceans and molluscs made up 15 percent and 1.6 percent of the diet, respectively (Cousseau 1973). The rest of the diet contained unidentifiable remains. The most common fish species was *Cynoscion striatus*, while the shrimp *Artemesia longinaris* and *Hymenopenaeus mulleri* were the most common crustaceans, and *Loligo brasiliensis* was the most common mollusc (Cousseau 1973). Argentine angel sharks are also thought to occasionally consume the short-finned squid (*Illex argentinus*) (dos Santos and Haimovici 2000).

Growth and Reproduction

Little is known about the growth and reproduction of the Argentine angel shark. Their maximum total length is estimated at 138 cm with a size at sexual maturity of 120 cm TL; however, age at first maturity and size at birth are unknown (Vooren and da Silva 1991; Vooren and Klippel 2005a). Gravid females and neonates are rarely found, so little is known about the reproductive characteristics of the species. Gestation is lecithotrophic (developing embryos depend on yolk for nutrition) (Vooren 1997) and litter size ranges from 7–11 pups (most commonly 9 or 10 pups) (Vooren and Klippel 2005a). Like *S. occulta* and *S. guggenheim*, the Argentine angel shark may have cloacal gestation during the latter half of pregnancy (Vooren and Klippel 2005a). Based on the location and capture of two neonates of 35 cm and 37 cm TL in Santa Catarina, Brazil, it is assumed that Argentine angel sharks reproduce on the slope of the southern Brazilian continental shelf (Vooren and Klippel 2005a). Additionally, the Bahia Engano in coastal Patagonia is thought to serve as a nursery area for the Argentine angel shark (Van der Molen *et al.* 1998).

Genetics and Population Structure

Studies examining the genetics of the species or information on its population structure could not be found.

Demography

Information regarding natural mortality rates or the intrinsic rate of

population increase of the Argentine angel shark is currently unknown.

Historical and Current Distribution and Population Abundance

As previously described, there is conflicting information regarding the range of the Argentine angel shark, and the species' distribution is poorly defined. While there are no specific population abundance estimates for Argentine angel sharks, they are considered to be the least common species of angel shark found in the southwestern Atlantic, particularly in Argentina (Vooren and Klippel 2005a). According to one paper, Argentine angel sharks occur in highest densities (from 1 to 11.4 t/nm²) along the Uruguayan coast in the AUCFZ, where salinities are higher than the Argentine coast (Díaz de Astarloa *et al.* 1997). However, this paper refers to all *Squatina* species as Argentine angel sharks and, based on the distribution of *S. guggenheim* (see species assessment; Colonello *et al.* 2007), the authors have likely misidentified spiny angel sharks as Argentine angel sharks.

In Brazil, Argentine angel sharks of all life stages are most abundant between Rio Grande and Chuí in Rio Grande do Sul, with no evidence of abundant populations outside of this area (Vooren and Klippel 2005a; Vooren and Chiaramonte 2006). Specifically, the outer shelf and upper slope of the southern Brazilian continental shelf, south of latitude 32 °S., are important habitat areas for *S. argentina*. However, based on fishery independent research surveys from 1986–2002, the abundances of both the Argentine angel shark and the hidden angel shark (*S. occulta*) within this area have declined by approximately 80 percent (Vooren and Klippel 2005a).

Summary of Factors Affecting the Argentine Angel Shark

We reviewed the best available information regarding historical, current, and potential threats to the Argentine angel shark species. We find that the main threat to this species is overutilization for commercial purposes. We consider the severity of this threat to be exacerbated by the species' natural biological vulnerability to overexploitation, which has led to significant declines in abundance of the species. We find current regulatory measures inadequate to protect the species from further overutilization. Hence, we identify these factors as additional threats contributing to the species' risk of extinction. We summarize information regarding these threats and their interactions below

according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction or modification, disease, predation or other natural or manmade factors are operative threats on these species; therefore, we do not discuss these factors further in this finding. See Casselbury and Carlson (2015f) for discussion of these ESA section 4(a)(1) threat categories.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The primary threat to *S. argentina* is overutilization by commercial fisheries, particularly the trawl and bottom gillnet fisheries in Brazil, where the species is likely most concentrated. As mentioned previously, the vast majority of fisheries information on angel sharks is documented as "*Squatina spp*" throughout Brazil, Uruguay, and Argentina; however, the Argentine angel shark is the rarest *Squatina* species in the region. Additionally, incorrect species identification of angel sharks is a problem that persists in the AUCFZ, particularly in Argentine landings (Milessi *et al.* 2001); therefore, determining the magnitude of threats currently acting specifically on *S. argentina* is challenging. However, some information, including fisheries effort, catch and landings data, provides insight into the current status of Argentine angel shark, as described below.

As discussed in the spiny angel shark assessment, angel sharks, in general, have been historically caught in the multispecies artisanal shark fisheries and considered valuable bycatch species in Argentina (see spiny angel shark: *Overutilization* section). However, the Argentine angel shark is considered relatively rare in Argentina (Menni *et al.* 1984 cited in Vooren and Klippel 2005a), with *S. guggenheim* comprising the majority of the catch (Massa *et al.* 2004b). From 1981–1982, Otero *et al.* (1982) noted the low density of *S. argentina* off the Buenos Aires coast and estimated an annual biomass of only 4,050 t. In the 1990s, angel sharks became commercially important bycatch, particularly in the Necochea school shark (*Galeorhinus galeus*) gillnet fishery, and were a prevalent bycatch species in the Patagonian coastal trawl fisheries. According to 1993–1996 observer data from the Patagonian fishery, Argentine angel sharks were bycaught with medium frequency, particularly in the San Matias Gulf and Bahia Engano. By 1993, declared landings of *S. argentina* were on the same order of magnitude as the

total biomass of the population estimated from the early 1980s, at 3,974.7 mt, and landings remained near this level in 1994 at 3,621.8 mt (Chiaramonte 1998). However, by 1998, CPUE values indicated that the level of fishing mortality on the *Squatina* shark populations was leading to declines in abundance of angel sharks. Specifically, Massa and Hozbor (2003) estimated that CPUE of angel sharks declined by 58 percent between 1992 and 1998 for vessels operating on the Argentine shelf, and since 1998, landings of *Squatina* species have been on a decline (Massa *et al.* 2004b).

In Uruguay, Argentine angel sharks are targeted in the Atlantic gillnet fishery and bottom trawl fisheries. They are also caught as bycatch in bottom longline, estuarine gillnet, and bottom trawl fisheries (Domingo *et al.* 2008). Both artisanal and industrial trawl fleets operate at depths between 10 m and 200 m in Uruguay, which overlap with the principal depth range of *S. argentina*. Annual catches of all angel sharks in Uruguay have increased over time, with less than 100 t landed from 1977 to 1996 and increasing to between 200 t and 400 t from 1997 to 2005. In 2012, catches for *Squatina spp.* exceeded the set catch limit in the AUCFZ (2,600 t), resulting in the closure of the fishery for the following month. However, similar to catch composition reported in Argentina, it is likely that the majority of these reported angel shark landings are spiny angel sharks rather than Argentine angel sharks (Domingo *et al.* 2008).

In Brazil, Argentine angel sharks are most abundant between Rio Grande and Chuí in Rio Grande do Sul, off southern Brazil (Vooren and Klippel 2005a; Vooren and Chiaramonte 2006); however, they are the least captured *Squatina* species in Brazilian fisheries (Perez and Wahlrich 2005). In general, angel shark landings are recorded in single trawl, pair trawl, oceanic gillnet, and coastal artisanal fisheries. Historically, angel sharks were fished on the Brazilian shelf by double rig trawlers down to 140 m depths, with *S. guggenheim* comprising the majority of the catch (Haimovici 1998).

As catch rates of shelf resources decreased, and international markets for traditionally discarded or poorly known species expanded, deep-water demersal fishing operations off southern Brazil (from 20° S.–34° S.) increased in the early 1990s (Valentini *et al.* 1991; Haimovici 1998) and greatly accelerated after 1999. This was largely a result of shrimp and groundfish trawlers expanding their fishing grounds towards the previously unexploited resources of

the outer shelf and slope (Valentim *et al.* 2007; Perez and Wahrlich 2005), but also reflected the increasing number of gillnet vessels operating on the outer shelf. In fact, in the early 1990s, in response to a decline in trawl catch of marine resources, many trawlers began converting their boats to gillnet vessels. These vessels would fish at depths of up to 300 m, with the oceanic bottom gillnet fisheries specifically targeting sharks and, based on CPUE data, potentially *Squatina* species (Miranda and Vooren 2003). The number of gillnet vessels as well as fishing effort increased throughout the 1990s, with annual landings of angel sharks by the oceanic gillnet fleet of more than 800 t between the years 1992 to 1998. Landings of the three angel shark species (*S. guggenheim*, *S. occulta* and *S. argentina*) were especially common in the Santa Catarina bottom gillnet fleet operating on the Plataforma Sul between 1994 and 1999 (Mazzoleni and Schwingel 1999; cited by Klippel *et al.* 2005). However, in the following years, from 1999 to 2002, annual landings of angel sharks dropped in half and the CPUE of the bottom gillnet fleet also decreased, from a maximum of 4.3 t/trip in 1992 to values that varied between 0.5 t/trip and 1 t/trip in the years 1994–2002 (Klippel *et al.* 2005).

As the regional Brazilian fleets gradually occupied slope grounds in the 1990s, they were joined by foreign fleets chartered by national companies as part of a deep-water fishing development program promoted by Brazilian authorities (Perez *et al.* 2003). This program was implemented in 2000, with chartered vessels operating at depths of 200 m to 900 m in the Brazilian EEZ, using traps, longlines, gillnets, and trawl nets (Perez and Pezzuto 2006 cited in Perez *et al.* 2009). Together, both national and foreign trawlers concentrated their efforts in the southern and southeastern sectors of the Brazilian coast, exploiting three discrete bathymetric strata: shelf break (100–250 m), upper slope (250–500 m), and lower slope (\leq 500 m) (Perez and Pezzuto 2006 cited in Perez *et al.* 2009). Brazilian trawlers concentrated their activities on the shelf break (at 100–200 m) while chartered gillnet vessels concentrated their efforts in deeper areas of the upper slope (at 300–400 m). As a result of this expansion of fishing activities into deeper waters, deep-water monkfish (*Lophius gastrophysus*) was the first fishing resource that proved abundant enough to sustain profitable deepwater fishing operations off southern Brazil, and thus a targeted fishery developed for the species. In 2001, a total of 7,094

t of monkfish were landed, mostly by national double-rig trawlers (58 percent) and foreign chartered gillnetters (36 percent) operating in a fishing area that extended along the southern Brazilian slope, from 21° S. to 34° S. and within the 100–600 m isobaths (Perez *et al.* 2005). Monkfish biomass also happened to be concentrated between 125 m and 350 m depths, which overlaps with the principal depth distribution of the Argentine angel shark (120 m–320 m). As a result, Argentine angel sharks were reported as a significant bycatch species in the monkfish gillnet fishery. In fact, Perez and Wahrlich (2005) noted that *S. argentina* was one of the most retained bycatch species in the monkfish gillnet fishery, with bycatch estimated at 1.052 per 100 nets in 2001 (total 8,698 individuals). This fishing regime that contributed to the significant bycatch of Argentine angel shark continued operating at high levels through most of the following year (2002), with monkfish landings of 5,129 t (Perez *et al.* 2009). The numerous incidental catches produced by monkfish gillnetting suggests that the development of this fishery off southern Brazil substantially increased the levels of fishery-related mortality in the *S. argentina* population and potentially introduced adverse effects in the recruitment process (*i.e.*, recruitment overfishing), especially considering that the species' reproductive cycle may exceed 1 year (Cousseau and Perrota 1998 cited in Perez and Wahrlich 2005). In fact, research bottom trawl surveys of the outer shelf and upper slope from Cape Santa Marta Grande to Chuí (the main habitat of Argentine angel sharks) found decreases in both the CPUE and frequency of occurrence of Argentine angel sharks during the winter and fall seasons between the years 1986/87 and 2001/02. Specifically, these surveys detected declines of 75 and 96 percent in *S. argentina* CPUE (kg/hour) and frequency of occurrence, respectively, during the winter months, and declines of 97 and 63 percent, respectively, during the fall surveys. These declines confirm that the abundance of *S. argentina* in southern Brazil decreased by roughly 80 percent from its original level as a result of recruitment overfishing, primarily due to the bottom gillnet fishery (Vooren and Lamónaca 2002; Vooren and Klippel 2005a).

In 2003, the fishery regime changed, as the foreign chartered vessels abandoned Brazilian waters as a result of conflicts with national trawlers (Perez *et al.* 2009). Since then, exploitation has been maintained mostly by double-rig trawlers along with a few vessels of the

national fleet transformed to fish with the new gillnet technology (Wahrlich *et al.* 2004 cited in Perez *et al.* 2009). Landings of monkfish decreased by roughly 50 percent from 2002 to 2003, and have remained stable around 2,500 t ever since (Perez *et al.* 2009). The large reduction in monkfish biomass after 2002 (and the stabilization at biologically insecure levels thereafter) is largely attributed to the fact that landed catches have been systematically higher than maximum recommended catches (Perez, 2007a; Anon 2007 cited in Perez *et al.* 2009). In 2004, the monkfish fishery was declared overexploited, with subsequent biomass assessments lacking any signs of recovery for the monkfish stock (Perez *et al.* 2009). Given the significant bycatch of Argentine angel sharks in the monkfish fishery in 2001, and the subsequent 80 percent decline in the angel shark population by 2002, the continued intense exploitation by the monkfish fishery within the Argentine angel shark habitat likely contributed to further abundance declines of *S. argentina* after 2002. This is especially probable considering the fact that the fishery operates on the outer and upper slope areas of the continental shelf, where the Argentine angel shark reproduces and likely carries out its entire lifecycle. Thus, the significant increase in fishing effort on the outer shelf and slope areas, particularly by the monkfish fishery, likely impacted all life stages of the species, resulting in recruitment overfishing and, ultimately, overutilization of the species leading to a significant population decline.

Argentine angel sharks are still likely susceptible to fishing pressure in the monkfish fishery, as the fishery is still operational today. Recent landings of monkfish for years 2009, 2010, and 2011 were 2,744 mt, 2,592 mt and 2,616 mt, respectively (IBAMA 2011). While this is a large reduction from peak landings in 2001 of 7,094 mt, Argentine angel sharks of all life stages are likely still bycaught by this fishery, which may limit the species from recovering from its initial 80 percent population decline, especially considering the species' low productivity. In addition, the Argentine angel shark likely has high discard mortality rates based on rates estimated for similar angel shark species (see spiny angel shark—Threats Assessment). Given general similarities between the Argentine angel shark and other *Squatina* species, it seems reasonable to infer similar discard survival rates for the Argentine angel shark (*i.e.*, ~60 percent at-vessel

mortality rate in trawl fisheries and ~25–67 percent mortality in gillnets).

Thus, while the bottom gillnet fishery specifically targeting monkfish has been restricted in terms of overall effort, with only the national trawl fleet continuing to operate on the upper slope (Perez *et al.* 2009), the threat of overutilization remains. However, the monkfish fishery is not the only fishery presently operating within the Argentine angel shark habitat. There are a number of oceanic bottom gillnet fisheries targeting other species (*e.g.*, *Umbrina canosai*, *Cynoscion guatucupa*, and *Micropogonias furnieri*) that currently operate on the shelf and slope at depths of up to 300 m. In fact, due to their effort and fishing area of operation, these oceanic bottom gillnet fisheries now land the majority of angel sharks in Brazil (Klippel *et al.* 2005). As described in the spiny angel shark assessment, fishing effort (both by trawl and gillnet fleets) on the Plataforma Sul remains high and poorly regulated, and therefore, the susceptibility of the species' to fishery-related mortality also remains high. As such, given the best available information and the above analysis, we conclude that overutilization is a factor that is significantly contributing to the extinction risk of the species.

Inadequacy of Existing Regulatory Mechanisms

In Argentina, catches of angel sharks are regulated through annual catch limits and fisheries closures. Since 2013, *Squatina* landings have been below the maximum catch limit in recent years, providing evidence that regulations are potentially being followed. However, without effort information, it is unclear whether these regulations are adequately controlling the exploitation of angel sharks and given that Argentine angel sharks are particularly rare in Argentina, the degree to which these regulations are decreasing the threat of overutilization of the species in this portion of its range is uncertain.

In Uruguay, the Argentine angel shark is listed as a species of high priority in the country's FAO NPOA-sharks (Domingo *et al.* 2008). The plan, as stated previously, has set goals to collect the necessary information on its priority species in order to conduct abundance assessments, review current fishing licenses, and promote public awareness to release captured individuals. However, no updated results from the goals and priorities of this plan could be found.

Like the spiny angel shark, and other species described previously in this

proposed rule, the Argentine angel shark was listed as "critically endangered" under Annex I of Brazil's endangered species list in 2004. As described in previous species assessments, an Annex 1 listing prohibits the catch of the species except for scientific purposes, which requires a special license from IBAMA. There is also a prohibition of trawl fishing within three nautical miles from the coast of southern Brazil, although enforcement of this prohibition has been noted as difficult (Chiaromonte and Vooren 2007), and moreover, the ban only covers depths of <10 m, which does little to provide any protection to the Argentine angel shark given its principal depth distribution of 120–320 m. As described in previous species assessments, Brazil has a FAO NPOA-sharks; however, the Argentine angel shark is not considered one of the 12 species of concern.

Finally, there are some regulatory mechanisms in place for the monkfish fishery in Brazil, which operates in the primary habitat of the Argentine angel shark and has been a significant source of bycatch-related mortality for the species. In mid-2002, government regulations were implemented to prohibit foreign gillnetters from operating south of 21°S (to the southern extent of Brazil's EEZ), which roughly encompasses the entirety of the Argentine angel shark's Brazilian range. This regulation effectively terminated foreign chartered gillnet operations off Brazil and left a national fleet of 5 licensed units to continue the fishery (Perez *et al.* 2009). However, despite this reduction of the monkfish fishery fleet, uncontrolled exploitation continued and the stock was declared overexploited in 2004. It was not until 2005 that a management plan for the monkfish fishery was eventually developed, which included the implementation of 100 percent observer coverage for monitoring the fishery, logbooks, and a recommendation to ban fishing shallower than 250 m (Perez *et al.* 2009). However, the principal depth range of *S. argentina* exceeds the 250 m restriction, thus this recommendation only theoretically protects a portion of the species' depth range. In 2008, catch limits of 1,500 t per year were imposed for the monkfish gillnet fishery, as well as bycatch limits of certain species; however, though the catch limits should help reduce overall fishing effort, the species is still susceptible to bycatch-related mortality in the fishery.

Overall, regulatory mechanisms for the monkfish fishery, particularly the ban of chartered foreign gillnets from 21° S. to the southern extent of Brazil's

EEZ, which were responsible for catching a total of 157,656 monkfish (compared to a total of only 16,697 monkfish landed by all gears of the national fleet) from 2000–2007, and recent catch limits of 1,500 tons for the gillnet fishery, have likely reduced the level of fishing pressure and subsequent mortality of Argentine angel sharks. However, the fact that enforcement of management rules for the monkfish fishery has been poor, with no evident signs of recovery for this overexploited resource (Perez *et al.* 2009), may indicate that the regulations outlined in the management plan for the monkfish are inadequate to control for indirect overutilization of Argentine angel sharks. Given that the conservation status of the Argentine angel shark likely relies heavily upon the success of the management plan for the southern Brazil gillnet monkfish fishery (Vooren and Chiaromonte 2006) and that the monkfish fishery is still operational throughout the species' Brazilian range via the national fleet, with reportedly poor enforcement of management rules, the fishery is likely still exerting fishing pressure and contributing to the overutilization of the already at-risk *S. argentina* population. This continued exploitation is concerning for a species that has already undergone such significant declines in a critical portion of its range, with no indication of a reversal of this trend. As such, we conclude that existing regulatory mechanisms to control for overutilization of the Argentine angel shark are inadequate, particularly in Brazil, where the species is most heavily concentrated and utilized.

Extinction Risk

Demographic Risk Analysis

Abundance

Estimates of population abundance specifically for Argentine angel shark (*Squatina argentina*) throughout its range are not available. However, some qualitative information as well as density and biomass estimates are available from parts of the species' range. Compared to congeners *S. guggenheim* and *S. occulta*, the Argentine angel shark is the rarest species of angel shark found in the southwestern Atlantic, particularly in Argentina. Biomass of *S. argentina* in Argentina was estimated to be 40,000 mt in 1998, although there is high uncertainty with this estimate. In Brazil, this species is reportedly most abundant between Rio Grande and Chui in Rio Grande do Sul, with no evidence of abundant populations outside this region. Based on fishery-independent

surveys conducted from 1986–2002, abundance of Argentine angel shark declined by approximately 80 percent on the outer shelf and upper slope of the Plataforma Sul, which is where the highest concentrations of the species is located. Due to uncertainties regarding the range and distribution of the species, as well as identification issues between *S. argentina* and other *Squatina spp.* in the region, the current abundance of the species cannot be determined at this time. However, given the intense year-round fishing pressure from trawl and gillnet fisheries within the very restricted range of this rare species, combined with the species' presumed low reproductive output, it is likely that *S. argentina* is experiencing continued population declines throughout its range, which is significantly contributing to its extinction risk.

Growth Rate/Productivity

There is limited information regarding the growth and reproduction of the Argentine angel shark, and information on natural mortality rates or the potential intrinsic rate of population increase for the species is unavailable. The species has an estimated maximum total length of 138 cm with a size at sexual maturity of 120 cm TL, which means the species must grow to approximately 87 percent of its maximum size before reaching sexual maturity. Gravid females and neonates are rarely found, so little is known about the gestation and birth of this species; however, litter sizes range from 7–11 pups (with 9–10 pups being common) and their reproductive cycle is reportedly at least biennial (Vooren and Chiaramonte 2006). These reproductive characteristics suggest the species has relatively low productivity, similar to other elasmobranch species, which has likely hindered its ability to quickly rebound from threats that decrease its abundance (such as overutilization) and renders the species more vulnerable to extinction. In addition, similar to its congener *S. guggenheim*, *S. argentina* is thought to have cloacal gestation during the latter half of pregnancy, which increases the likelihood that the species will abort pups upon capture and significantly decreases their already low reproductive output.

Spatial Structure/Connectivity

The Argentine angel shark has a very restricted range, from Santa Catarina, Brazil to northern Argentina (*i.e.*, Buenos Aires). Currently, there is no evidence of abundant populations outside of southern Brazil. Argentine angel sharks are sedentary, territorial,

and assumed to carry out their entire lifecycles within the same area. This indicates that populations of the species maintain population growth by recruiting within each area without producing a necessary excess of recruits with the potential to migrate to other areas (Vooren and Klippel 2005a). As a result, *S. argentina* populations reportedly have limited movement and dispersal migration between neighboring populations, with migrants having no impact on the short term abundance of a population. This limited inter-population exchange reduces the recovery potential for the depleted and small local populations and may increase the risk of local extirpations, possibly leading to complete extinction. Given the lack of evidence of abundant populations outside of southern Brazil, and the limited connectivity between the populations of southern Brazil and populations elsewhere throughout the species' range, conservation of the southern Brazilian populations of *S. argentina* is likely critical for the conservation of the taxon as a whole. Thus, based on the available information, low dispersal rates among populations of *S. argentina* poses a significant risk of extinction to the species.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. Although it is unknown if *S. argentina* has experienced a loss of diversity, the significant decline estimated for the population in southern Brazil, as well as the likely small populations elsewhere throughout its range, and limited connectivity of these populations, suggest the species may be at an increased risk of inbreeding depression or random genetic drift and could experience the fixing of recessive detrimental genes, reducing the overall fitness of the species.

Threats Assessment

The primary threat to *S. argentina* is overutilization by commercial fisheries, with particular vulnerability to trawl and bottom gillnet fisheries. As previously mentioned, the vast majority of fisheries information on angel sharks is documented as "*Squatina spp.*" throughout Brazil, Uruguay, and Argentina; therefore, determining the

magnitude of threats currently acting specifically on *S. argentina* is challenging. However, there are some landings and CPUE data for *S. argentina*, which suggest the historical and continued level of fishing pressure has led to significant observed declines in the species.

Historically, angel sharks, including *S. argentina*, were caught in multispecies artisanal shark fisheries and considered a valuable bycatch species. In Argentina, in the 1990s, angel sharks were considered commercially important bycatch, particularly in the Necochea school shark (*Galeorhinus galeus*) gillnet fishery, and between 1992 and 1998, landings of angel sharks in Argentina were fairly stable. However, declines in CPUE over this time period (of up to 58 percent) were recorded for vessels operating on the Argentine shelf, indicating a level of fishing mortality on the angel shark population that was leading to declines in abundance, and since 1998, landings have been on a decline (Massa *et al.* 2004b). In Uruguay, catches of angel sharks (*Squatina spp.*) have actually been on an increasing trend since the 1970s, and exceeded the catch limit imposed in the AUCFZ for 2012 (2,600 mt). However, in both Argentina and Uruguay, Argentine angel sharks are relatively rare, with the majority of angel shark landings comprised of *S. guggenheim*. As such, it is unclear whether overutilization is significantly contributing to the species' extinction risk in this portion of its range.

Off southern Brazil, angel sharks have been and continue to be heavily exploited by the trawl and gillnet fisheries (see the *S. guggenheim* assessment for more details). This heavy exploitation has led to observed declines in the abundance of *S. argentina* on the Plataforma Sul as a result of recruitment overfishing (primarily by the bottom gillnet fishery targeting monkfish). Given the natural rarity and low productivity of the species, these declines (of up to 80 percent) have placed the Argentine angel shark at an increased risk of extinction from stochastic and compensatory processes. In addition, it is likely that the population of Argentine angel shark has continued to decline (from the 80 percent estimate in 2002) as a result of the continued exploitation of the species by the monkfish gillnet fishery that continued unabated until 2004, and the present fishing pressure by the reduced monkfish fishery and the other oceanic gillnet fisheries operating within the species' habitat. Further, few existing regulations appear adequate to

control the overutilization of *S. argentina*. In the monkfish fishery, which catches significant amounts of Argentine angel shark as bycatch, a management plan was implemented in 2005. Though the monkfish fishery has been significantly reduced in terms of overall effort through catch limits and fisheries restrictions, enforcement of management rules has been poor with no evident signs of recovery for this overexploited resource (Perez *et al.* 2009). Additionally, in 2004, the Argentine angel shark was classified as “critically endangered” on Brazil’s endangered species list, which effectively prohibited the catch of this species. However, for the most part, there is reportedly minimal control of the fisheries operating on the Plataforma Sul, and this regulation does not address the threat of bycatch-related mortality of the species. Additionally, although landings of the species are currently prohibited, the fleets’ extensive operations will continue to contribute to the fishing mortality of all life stages of the species as the Argentine angel shark likely has high discard mortality rates based on rates estimated for similar angel shark species (see spiny angel shark—*Threats Assessment*). Thus, given general similarities between the Argentine angel shark and other *Squatina* species, it seems reasonable to infer similar discard survival rates for the Argentine angel shark from these other *Squatina* species. As such, given the sensitive life history traits of the Argentine angel shark as well as the evidence of significant population declines, an assumed 60 percent at-vessel mortality rate in trawl fisheries and 25–67 percent mortality in gillnets is likely to significantly contribute to the overutilization of the species and increase its extinction risk.

Overall, it is likely that *S. argentina* has suffered significant population declines throughout its restricted range as a result of historical and continued overutilization of the species from direct and indirect fishing pressure. Given the reduction of the species’ critically important southern Brazilian population of at least 80 percent, combined with inadequate regulatory mechanisms in this part of the species’ range to control the high level of fishing pressure on the species, we conclude that overutilization is significantly contributing to the species’ risk of extinction.

Risk of Extinction

Although there is significant uncertainty regarding the current abundance of the species, it appears that

the Argentine angel shark is relatively rare outside of southern Brazil, where small, isolated populations have experienced substantial declines and remain at risk from overutilization by fisheries targeting deep-water monkfish. Best available information indicates the species has experienced at least an 80 percent reduction of its critically important southern Brazil population as a result of intense year-round fishing pressure, and will continue to decline without adequate protection from overutilization. Given the species’ restricted range and present rarity throughout the range, combined with its limited movement and dispersal between populations and low reproductive output, *S. argentina* is likely strongly influenced by stochastic or depensatory processes. This vulnerability is further exacerbated by the present threats of overutilization and inadequacy of existing regulatory measures that are and will continue to significantly contribute to the decline of the existing populations (based on its demographic risks), compromising the species’ long-term viability. Therefore, based on the best available information and the above analysis, we conclude that *S. argentina* is presently at a high risk of extinction throughout its range.

Protective Efforts

Aside from the management goals outlined in the previously described FAO NPOA-sharks in Uruguay, we could not find any additional information regarding protective efforts for the Argentine angel shark.

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the Argentine angel shark is presently at risk of extinction throughout all of its range. We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization and inadequacy of existing regulatory mechanisms throughout its range. The species’ present rarity and restricted range, combined with the its natural biological vulnerability to overexploitation and demographic risks (*e.g.*, low and declining abundance, low productivity, likely small and/or isolated populations at an increased risk of random genetic drift, and limited dispersal capabilities) are exacerbating the negative effects of the aforementioned threats, placing this species in danger of extinction. We also found no evidence of protective efforts for the conservation of Argentine angel shark that would reduce the level of

extinction risk faced by the species or otherwise alter its current status. We therefore propose to list the Argentine angel shark as an endangered species.

Graytail Skate (*Bathyraja griseocauda*)

Species Description

The graytail skate, *Bathyraja griseocauda*, is a member of the genus *Bathyraja*, the most speciose genus of the family Arhynchobatidae (McCormack *et al.* 2007). Physical features of the graytail skate include a disc that is rhomboidal in shape (Bizikov *et al.* 2004), brownish in color with traces of darker spots or rings on its dorsal surface, and white or yellow coloring on the ventral side (Norman 1937; Bigelow and Schroeder 1965). The posterior margins of the pelvic and pectoral fins are dusky, and the tail is grayish brown in color (Norman 1937), with the underside covered in dark spots (Bizikov *et al.* 2004). The dorsal surface is covered in numerous small spinules, but the tip of the snout and axils of the pectoral fins lack spinules (Bigelow and Schroeder 1965). There are 18–20 strong median spines on the tail that begin above the origin of the pelvic fins and extend to the first dorsal fin (Norman 1937; Springer 1971; Bizikov *et al.* 2004). Males have alar thorns, curved spines on the outer part of their pectoral fins, arranged in rows with 5–7 thorns per row (Bizikov *et al.* 2004).

Range and Habitat Use

The graytail skate occurs in Southwest Atlantic waters off the coasts of Argentina, Uruguay, Chile, and the Falkland Islands, and in the Southeast Pacific off of Chile (Sáez and Lamilla 2004). They have been caught at latitudes as far north as 39° S. in the Pacific Ocean and 34° S. in the Atlantic Ocean, and as far south as 60° S. in the Southern Ocean on the Antarctic shelf (Bigelow and Schroeder 1965; Figueroa *et al.* 1999; Sáez and Lamilla 2004). A few individuals have been captured on the Antarctic continental shelf, around the Antarctic Peninsula. There are also unconfirmed records of graytail skate in the Southern Ocean in Prydz Bay, Antarctica (GBIF 2013). If these records are validated, this would extend the range of the skate beyond the southwest Atlantic Ocean and eastern Pacific.

Diet and Feeding

Various studies on graytail skate diet indicate they are opportunistic predators that consume a variety of prey items, but primarily favor fish. The most extensive study of the diet and feeding

habits of the graytail skate caught around the Falkland Islands found that skates smaller than 50 cm (DW) preyed mostly on benthic gammarid amphipods and isopods, such as *Serolis* spp., whereas skates larger than 50 cm DW preyed increasingly on fishes (Brickle *et al.* 2003). Subsequent studies off the Falkland Islands have confirmed this ontogenetic diet shift (Laptikhovskiy *et al.* 2005). In adult graytail skate, fish can make up more than 40 percent of the diet (Sánchez and Mabragaña 2002). Off the coast of Argentina, the graytail skate did not consume crustaceans (Sánchez and Mabragaña 2002), which contrasts with data from the Falkland Islands.

Growth and Reproduction

Graytail skates have a lifespan of approximately 28 years, with a maximum observed disc width of 130 cm and a maximum weight of 30.4 kg (Arkhipkin *et al.* 2008; Wakeford *et al.* 2005). Based on vertebral band counts from samples collected from along the coast of Argentina, Bücker (2006) calculated the relative growth rate (k) from the von Bertalanffy growth equation to be 0.064 year^{-1} with a theoretical maximum size (L_{∞}) of 169.9 cm TL and an estimated size-at-birth (L_0) of 6.1 cm. Arkhipkin *et al.* (2008), using samples collected only off the Falkland Islands, reported a lower growth rate (k) of 0.02 year^{-1} , with a maximum theoretical size (L_{∞}) of 313.4 cm total length. Growth rates of graytail skate begin around 5.6 cm/year for the first 9 years of life and decline to 4.3 cm/year between 14 and 20 years old (Arkhipkin *et al.* 2008). In comparison, a study of caudal thorn band counts and vertebral centra ring counts found that the most accurate von Bertalanffy growth parameters came from the vertebral centra with the relative growth rate (k) based on vertebrae centra to be 0.033 year^{-1} with a theoretical maximum size (L_{∞}) of 219.7 cm total length (Gallagher 2000). However, based on observed size data, these parameters still slightly underestimate growth (Gallagher 2000).

Little is known about the reproduction of the graytail skate (Sánchez and Mabragaña 2002) and available age and growth studies from the same region provide conflicting estimates for length and age at maturity. For example, in the Falkland Islands, Gallagher (2000) estimated a total length at 50 percent maturity of 120.7 cm for both sexes, with males and females maturing after 17.6 and 24.8 years respectively. Arkhipkin *et al.* (2008) estimated a total length at 50 percent maturity to be 108.2 cm for females and 94.5 cm for males, with age at maturity

of 14 years for males and 17.8 years for females. Based on commercial fleet observer and research cruise data collected around the Falkland Islands, males reached 50 percent maturity at a disc width of 76–77 cm (Agnew *et al.* 2000; Wakeford *et al.* 2005). A Falkland Islands study of graytail skate suggests that graytail skate females may spawn year-round with a weak spawning peak in the spring and summer months observed (Arkhipkin *et al.* 2008). Around the Falkland Islands, the spawning grounds of the graytail skate can be found northwest of the islands in deep waters, close to the edge of the continental shelf between 200 and 300 m deep (Arkhipkin *et al.* 2008) and in waters south of 51° latitude (Dr. Andreas Winter, Falkland Islands Fisheries Stock Assessment Scientist, personal communication 2015). Based on catches of the smallest skates, it is thought that hatchlings have disc widths between 9 cm and 12 cm (Brickle *et al.* 2003; Arkhipkin *et al.* 2008).

Genetics and Population Structure

Studies examining the genetics of the species or information on its population structure could not be found.

Demography

Little is known about the population growth and natural mortality of the graytail skate. However, based on the life history parameters described previously, like other elasmobranchs, the graytail skate is a K -selected species with slow growth rates and late age at maturity, which is indicative of low productivity (Gallagher 2000; Bücker 2006; Arkhipkin *et al.* 2008).

Historical and Current Distribution and Population Abundance

Graytail skate occur on the continental shelf and slope in the southwestern Atlantic Ocean, south of 34° S. and in the southeastern Pacific Ocean, south of 39° S. (Figuroa *et al.* 1999; Sáez and Lamilla 2004). In the Falkland Islands, graytail skate are caught in cool, deep waters on the slopes of the continental shelf break, making them more common to the west of the islands (Agnew *et al.* 1999; Arkhipkin *et al.* 2008; Arkhipkin *et al.* 2012). Outside the Falkland Islands, on the Patagonian shelf, they are more commonly found on the northwestern outer shelf and northern shelf and slope (Figuroa *et al.* 1999; Arkhipkin *et al.* 2012). In Argentina, graytail skate are found on the continental shelf and slope around Argentina south of 37° S. and 41° S. respectively (McCormack *et al.* 2007), where they exhibit strict

stenothermic and stenohaline behavior. In other words, the species appears to tolerate very narrow ranges of temperature and salinity (Figuroa *et al.* 1999), with catch data that suggest that the species occurs at water temperatures below 6 °C (Menni and Lopez 1984; Colonello and Massa 2004) and salinity above 33.9 psu (Colonello and Massa 2004).

Throughout their range, graytail skates are found at depths between 106 m and 1,010 m, but have been caught as shallow as 77 m in Argentine waters (Bücker 2006). Graytail skate are typically most common at depths below 300 m (Bigelow and Schroeder 1965; Menni and Lopez 1984; Brickle *et al.* 2003; Laptikhovskiy *et al.* 2005; Wakeford *et al.* 2005; Arkhipkin *et al.* 2008; Arkhipkin *et al.* 2012). However, in Argentina, the highest density of graytail skate catches was reported at depths of 120 m on the Argentina platform between 45° S. and 41° S. during the late winter and early spring months (Colonello and Massa, 2004). As graytail skates mature, they display an ontogenetic shift in depth preference (Arkhipkin *et al.* 2008). For example, in Falkland Islands waters, hatchlings occupy nursery grounds of approximately 300 m–350 m depth, but transition to deeper waters of 400 m–600 m as juveniles (Arkhipkin *et al.* 2008). At 20 cm–30 cm DW, some individuals migrate up to shallower depths of 200 m–400 m, while others move into water deeper than 600 m (Arkhipkin *et al.* 2008). Skates 80 cm–90 cm DW or larger occur most commonly at depths of 400 m–600 m (Arkhipkin *et al.* 2008). Despite these depth changes, studies around the Falkland Islands have shown little evidence of large spatial or temporal movements, which could indicate that graytail skates carry out their entire life cycle within the waters where they hatch (Agnew *et al.* 2000; Wakeford *et al.* 2005; Winter *et al.* unpublished).

Range-wide abundance estimates for graytail skate are not available; however, biomass estimates exist for the populations off the Falkland Islands and Argentina. In the Falkland Islands, graytail skate were part of the fish assemblage of both the southern and northern skate and ray stocks. They were particularly abundant south of the islands, making them dominant in catches of the southern skate and ray assemblage. However, due to declining CPUEs of the southern stock, especially for graytail skate, the southern rajid fishery was closed in 1996 (Agnew *et al.* 1999; Agnew *et al.* 2000; Wakeford *et al.* 2005). Current biomass estimates from this area could not be found. North of

the Falkland Islands, declines in the CPUE of graytail skate were also observed between 1992 and 2001 (Wakeford *et al.* 2005); however, based on recent biomass estimates, the population appears to have recovered and stabilized. Specifically, analysis of 2010 fishery survey cruise data resulted in an estimated biomass of graytail skate of 7,232 t, which is consistent with the earlier biomass estimates for the species from the 1990s (Falkland Islands Government 2011). As this biomass estimate is just for the graytail skate population north of the Falkland Islands, it is likely a significant underestimation of the total biomass for the entire Falkland Islands population, especially considering the southern stock, which was historically more abundant, has been protected from targeted fishing since 1996.

In 2002, Sánchez and Mabragaña (2002) estimated the population abundance of the graytail skate on the continental Argentine shelf between 48° S. and 55° S. to be 259,210 individuals, or 2,431.98 t. This estimate was calculated prior to the apparent recovery of the graytail skate in the Falkland Islands and also corresponds to when CPUE of the graytail skate was at its minimum in the Falkland Islands (Wakeford *et al.* 2005). As such, it could be assumed that biomass has since increased on the shelf; however, with no recent abundance estimates available, the trends within this portion of the species' range cannot be determined with certainty.

Farther north on the Argentine shelf, between 45° S. and 41° S., the biomass of graytail skate was estimated to be 503 t in 2004, but had a large confidence interval ($\pm 2,237$ t), with an average density of the species of 0.05 t/nm² (Colonello and Massa 2004). More recent estimates or trends in population abundance or biomass levels for graytail skate are not available.

There is very little information pertaining to the presence of graytail skate in Uruguayan and Chilean waters. No information on commercial, recreational, or research catches of graytail skate is available from Uruguay. Likewise, there is no estimate of abundance from this area. In Chile, graytail skate are found south of 41° S. and at depths of 137 m to 595 m (McCormack *et al.* 2007). In 1995, Saez and Lamilla (2004) caught 42 graytail skate between March and December at 350 m depth approximately 20 miles from Punta Galera; however, no other information is available on scientific or commercial catch distribution or population abundance from this area.

Summary of Factors Affecting the Graytail Skate

We reviewed the best available information regarding historical, current, and potential threats to the graytail skate species. We find that the main threat to this species is overutilization for commercial purposes; however, we consider the severity of this threat to be greatly reduced by the regulatory mechanisms in place in the Falkland Islands, where the species was historically most heavily exploited. Thus, we find that historical and present levels of utilization are not exceeding the species' biological capacity to sustain current levels of exploitation. We also find that current regulatory measures are adequate to protect the species from further overutilization. Additionally, available information does not indicate that habitat destruction or modification, disease, predation or other natural or manmade factors are operative threats on these species. We summarize information regarding these factors and their interactions below according to section 4(a)(1) of the ESA. See Casselbury and Carlson (2015g) for a more detailed discussion of these factors.

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Trawl fisheries occur throughout the graytail skate's range. Studies show that the interaction of bottom trawling gears with bottom substrate can have negative effects on benthic fish habitat (Valdemarsen *et al.* 2007). These impacts are often the most serious on hard substrates with organisms that grow up from the bottom, such as corals and sponges, but alterations to soft substrates have also been seen. The trawl doors on bottom otter trawls often cause the most damage to the ocean bottom, but other parts of trawling gear, such as weights, sweeps, and bridles that contact the bottom can also be damaging. Intense fishing disturbance from trawling has reduced the abundance of several benthic species (Valdemarsen *et al.* 2007); however, there is no specific information available that indicates this habitat modification has had a direct effect on the abundance of the graytail skate, or is specifically responsible for the curtailment of its habitat or range.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information available on the harvest of the graytail skate indicates that they

are most heavily exploited in the Falkland Islands multispecies skate and ray fishery by foreign fleets (Agnew *et al.* 1999; Falkland Islands Government 2005–2013). Prior to the 1990s, catches from the Falkland Islands were mainly attributed to Spanish vessels fishing in a mixed groundfish fishery, with rajid catches of less than 1,500 t per year (Wakeford *et al.* 2005). However, in 1989, Korean vessels began to specifically target rajids in this fishery using demersal trawls, and by 1991 catches of skates and rays rose to more than 7,000 t/year (Wakeford *et al.* 2005). Subsequently, two rather distinct rajid fisheries developed within the Falkland Islands: a southern rajid fishery that fished in a small area south of the Falkland Islands (a ray "hot spot;" Agnew *et al.* 2000), and a northern rajid fishery that operated in a more extensive area to the north of the Falkland Islands (primarily on the slope between 200 m–400 m depths; Wakeford *et al.* 2005). In the 1990s, the graytail skate was the most important species caught in the Falkland Islands multispecies rajid fisheries based on catch weight, and was estimated to make up approximately 58 percent of the catch in the southern rajid fishery and 39 percent of the catch in the northern rajid fishery between 1993 and 1995 (Agnew *et al.* 1999; Bizikov *et al.* 2004). However, with this heavy exploitation on the skate populations by Korean fleets (which were responsible for 88 percent of the directed rajid catch between 1990 and 1997; Agnew *et al.* 2000), the proportional catches of graytail skate declined in all areas that were fished. This decline was particularly precipitous in the southern batoid aggregation area, where graytail skate spawn (A. Winter, pers. comm. 2015) and had previously comprised the majority of the catch (Agnew *et al.* 1999). Agnew *et al.* (2000) calculated that total mortality rates (fishing mortality rates + natural mortality rates) in the northern and southern areas were significantly higher than what could be sustained by the batoid assemblage, particularly graytail skates. Specifically, the authors estimated that graytail skates could sustain total mortality rates of less than 0.3/year; however, the total mortality rate in the northern area from 1991–1995 was on the order of 0.42/year and in the southern area was 0.61/year (Agnew *et al.* 2000). Consequently, significant declines in CPUE were observed between 1990 and 1997. A steep 58 percent decline was noted in the southern rajid fishery from 1993 to 1996, which was attributed to the decline in graytail skate abundance

(Agnew *et al.* 1999, 2000) and declines ranging from 44 to 65 percent were observed for the northern rajid fishery from 1990–1996 (Agnew *et al.* 2000). For catches of graytail skate, Wakeford *et al.* (2005) estimated a decline in CPUE of around 70 percent between 1992 and 2001 in the northern rajid fishery, and observer data indicate CPUE of graytail skate continued to decline through 2007 (Winter *et al.* unpublished). Catches of graytail skate also showed a reduction in average disc width. From 1993–1995, average disc width declined from 52.18 cm to 31.91 cm (Agnew *et al.* 2000), and based on observer data collected from the Falkland Islands Inner Conservation and Management Zone (located between 49° S.–54° S. and 64° W.–54° W.), the majority of graytail skate catches in the commercial trawl fishery from 1997–2006 were still relatively small skates with modal disc widths between 25 cm and 40 cm (Arkhipkin *et al.* 2008). Additionally, about 54 percent of the catches were female skates with disc widths between 10 cm and 80 cm, and the majority were under the estimated size at 50 percent maturity (Arkhipkin *et al.* 2008).

As a result of the marked declines in CPUE, particularly for the entire southern batoid aggregation, which was presumed to be driven by declines in graytail skate (Agnew *et al.* 1999, 2000; Wakeford *et al.* 2005), the southern ray fishery was closed in 1996 and separate skate target trawling licenses and catch limits (of around 3,000 t through the late 1990s) were imposed in the northern ray fishery. Following the implementation of these catch limits, which equated to between 6.5 and 7.6 percent of the estimated pre-exploitation biomass, the northern rajid stock appeared to stabilize by 2000 (Agnew *et al.* 2000). In fact, based on a stock assessment of the northern skate stock, with updated data through 2014, estimated biomass of the entire stock has gradually and consistently increased since 1996, from a low of 13,641 t in 1989 (95 percent CI: 10,591–24,214), which marked the start of heavy exploitation, to a recent peak high of 34,558 t in 2014 (90 percent CI: 27,284–59,806) (Fisheries Committee 2015). In addition, CPUE of the northern stock has been gradually increasing over the years (Agnew *et al.* 2000; Falkland Islands Fisheries Committee 2015) whereas targeting of skate and ray species in the Falkland Islands has been decreasing, with a large portion (almost half) of the skate catch now taken as bycatch under finfish licenses (Falkland Islands Government 2014). In fact, the most recent data from the fishery show

that in 2014 total skate catch amounted to 5,543.2 t, with 53 percent of this total representing targeted skate catch (Fisheries Committee 2015). Furthermore, even with the proportional increase in bycaught skates and decrease in targeted skate catch, the total skate catch for the fishery appears sustainable as it falls below the Maximum Sustainable Yield (MSY) estimate, which is the theoretical largest catch that can be taken from a stock. Based on the latest stock assessment of the northern skate assemblage, MSY is estimated to be 6,048 t (95 percent CI: 6,198–46,811), which is approximately 8 percent higher than the 2014 total skate catch (Fisheries Committee 2015).

In terms of the graytail skate, despite the reported historical reductions in CPUE, *B. griseocauda* remains one of the most abundant species caught in the Falkland Islands multispecies skate fishery (Agnew *et al.* 1999; Arkhipkin *et al.* 2008; Falkland Islands Government 2005, 2006, 2007, 2008, 2010, 2011, 2012) and presently makes up between 11 percent and 18 percent of the skate trawl catch and bycatch identified by observers (Agnew *et al.* 2000; Falkland Islands Government 2010, 2011, 2012, 2014). Recent data from the Falkland Islands Government (2012) also indicate that the modal disc width of graytail skate catches has increased to 63 cm in 2012. The increase in modal disc width could be indicative of population recovery for graytail skates in recent years. This is supported by the fact that in 2010, fishery-independent surveys conducted to estimate skate biomass in the northern area of the Falkland Islands (the area that generally yields the highest skate catches by the targeted skate fishery) confirm that total skate biomass, and particularly the predominant skate species, including graytail skate, have remained stable in recent years. Using CPUE as an index of abundance, an analysis incorporating more recent data from 1994 to 2013 revealed that *B. griseocauda* was in decline until about 2007, with a decrease in CPUE from 120.1 kg/hr in 1994 to 22.6 kg/hr in 2007 (Winter *et al.* unpublished). However, CPUE has since increased to an estimated 70.1 kg/hr in 2013, similar to levels observed in 1997–2001, with abundance continuing on a positive trend (Winter *et al.* unpublished). Furthermore, given that these estimates are only for graytail skate in the northern area of the Falkland Islands, it is likely that the total abundance of the Falkland Islands population is significantly higher and has recovered even more so due to the complete ban on commercial skate

fishing in the southern batoid aggregation area, where the spawning grounds of the species are mostly located (A. Winter, pers. comm. 2015).

Given the evidence of increasing CPUE and biomass of the northern skate assemblage, skate catch estimates that are below MSY, stable biomass estimates of graytail skate, and increasing abundance and sizes of graytail skates in catches, the current fishing effort and level of exploitation of skates in general, and graytail skate in particular, in the Falkland Islands appears to be sustainable (Falkland Islands Government 2014). In other words, overutilization of the species in this portion of its range is not a threat that is contributing significantly to its risk of extinction.

In Argentina, an active commercial elasmobranch fishery, which exploits sharks, skates, and rays, has shown an increasing trend in both catches and number of vessels reporting skate and ray landings since the early 1990s. Historically, skates and rays were mainly discarded as fisheries bycatch, but are now landed as both target and non-target catch (Chiaramonte 1998; Massa and Hozbor 2003). Specifically, catches have increased from 183 t in 1991 to 13,265 t in 2000, and vessels reporting landings have increased from 69 in 1992 to 377 in 1998 (Sánchez and Mabragna 2002; Massa and Hozbor 2003). From 1994–1998, Massa and Hozbor (2003) estimated a decline of around 36 percent in the CPUE of large fishing vessels (>28 m in length) for all skates and rays on the Argentine shelf between 34 and 48° S.; however, the data are not species-specific and deep-water skates, like the graytail skate, are generally not monitored despite the fact that they are under fishing pressure (Massa *et al.* 2004b). Additionally, the CPUE of skates and rays for smaller fishing vessels (with lengths <28 m) did not show similar declines; rather, CPUE for these vessels on the Argentine shelf remained fairly stable from 1994–1998 (Massa and Hozbor 2003).

Along the Patagonian shelf, the graytail skate has also been observed as bycatch in the scallop (*Zygochlamys patagonica*) fishery. This Patagonian scallop fishery primarily operates along the 100 m isobath, between 36°43' S and 48°30' S, and uses non-selective bottom otter trawls (Schejter *et al.* 2012). In a research study examining the bycatch composition from this fishery, the graytail skate occurred in 6.8 percent of the sampled fishing sites (n=177) (Schejter *et al.* 2012); however, no information on abundance of the species within those sites was provided. Overall, the limited abundance data as

well as the lack of species-specific information and trends data makes it difficult to determine the magnitude of utilization that may be occurring specifically for *B. griseocauda* in this part of its Argentinian range, and whether this level of utilization is contributing significantly to the species' extinction risk.

Similarly, little information is available on the exploitation of the graytail skate in Chilean waters. There is a directed skate fishery off Chile that primarily targets the yellownose skate (*Zearaja chilensis*), and although information on the depth at which the fishery operates could not be found, *Z. chilensis* lives at depths between 28 m and 435 m. This depth range overlaps with the shallower half of the graytail skate's depth range (Kyne *et al.* 2007) and thus this fishery may also incidentally catch graytail skates. Since 1979, declines in *Z. chilensis* catches have been reported, and it is suspected that other skate species, including the graytail skate, have also been affected (McCormack *et al.* 2007); however, graytail skate comprise less than 5 percent of the skate landings in this fishery (McCormack *et al.* 2007). As such, the impact of this fishery on graytail skate abundance and overall extinction risk is likely to be minimal.

Disease or Predation

At this time, there is no available information regarding diseases or predators of the species. As such, there is no evidence to indicate that these factors are a threat to the graytail skate.

Inadequacy of Existing Regulatory Mechanisms

In the Falkland Islands, there are numerous management measures in place that provide for the protection of graytail skate from overutilization. The Falkland Islands multispecies fishery, where graytail skate is presumably most heavily exploited, is rigorously managed through fishing effort controls. In order to protect the southern batoid aggregation area that displayed marked declines in CPUE in the early 1990s (Agnew *et al.* 1999), the Falkland Islands government implemented a number of management measures to ensure long-term sustainability of the rajid fishery, including: (1) The placement of observers on vessels to identify batoids to species and collect other biological data to inform fisheries management; (2) the development of specific skate and ray fishery seasons and licenses to better regulate the catch of rajids; and (3) the implementation and continuation of a prohibition on trawling for skates and rays south of 51°

S, which effectively closed the southern ray fishery. Before the prohibition, graytail skate were particularly abundant south of the islands, where its spawning grounds are mostly located (A. Winter, pers. comm. 2015), and made up a significant portion of the catch from this area. Thus, this measure helps protect not only a large segment of the population from further depletion in an area where they were historically most concentrated, but also important life history behavior required for the survival of the species (Agnew *et al.* 2000). In addition to the closure of the southern ray fishery via the trawl prohibition, catch limits were also imposed for the northern rajid fishery in 1996. Since then, the northern batoid stock has seen a gradual increase in both CPUE and biomass, with total catches lower than MSY, suggesting regulatory measures are adequate in providing for the sustainable exploitation of the northern skate assemblage in Falkland waters. Data also suggest that these regulatory measures have allowed for the recovery of the graytail skate population, as indicated by the increasing CPUE and sizes of graytail skate in recent catches. As such, the Fisheries Committee, which advises the Falkland Islands Fisheries Department, recommended maintaining the skate target catch at the current level of effort allocation for the 2016 fishing year as these limits are effective at maintaining a sustainable multispecies fishery and appear adequate to protect the graytail skate from extinction.

In Argentina, the graytail skate is covered under the country's FAO NPOA-sharks; however, it is not considered a priority species. Several sources have noted that Argentina does little to actively protect elasmobranchs, particularly skates and rays, in its waters (Massa and Hozbor 2003; Massa *et al.* 2004b, McCormack *et al.* 2007). Though total allowable catch, minimum sizes, and annual quotas are in place for many elasmobranchs in Argentina, they are largely ignored and poorly enforced (McCormack *et al.* 2007). In 2013, El Instituto Nacional de Investigación y Desarrollo Pesquero (INIDEP) set the recommended total allowable catch for all skates and rays at 9,000 t and a landing limit for skates and rays was set at no more than 30 percent of the catch. However, due to the lack of information regarding the status of the graytail skate in Argentina, there is no indication that existing regulatory mechanisms are inadequate in controlling threats to the species or are contributing significantly to the species' risk of extinction.

In Uruguay, the graytail skate is considered a species of high priority

under Uruguay's FAO NPOA-sharks, which outlines plans to: investigate the species' age, growth, reproduction, diet, distribution, and habitat use in Uruguayan waters; generate a time series for catch and effort of the skate in fisheries; conduct an abundance assessment; establish measures to review current fishing licenses for graytail skate and determine possible modifications to the licenses; and finally, prohibit new fishing permits. However, aside from the species' presence in Uruguayan waters, there is a significant lack of information regarding the status of graytail skate in Uruguay; thus, there is no indication that existing regulatory mechanisms are inadequate in controlling threats to the species in this portion of its range, or are contributing significantly to its risk of extinction.

In Chile, there are little to no regulations for the protection of graytail skate; however, the exploitation of the species in Chilean waters is minimal. While there are regulations pertaining to other fisheries in Chilean waters that overlap the graytail skate's range, it is unknown how these regulations affect the status of graytail skate. Based on the available information, there is no indication that existing regulatory mechanisms are inadequate in controlling threats to the species in this portion of its range, or are contributing significantly to its risk of extinction.

Other Natural or Manmade Factors Affecting the Species

Besides the information already discussed above in the other factor sections, no additional information was found regarding threats to the species that would fall under this category. As such, there is no evidence to indicate that this factor is a threat to the graytail skate.

Extinction Risk

Demographic Risk Analysis

Abundance

Although range-wide abundance estimates for graytail skate are unavailable; biomass estimates and trends exist for the areas where the species was historically and is currently most abundant. In the Falkland Islands, graytail skate represented a dominant part of the southern rajid assemblage in the mid-1990s and comprised around 39 percent of the northern rajid catch. Due to heavy fishing pressure contributing to unsustainable mortality rates, significant declines in the CPUE of the species were observed between 1992 and 2007 indicating a likely reduction in population abundance. However,

since the decline, CPUE (as an index of abundance of graytail skate) from north of the Falkland Islands has been increasing, already reaching levels observed in 1997–2001, with biomass of the species in 2010 estimated to be 7,232 t, consistent with biomass estimates from the early 1990s. Additionally, the graytail skate remains one of the most abundant species caught in the Falkland Islands multispecies skate fishery. Therefore, while the species likely experienced historical declines in abundance as a result of heavy exploitation in the early 1990s, the available information on biomass estimates and trends between the 1990s and 2014 indicate that the population is potentially stabilized and even recovering. Therefore, the species' present level of abundance is unlikely to pose a demographic risk to the species. Furthermore, there is no other abundance information or trend data from the rest of the species' range to indicate that the species' present abundance level is contributing significantly to its risk of extinction.

Growth Rate/Productivity

Relative growth rates (k) of graytail skates were estimated to be 0.064 year^{-1} in Argentinean waters (*i.e.*, low), and 0.02 year^{-1} to 0.033 year^{-1} in the Falkland Islands (*i.e.*, very low). Graytail skates are long-lived species, with an estimated lifespan of approximately 28 years, and a maximum disc width of 130 cm. Although age and growth studies from skates in the same region provide conflicting estimates for length and age at maturity, with age of maturity estimates ranging from 14–17.6 years for males and 17.8–24.8 years for females, all estimates indicate a very late age of maturity. While there is some evidence to suggest that graytail skates may reproduce year-round, overall, these reproductive characteristics suggest the species has relatively low productivity, similar to other elasmobranch species, which may hinder its ability to quickly rebound from threats that decrease its abundance (such as overutilization) and render the species more vulnerable to extinction in the face of other demographic risks and threats. Additionally, the observed decrease in the species' mean disc width in catches from 1993–1995 and 1997–2006 (to sizes that ranged between 25 cm and 40 cm) likely portended a declining growth rate for the species. This is because changes in metrics, such as average size, can significantly impact other important life history functions, like fecundity or even natural mortality rates (Audzijonyte *et al.* 2015), that affect the

instantaneous per capita growth rate of a species. However, since 2006, data from the Falkland Islands Government show an increase in size of the modal disc width of graytail skate catches, with the most recent size estimate of 63 cm in 2012, likely indicating that the population is recovering and that growth rate is no longer declining.

Spatial Structure/Connectivity

Based on trends in commercial fisheries data from the Falkland Islands and Argentina, Wakeford *et al.* (2005) concluded that graytail skates have limited spatial and temporal movements and, therefore, may likely exist as localized populations. Limited inter-population exchange reduces the recovery potential for depleted and small local populations and may increase the risk of local extirpations, possibly leading to complete extinction. However, no other information is available regarding spatial structure or connectivity of graytail skate populations throughout its range, and there is no evidence to suggest this demographic risk is presently significantly contributing to the graytail skate's risk of extinction.

Diversity

The loss of diversity can increase a species' extinction risk through decreasing a species' capability of responding to episodic or changing environmental conditions. This can occur through a significant change or loss of variation in life history characteristics (such as reproductive fitness and fecundity), morphology, behavior, or other genetic characteristics. Currently, there is no information regarding the graytail skates' diversity throughout its range, thus we can not conclude whether its present level of diversity is contributing to its extinction risk.

Threats Assessment

The best available information indicates that graytail skates are most heavily exploited in the Falkland Islands multispecies skate and ray fishery by foreign fleets and likely suffered significant declines in abundance due to overexploitation in the early 1990s. However, since 1996, the area of operation of the Falkland Islands rajid fishery has been significantly restricted (to an area north of the Islands) with imposed catch limits to manage the northern batoid stock assemblage (which includes graytail skates) within this area. As a result of these management measures, there has been a gradual increase in CPUE and biomass of the northern

batoid stock assemblage. As for graytail skates specifically, they remain one of the most abundant species caught in the Falkland Islands multispecies skate fishery. Recent data from the Falkland Islands Government shows an increasing trend in the CPUE of the species as well as in the modal disc width of graytail skate catches, with the latest estimate of 63 cm DW in 2012. While 63 cm is still below the size of sexual maturity (*i.e.*, 75 cm) it is a marked improvement from the modal disc widths between 1993 and 2006 (after heavy exploitation), which ranged between 25 cm and 40 cm, and indicates potential recovery of the population. Additionally, since the early 2000s, there has been a general decreasing trend in the targeting of skate and ray species in the Falkland Islands, with most species now taken as bycatch in the finfish fishery. Furthermore, total skate catch in recent years has remained below MSY, indicating that current catch and effort of the skate and ray fishery are likely sustainable. Based on the above information, it is clear that existing regulatory measures, including current catch limits and trawling closures, are adequate to protect the graytail skate in the Falkland Islands from extinction.

In Argentina, there is an active commercial elasmobranch fishery, which exploits sharks, skates, and rays, and it has shown an increasing trend in both catches and number of vessels reporting skate and ray landings (Massa and Hozbor 2003). However, based on the lack of species-specific information from the region, it is highly uncertain if present levels of utilization of skates and rays are a threat that is contributing significantly to the extinction risk of the graytail skate.

In Chile, a directed skate fishery that primarily targets *Zearaja chilensis* in areas where graytail skate may also occur has reported declines in catch since 1979. It is suspected that other skate species, including the graytail skate, have also been affected. However, there are no available data that indicate a decline in graytail skate abundance or catch, and given that the species comprises less than 5 percent of the total skate landings in this fishery, it is unlikely that this fishery is significantly contributing to the extinction risk of the graytail skate.

Overall, while the species likely experienced historical declines in abundance during the 1990s due to exploitation by the Falkland Islands multispecies rajid fisheries, the available biomass estimates and trends over the past decade, including gradual increases in the CPUE and biomass of

the northern batoid stock and specifically the graytail skate in recent years, as well as an increasing trend in graytail modal disc width size, indicate the population is potentially stable and possibly moving towards recovery. This is likely a result of rigorous regulations implemented by the Falkland Islands government to sustainably manage the rajid fishery by reducing fishing effort, accomplished by setting catch limits in the northern rajid fishery and closing the southern rajid fishery area, where graytail skates likely spawn and were historically most heavily exploited. It should be noted that while this closure helps to protect the Falkland Islands population, due to uncertainty surrounding the connectivity of graytail skate populations, these regulations may not provide protection to skate populations found outside of Falkland waters. However, based on the available information, it appears that the Falkland Islands is where the species is most concentrated, and, hence, the protection of this population from extinction is likely critical for the survival of the species. Outside of the Falkland Islands, the minimal available information on the species does not indicate that present levels of utilization or any other factors are contributing significantly to the extinction risk of the species.

Risk of Extinction

While the species' demographic characteristics increase its inherent vulnerability to depletion, and likely contributed to past population declines of varying magnitudes, the best available information suggests these risks have decreased due to the adequate control of exploitation of the species. In the Falkland Islands, where the species was most heavily exploited and is likely presently most concentrated, abundance estimates and trends from the 1990s to 2013, and increases in the species' mean disc width, suggest potential stabilization and even recovery of the population. The continued rigorous management and monitoring of the fishery appears adequate in protecting the species from levels of overutilization that would increase its extinction risk. Despite fishing pressure in other parts of the species' range (e.g., Chile and Argentina) and evidence of it being taken as bycatch in various fisheries, graytail skates are not monitored and we have no other information (e.g., catch rates, abundance trends, or any other species-specific data) to indicate that present levels of utilization or any other factors are significantly contributing to the species' risk of extinction. Thus, considering the above information and

analysis, we conclude that *B. griseocauda* is at a low risk of extinction throughout its range, and as such, does not warrant listing as a threatened or endangered species throughout its range.

Significant Portion of Its Range Analysis

Because our range-wide analysis for the species leads us to conclude that the species is not threatened or endangered throughout its range, under the final Significant Portion of Its Range (SPR) policy announced in July 2014, we must go on to consider whether the species may have a higher risk of extinction in a significant portion of its range (79 FR 37577; July 1, 2014).

The final policy explains that it is necessary to fully evaluate a portion for potential listing under the "significant portion of its range" authority only if information indicates that the members of the species in a particular area are likely both to meet the test for biological significance and to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed:

To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37586, July 1, 2014).

Thus, the preliminary determination that a portion may be both significant and endangered or threatened merely requires NMFS to engage in a more detailed analysis to determine whether the standards are actually met (*Id.* at 37587). Unless both are met, listing is not warranted. The policy further explains that, depending on the particular facts of each situation, NMFS may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* ("[I]f we determine that a portion of the range is not "significant," we will not need to determine whether the species is

endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion was "significant.") Thus, if the answer to the first question is negative—whether that regards the significance question or the status question—then the analysis concludes and listing is not warranted.

After a review of the best available information, we identified the Falkland Islands as likely constituting a "significant" portion of the graytail skate range. Under the policy, a portion of a species' range is significant if, without that portion, the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction or likely to become so in the foreseeable future. As mentioned previously, the historical and current fisheries data indicate that graytail skate are likely most concentrated in Falkland waters. Graytail skate have also been identified and caught elsewhere throughout its range, such as north of the Falkland Islands on the Argentinian shelf between 45° S. and 41° S., and on the Pacific coast off Chile (south of 41° S.); however, based on trends in commercial fisheries data from the Falkland Islands and Argentina, Wakeford *et al.* (2005) concluded that graytail skates have limited spatial and temporal movements and, therefore, may likely exist as localized or isolated populations. If we assume the Falkland Islands population is isolated from the populations of graytail skate elsewhere throughout its range, then, technically, loss of this population would not directly affect the abundance of the other remaining populations. However, loss of this population could significantly increase the extinction risk of the species as a whole, as only small, fragmented, and isolated populations of the species (based on the best available abundance information—see the *Historical and Current Distribution and Population Abundance* and *Demographic Risk Analysis* sections above) would remain, making them more vulnerable to catastrophic events and environmental or anthropogenic perturbations. Limited inter-population exchange also reduces the recovery potential for these small local populations and increases the risk of local extirpations and overall complete extinction.

Under the policy, if we believe the Falkland Islands population may constitute a "significant" portion of the range, then we must either evaluate the extinction risk of this population first to determine whether it is threatened or endangered in that portion or determine

if this portion is, in fact, “significant.” Ultimately, of course, both tests have to be met to qualify the species for listing. Given the extremely limited amount of information on the species outside of its Falkland Islands range, it is difficult to conduct a more definitive analysis to determine whether or not this portion does, in fact, constitute a “significant” portion of the range of the graytail skate. Additionally, there is no information to suggest that any other portion may be significant. However, even if we were to assume that the Falklands Islands population does constitute a “significant” portion of the graytail skate range, based on the information and analysis in the previous extinction risk section, there are no identified threats concentrated in this portion that are significantly contributing to the species’ risk of extinction. In fact, the most recent available information indicate that existing regulatory measures are adequate in protecting the graytail skate in the Falkland Islands from extinction, with graytail skate abundance on a positive trend and exhibiting signs of population recovery based on both CPUE and size data. Thus, under the policy, the preliminary determination that a portion of the species’ range may be both significant and endangered or threatened has not been met. Therefore, listing is not warranted under the SPR policy.

Proposed Determination

Based on the best available scientific and commercial information as presented in the status review report and this finding, we find that the graytail skate is not presently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable future. We summarize the factors supporting this conclusion as follows: (1) Although there is no formal estimate of the current population size and historical declines in biomass have been observed, current biomass estimates from the Falkland Islands, where the species is likely most concentrated, suggest the population is stable and CPUE trends indicate abundance is increasing; (2) a reduction in mean disc width of the Falkland Islands population occurred in the late 1990s and early 2000s as a result of intensive fishing pressure; however, recent evidence suggests an increase in modal disc width, which is likely indicative of population recovery; (3) while an identified threat to the species was historical overutilization in the Falkland Islands commercial fisheries, subsequent fishery closures in the southern rajid fishery and catch limits

in the northern rajid fishery of the Falkland Islands have contributed to a significant reduction of fishing pressure on the species, leading to increases in the abundance of the population and providing for sustainable fishing of the northern Falkland Islands rajid assemblage; (4) targeting of skates and rays in the Falkland Islands, where the species was most heavily exploited, has been on a decreasing trend since the early 2000s; (5) there is no evidence that destruction of habitat, disease or predation are factors contributing to an increased risk of extinction for the species; and (6) the continual implementation of rigorous monitoring and fishery management measures in the Falkland Islands appears effective in addressing the most important threat to the species (overharvest) now and into the foreseeable future. Based on these findings, we conclude that the graytail skate is not presently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so within the foreseeable future. Accordingly, the graytail skate does not meet the definition of a threatened or endangered species and therefore does not warrant listing as threatened or endangered at this time.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); concurrent designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and prohibitions on taking for endangered species (16 U.S.C. 1538). Recognition of the species’ plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals. The main effects of the proposed endangered listings are prohibitions on take, including export and import.

Identifying Section 7 Conference and Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations

also require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or that result in the destruction or adverse modification of proposed critical habitat of those species. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations, because these species occur outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *Isogomphodon oxyrinchus*, *Rhinobatos horkelii*, *Mustelus fasciatus*, *M. schmitti*, *Squatina guggenheim* and *S. argentina* as being entirely outside U.S. jurisdiction, so we cannot designate critical habitat for these species.

We can designate critical habitat in areas in the United States currently unoccupied by the species, if the area(s) are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical range presently occupied by the species only when the designation limited to its present range would be inadequate to ensure the conservation of the species. The best available scientific and commercial information on these species does not indicate that U.S. waters provide any

specific essential biological function for any of the species proposed for listing. Therefore, based on the available information, we do not intend to designate critical habitat for *Isogomphodon oxyrhynchus*, *Rhinobatos horkelii*, *Mustelus fasciatus*, *M. schmitti*, *Squatina guggenheim* or *S. argentina*.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA.

Because we are proposing to list *Isogomphodon oxyrhynchus*, *Rhinobatos horkelii*, *Mustelus fasciatus* and *Squatina argentina* as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to these species. These include prohibitions on the import, export, use in foreign commerce, or “take” of the species. These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species’ range. Activities that we believe could result in a violation of section 9 prohibitions for these species include, but are not limited to, the following:

- (1) Possessing, delivering, transporting, or shipping any individual or part (dead or alive) taken in violation of section 9(a)(1);
- (2) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual or part, in the course of a commercial activity;
- (3) Selling or offering for sale in interstate commerce any part, except antique articles at least 100 years old;
- (4) Importing or exporting these species or any part of these species.

We emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. Further, an activity not listed may in fact constitute a violation.

Identification of Those Activities That Would Not Constitute a Violation of Section 9 of the ESA

We will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in a violation of section 9 of the ESA. Although not binding, we are considering the following actions, depending on the circumstances, as not being prohibited by ESA section 9:

- (1) Take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;
- (2) Continued possession of parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however, the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (*i.e.*, held in a controlled environment at the time of listing, in a non-commercial activity).

Protective Regulations Under Section 4(d) of the ESA

We are proposing to list *Mustelus fasciatus* and *Squatina guggenheim* as threatened species. In the case of threatened species, ESA section 4(d) leaves it to the Secretary’s discretion whether, and to what extent, to extend the section 9(a) “take” prohibitions to the species, and authorizes us to issue regulations necessary and advisable for the conservation of the species. Thus, we have flexibility under section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We will consider extending some or all potential protective regulations pursuant to section 4(d) for the proposed threatened species. We seek public comment on potential 4(d) protective regulations (see below).

Public Comments Solicited

To ensure that any final action resulting from this proposed rule will be as accurate and effective as possible, we are soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other

interested parties on information in the status review and proposed rule. Comments are encouraged on these proposals (See **DATES** and **ADDRESSES**). We must base our final determination on the best available scientific and commercial information when making listing determinations. We cannot, for example, consider the economic effects of a listing determination. Final promulgation of any regulation(s) on these species’ listing proposals will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal or result in a withdrawal of this listing proposal. We particularly seek:

- (1) Information concerning the threats to any of the six species proposed for listing;
- (2) Taxonomic information on any of these species;
- (3) Biological information (life history, genetics, population connectivity, etc.) on any of these species;
- (4) Efforts being made to protect any of these species throughout their current ranges;
- (5) Information on the commercial trade of any of these species;
- (6) Historical and current distribution and abundance and trends for any of these species;
- (7) Current or planned activities within the range of these species and their possible impact on these species; and,
- (8) Information relevant to potential ESA section 4(d) protective regulations for any of the proposed threatened species.

We request that all information be accompanied by: (1) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter’s name, address, and any association, institution, or business that the person represents.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from qualified specialists, concurrent with the public comment period. The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. We solicited peer review comments on the species’ status review reports (Casselbury and Carlson 2015a–

g) from 22 scientists from the academic and scientific community that were either familiar with the species or had expertise in elasmobranch biology, ecology, or conservation. We received comments from nine scientists and incorporated those comments into the status review reports and this proposed rule. Their comments on the status reviews are also summarized in the peer review report available at http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA,

economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant governmental agencies in the countries in which the species occurs, and they will be invited to comment. We will confer with the U.S. Department of State to ensure appropriate notice is given to foreign nations within the range of all three species. As the process continues, we intend to continue engaging in informal and formal contacts with the U.S. State Department, giving careful consideration to all written and oral comments received.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: November 30, 2015.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding new entries for two species in alphabetical order under the “Fishes” table subheading to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *
(e) * * *

| Species ¹ | | Description of listed entity | Citation(s) for listing determination(s) | Critical habitat | ESA rules |
|--------------------------------|----------------------------------|------------------------------|---|------------------|-----------|
| Common name | Scientific name | | | | |
| * | * | * | * | * | * |
| Fishes | | | | | |
| * | * | * | * | * | * |
| Shark, spiny angel | <i>Squatina guggenheim</i> | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| Shark, narrownose smoothhound. | <i>Mustelus schmitti</i> | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| * | * | * | * | * | * |

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[79 FR 20806, Apr. 14, 2014, as amended at 79 FR 38240, July 3, 2014; 79 FR 40015, July 11, 2014; 79 FR 54122, Sept. 10, 2014; 80 FR 7978, Feb. 13, 2015]

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C 1361 *et seq.*

“Fishes” table subheading to read as follows:

■ 3. The authority citation for part 224 continues to read as follows:

■ 4. In § 224.101, paragraph (h), amend the table by adding new entries for four species in alphabetical order under the

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *
(h) * * *

| Species ¹ | | Description of listed entity | Citation(s) for listing determination(s) | Critical habitat | ESA rules |
|------------------------------|----------------------------------|------------------------------|---|------------------|-----------|
| Common name | Scientific name | | | | |
| * | * | * | * | * | * |
| Fishes | | | | | |
| * | * | * | * | * | * |
| Guitarfish, Brazilian | <i>Rhinobatos horkelii</i> | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| Shark, Argentine angel | <i>Squatina argentina</i> | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| Shark, daggenose | <i>Isogomphodon oxyrinchus</i> . | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| Shark, striped smoothhound. | <i>Mustelus fasciatus</i> | Entire species | Federal Register citation and date when published as a final rule. | NA | NA |
| * | * | * | * | * | * |

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

² Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[79 FR 20814, Apr. 14, 2014, as amended at 79 FR 31227, June 2, 2014; 79 FR 38241, July 3, 2014; 79 FR 74005, Dec. 12, 2014; 79 FR 78725, Dec. 31, 2014; 79 FR 68372, Nov. 17, 2014; 80 FR 7978, Feb. 13, 2015; 80 FR 7390, Feb. 10, 2015]



FEDERAL REGISTER

Vol. 80

Monday,

No. 234

December 7, 2015

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 238

Passenger Train Exterior Side Door Safety; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 238**

[Docket No. FRA–2011–0063, Notice No. 2]

RIN 2130–AC34

Passenger Train Exterior Side Door Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule will improve the integrity of passenger train exterior side door safety systems and promote passenger train safety overall through new safety standards for the safe operation and use of passenger train exterior side doors. This final rule will limit the number and severity of injuries involving passenger train exterior side doors and enhance the level of safety for passengers and train crewmembers.

DATES: This final rule is effective February 5, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 5, 2016. Petitions for reconsideration must be received on or before February 5, 2016. Comments in response to petitions for reconsideration must be received on or before March 21, 2016.

ADDRESSES: *Petitions for reconsideration and comments on petitions for reconsideration:* Petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA–2011–0063, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, www.regulations.gov. Follow the Web site's online instructions for submitting comments, to include petitions for reconsideration.

- *Fax:* 202–493–2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC34). Note that all comments received will be posted without change

to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information for any submitted comments, petitions, or materials.

Docket: For access to the docket to read background documents, any petition for reconsideration submitted, or comments received, go to <http://www.regulations.gov> at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pete Lapré, Railroad Safety Specialist, Passenger Rail Division, U.S. Department of Transportation, Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 845–216–5794); or Brian Roberts, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6052).

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I. Executive Summary

Having carefully considered the public comments in response to FRA's March 26, 2014, proposed rule on passenger train exterior side door safety, *see* 79 FR 16978, FRA issues this final rule amending the Passenger Equipment Safety Standards, 49 CFR part 238. This final rule establishes new requirements to improve the integrity of passenger train exterior side door safety systems and promote passenger train safety overall through new safety standards for the safe operation and use of passenger train exterior side doors (also sometimes referred to in this rulemaking as “doors” and “side doors”). Through the new requirements in this final rule, FRA intends to limit the number and severity of injuries associated with the use and operation of passenger train exterior side doors and increase the overall level of safety for passengers and train crewmembers.

This final rule is based on recommended language developed by the Railroad Safety Advisory Committee's (RSAC) General Passenger Safety Task Force (Task Force) and includes new requirements for both powered and manual exterior side doors and door safety systems on passenger trains. Operating rules for train crews relating to exterior side doors and their safety systems on passenger trains and new definitions for this part are also included in this final rule. In addition, this final rule incorporates by reference American Public Transportation Association (APTA) Standard PR–M–S–18–10, “Standard for Powered Exterior Side Door System Design for New Passenger Cars” (February 11, 2011), which contains a set of minimum

standards for powered exterior side door systems and door system functioning on new rail passenger cars and locomotives used in passenger service.

Other requirements established by this final rule include, but are not limited to: Equipping new passenger cars with powered exterior side doors with an obstruction detection system; connecting new passenger cars (with either manual or powered exterior side doors) to a door summary circuit to prohibit the train from developing tractive power if any of the exterior side doors are open; requiring safety briefings for train crews to identify crewmember responsibilities for the safe operation of exterior side doors; operating passenger trains with their exterior side doors and trap doors closed when in motion between stations, except in limited circumstances or with FRA prior approval; and requiring railroads to develop operating rules on how to safely operate the exterior side doors of a passenger train with incompatible exterior side door safety systems and how to safely override a door summary circuit or a no-motion system, or both, when an exterior side door failure or malfunction occurs.

FRA analyzed the economic impacts of this final rule against a “no action” baseline that reflects what would happen in the absence of this final rule. FRA expects the requirements for the operating rules and adopted APTA standard for new equipment to prevent on average about 19 injuries and 0.20 fatalities per year in the future based on similar incidents in the past. The estimated benefits from these prevented casualties over a 20-year period total \$83.9 million undiscounted; these estimated benefits have a present value of \$43.3 million calculated using a 7-percent discount rate, and a present value of \$61.7 million calculated using a 3-percent discount rate. Given that some procedural and equipment errors may still occur in the future, the analysis assumes a 50-percent effectiveness rate in preventing these types of injuries and fatalities when estimating monetary benefits. In addition, there may be other benefits from the final rule, such as fewer passenger claims for personal property damage, maintaining passenger goodwill and trust, and by lowering future maintenance costs (by encouraging the replacement of older equipment with new passenger cars equipped with more reliable door safety systems).

FRA also quantified the incremental burden of the final rule upon commuter and intercity passenger railroads. The

primary contributor to the estimated costs is the train crew’s task of verifying that the door by-pass devices on the train are sealed in the normal non-by-pass mode, an operating rule requirement. The door by-pass devices are used to override door safety systems in certain circumstances, for example, allowing a train to develop tractive power and complete its route. The second greatest cost factor is the estimated cost to implement some of the door safety features on new passenger cars with either powered or manual doors and locomotives used in passenger service. The estimated costs over the 20-year period of analysis total \$15.2 million undiscounted, with a present value of about \$8.3 million calculated using a 7-percent discount rate, and a present value of about \$11.5 million calculated using a 3-percent discount rate. The rule incurs relatively small costs because most of the initial burdens are expected from changes to railroad operating rules. The design standards for door safety systems apply to new passenger cars and locomotives used in passenger service where they can be installed cost-effectively.

These costs and benefits result in net positive benefits over 20 years of about \$68.7 million undiscounted, with a present value of \$35.0 million calculated using a 7-percent discount rate, and present value of \$50.2 million calculated using a 3-percent discount rate.

II. Statutory and Regulatory Background

A. Passenger Equipment Safety Standards Background

In September 1994, the U.S. Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November 1994, Congress adopted the Secretary’s schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations and issuing orders under them. Section 215 of the Act (codified at 49 U.S.C. 20133). The Secretary has delegated such

responsibilities to the Administrator of FRA. See 49 CFR 1.89.

FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations Congress mandated, and on May 12, 1999, published a final rule containing a set of comprehensive safety standards for railroad passenger equipment. See 64 FR 25540. After publication of the final rule, interested parties filed petitions seeking FRA’s reconsideration of certain requirements in the rule and on June 25, 2002, FRA completed its response to the petitions for reconsideration. See 67 FR 42892. The product of that rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

One of the purposes of the Passenger Equipment Safety Standards is protecting the safety of passenger train occupants in an emergency, including providing for emergency egress and rescue access through exterior side doors. See 49 CFR 238.235 and 238.439. FRA has engaged in rulemaking to amend the Passenger Equipment Safety Standards, and notably, on February 1, 2008, FRA published a final rule on Passenger Train Emergency Systems addressing: Emergency communication, emergency egress, and rescue access. See 73 FR 6370. FRA has also established additional requirements for passenger train emergency systems, including doors used for emergency egress and rescue access. See Passenger Train Emergency Systems II final rule published on November 29, 2013, 78 FR 71785. However, these subsequent proceedings have not focused on the safety of doors systems in non-emergency situations.

B. The Need for New Design Standards and Operating Practices for Exterior Side Doors on Passenger Train Equipment

FRA’s principal reason for issuing this final rule is to reduce the number and severity of injuries caused by exterior side doors striking or trapping passengers as they board or alight from passenger trains in non-emergency situations. FRA has observed that incidents involving exterior side doors in routine use on passenger trains have previously resulted in casualties and serious injuries.

For example, on November 21, 2006, a New Jersey Transit Rail Operations (NJT) train was departing a station in Bradley Beach, New Jersey, when the closing exterior side doors of the train caught and held a passenger attempting to exit the train. The passenger was then dragged by the train along the station

platform as the train was leaving the station. The passenger died as a result of his injuries.

Through its investigation of the incident, FRA found that the train's assistant conductor was not in the proper position to monitor all the train's exterior side doors as they were closing. Specifically, the assistant conductor could not see the passenger exit through a door behind where the assistant conductor was located. The assistant conductor also did not observe the door-indicator lights on the door control panel which indicated that the exterior side doors on the passenger car were not all closed as intended. In addition, FRA learned the train was being operated with its door by-pass switch activated, negating the passenger car's door safety system, which was designed to reopen the exterior side doors after detecting an obstruction.

As a result of this incident, NJT reviewed its operating rules and limited the use of the door by-pass feature in its passenger train operations. Contemporaneously, FRA issued Safety Advisory 2006-05, "Notice of Safety Advisory: Passenger Train Safety—Passenger Boarding or Alighting from Trains" (71 FR 69606, Dec. 1, 2006). The safety advisory recommended that passenger railroads reassess their rules and procedures to make certain that trains do not depart a station until all passengers have successfully boarded or alighted from the train. The safety advisory also noted the important role of passenger train crews in the safe operation of a train after a door by-pass switch has been activated. FRA encouraged passenger railroads to voluntarily implement the recommendations of the safety advisory.

Subsequently, there have been other instances where passengers have become trapped in the exterior side doors of trains. In one instance, on February 2, 2007, a local police officer witnessed a passenger stuck between the exterior side doors of a moving Long Island Rail Road (LIRR) train at a station in New York City, New York. As a result, the passenger's right leg was dragged on the tactile strip of the station platform, causing abrasions to the passenger's leg. The police officer stopped the train and pulled the passenger free from the exterior side doors.

Other instances were "close calls" in which passengers narrowly avoided injury. On March 4, 2011, in La Grange, Illinois, a passenger's arm and cane got caught in the closing exterior side doors of a Northeast Illinois Regional Commuter Railroad Corporation (Metra) train while attempting to board the

train. A fellow passenger inside the train was able to flip the door's emergency switch just as the train began to move. As a result, the trapped passenger was released and avoided being dragged down the station platform. A similar incident occurred on a Metra train on December 19, 2009, when a four-year-old boy's boot became caught in the exterior side doors when alighting from the train. The child's mother had to pull the child's leg free from the train doors as the train was leaving the station.

As a result of these types of incidents, Metra changed its operating rules to require a "second look" up and down each train before departing a station. This operating rule requires the conductor to close all exterior side doors on the train, except the door in which he or she is standing, to take a second look up and down the station platform to make sure all the train's exterior side doors are closed and clear of passengers. After the second look, the conductor may then close his or her open door and signal to the train's engineer to depart the station.

Since the issuance of the NPRM for this rulemaking in March 2014, there have been other injuries involving passengers and exterior side doors. The Massachusetts Bay Transportation Authority (MBTA) reported to FRA that in June 2014 an MBTA passenger got his luggage stuck in the closing exterior side doors of the train and was subsequently injured when the train started to move. When the train started to leave the station platform, the passenger sustained injuries after he was dragged by the train a total of 30 to 40 feet before falling.

In addition, Peninsula Corridor Joint Powers Board (Caltrain) reported to FRA an incident that occurred in October 2014 where a passenger was injured after she put her hand in the closing exterior side door of a passenger train at the Burlingame Station in San Mateo, California. The train's passenger door safety system did not work as intended and the passenger got her hand caught in the closing door and it did not reopen. As a result, the passenger was dragged by the train approximately 10 feet.

Based on these types of incidents, and other findings and concerns, including initial findings from assessing the safety of exterior side door systems on passenger railroads in the northeast region of the United States, FRA tasked RSAC to review Safety Advisory 2006-5 and develop recommendations for new safety standards to improve passenger and crewmember safety for the operation and use of exterior side

doors. The Task Force, a subgroup of the RSAC Passenger Safety Working Group (Working Group), was assigned to develop these recommendations.

The Task Force was already reviewing passenger station gap issues in April 2007 when it was assigned this task. The Task Force then assembled the Passenger Door Safety Subgroup (Door Safety Subgroup) to develop recommended regulatory language to improve the safety of exterior side door systems on passenger trains. FRA shared with RSAC its initial findings that many passenger railroads in the Northeast were not operated with fully-functional passenger train exterior side door safety systems, and FRA then conducted in-person assessments of the exterior side door safety systems on a total of 24 passenger railroads throughout the Nation. During those assessments, FRA reviewed many different models of passenger equipment and gained important information about the risks to passengers and train crews associated with the operation and use of passenger train exterior side doors. FRA shared this information with the Door Safety Subgroup, which met a total of nine times from 2008 to 2011.

Through its meetings, the Door Safety Subgroup developed proposed regulatory language to improve the safe use and operation of exterior side doors on passenger trains. The Task Force approved the consensus language on February 25, 2011, which was then adopted by the Working Group and full Committee on March 31, 2011, and May 20, 2011, respectively.

While the Door Safety Subgroup was developing proposed regulatory language, APTA developed and approved Standard SS-M-18-10, "Standard for Powered Exterior Side Door System Design for New Passenger Cars." Subsequent to RSAC's approval of the consensus recommendations that form the basis of this final rule, APTA changed its numbering nomenclature for its safety standards, which resulted in the numbering of this standard changing from SS-M-18-10 to PR-M-S-18-10 without changing the substantive content of the standard. Thus, this standard is identified as PR-M-S-18-10 in this final rule. This APTA standard contains minimum standards for powered exterior side door systems and door system function on new rail passenger cars because APTA designed it to be used in specifications for the procurement of new passenger cars. The standard addresses door system design requirements at the door level, car level, and train level. Non-powered doors and other types of doors on passenger cars that are not exterior side doors are not

covered by APTA's standard. This final rule incorporates by reference this APTA standard for powered exterior side door safety systems on new passenger cars and connected door safety systems on new locomotives used in passenger service. A copy of this APTA standard is included in the docket of this rulemaking for public review.

C. RSAC Overview

In March 1996, FRA established RSAC as a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties.¹ To the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If RSAC accepts the task, it establishes a working group with the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The

individual task force then provides that information to the working group for consideration. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full Committee for a vote. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to the Administrator of FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level discussing the issues and options and drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is not bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal(s), is soundly supported, and is consistent with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation when developing the actual regulatory proposal or final rule. FRA notes and explains any such variations in the rulemaking it issues.

D. Passenger Safety Working Group and General Passenger Safety Task Force

In May 2003, RSAC established the Working Group to handle the task of reviewing passenger equipment safety needs and programs as well as developing recommendations for specific actions to advance the safety of rail passenger service.²

In September 2006, the Working Group established the Task Force principally to examine the following issues: (1) Exterior side door securement; (2) passenger safety in train stations; and (3) system safety plans.³

After being assigned its task by the Working Group, the Task Force assembled the Door Safety Subgroup to develop recommended regulatory language to improve the safety of exterior side door systems on passenger trains. The Door Safety Subgroup consisted of Task Force members who were interested in addressing the risks associated with the operation and use of exterior side doors on passenger equipment. The Door Safety Subgroup met during scheduled Task Force meetings.⁴

To aid the Task Force with its delegated task, FRA's Office of Chief Counsel, in conjunction with FRA's Office of Railroad Safety, typically drafted proposed regulatory text for discussion purposes at Door Safety Subgroup meetings. Door Safety Subgroup members would then offer suggested changes to this proposed draft text. Staff from DOT's John A. Volpe National Transportation System Center also attended these meetings and contributed to the discussions. Minutes of each meeting are part of the docket in this proceeding and are available for public inspection.

Through these various discussions, the Door Safety Subgroup developed proposed regulatory language which the Task Force accepted as a recommendation to the Working Group on February 25, 2011. The Task Force's consensus language was then subsequently approved by the Working Group on March 31, 2011. The consensus language was then presented before the full Committee on May 20, 2011, where it was approved by unanimous vote. Thus, the Working Group's recommendation was adopted by the full Committee as the recommendation to FRA.

In the March 26, 2014 NPRM, FRA proposed adding some regulatory text that was not expressly part of the RSAC's consensus recommendation. For instance, for the benefit of the regulated community, in proposed § 238.131(c), FRA identified other sections in part

¹ A list of RSAC member groups includes the following: American Association of Private Railroad Car Owners (AAPRCO); American Association of State Highway and Transportation Officials (AASHTO); American Chemistry Council; American Petroleum Institute; American Short Line and Regional Railroad Association (ASLRRRA); American Train Dispatchers Association (ATDA); APTA; Association of American Railroads (AAR); Association of Railway Museums; Association of State Rail Safety Managers (ASRSM); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); Chlorine Institute; Federal Transit Administration (FTA); * Fertilizer Institute; High Speed Ground Transportation Association; Institute of Makers of Explosives; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Labor Council for Latin American Advancement; * League of Railway Industry Women; * National Association of Railroad Passengers (NARP); National Association of Railway Business Women; * National Conference of Firemen & Oilers; National Railroad Construction and Maintenance Association (NRCMA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB); * Railway Supply Institute (RSI); Safe Travel America (STA); Secretaria de Comunicaciones y Transporte; * Sheet Metal Workers International Association (SMWIA); Tourist Railway Association, Inc.; Transport Canada; * Transport Workers Union of America (TWU); Transportation Communications International Union/BRC (TCIU/BRC); Transportation Security Administration (TSA); * and United Transportation Union (UTU).

* Indicates associate, non-voting membership.

² Members of the Working Group, in addition to FRA, include the following: AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), and Union Pacific Railroad Company (UP); AAPRCO; AASHTO; Amtrak; APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), LIRR, Maryland Transit Administration (MTA), Metro-North Commuter Railroad Company (Metro-North), Metra, Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA); ASLRRRA; BLET; BRS; FTA; NARP; NTSB; RSI; SMWIA; STA; TCIU/BRC; TSA; TWU; and UTU.

³ Members of the Task Force include representatives from various organizations that are part of the larger Working Group and, in addition to FRA, include the following: AAR, including members from BNSF, CSXT, Norfolk Southern

Railway Co., and UP; AASHTO; Amtrak; APTA, including members from Alaska Railroad Corporation, Caltrain, LIRR, MBTA, Metro-North, MTA, NJT, New Mexico Rail Runner Express, Port Authority Trans-Hudson, SEPTA, Metrolink, and Utah Transit Authority; ASLRRRA; ATDA; BLET; FTA; NARP; NRCMA; NTSB; Transport Canada; and UTU.

⁴ The Task Force met on the following dates and in the following locations to discuss passenger train exterior side door safety: April 23–24, 2008, in San Diego, CA; July 29–30, 2008, in Cambridge, MA; December 2, 2008, in Cambridge, MA; March 3, 2009, in Arlington, VA; April 21, 2009, in Washington, DC; May 27–28, 2009, in Cambridge, MA; July 7–8, 2009, in Philadelphia, PA; October 6–8, 2009, in Orlando, FL; and February 24–25, 2011, in Washington, DC.

238 that include substantive door safety requirements. FRA also clarified that all exterior side doors on new intercity passenger train cars—in addition to new commuter train cars—would be subject to the requirements of § 238.131.

In addition, FRA made changes to the RSAC recommended language to clarify the proposed requirements in the NPRM. For example, FRA clarified that the provisions of the NPRM applied to full-sized exterior side doors besides those used for the boarding and alighting of passengers at train stations, such as baggage doors, but did not apply to small hatches of compartment-sized doors and the exterior side doors on private cars. FRA also decided not to include in the NPRM an RSAC recommendation that powered, exterior side passenger doors be connected to a manual override device capable of opening the exterior side doors when the doors are locked out, because this design requirement was already covered under existing regulations at § 238.112(a) and (b). FRA also moved an RSAC consensus item proposed under existing § 238.305 (“Interior calendar day mechanical inspection of passenger cars”) to new proposed § 238.133(g)(2) in the NPRM, so the requirement would apply to all tiers of passenger cars, including conventional locomotives used in passenger service.

FRA specifically asked for comment on these areas of the proposal. However, FRA did not receive any comments on these or other areas of the NPRM where FRA specifically invited comment.

III. Discussion of Specific Comments and Conclusions

Overall, FRA received four comments in response to the NPRM from the following parties: Sensotech Inc. (Sensotech), the Southeastern Pennsylvania Transportation Authority (SEPTA), Veolia Transportation (Veolia), and an anonymous commenter. The comment from Veolia was initially received as an email to an FRA staff director asking whether one of Veolia’s procedures conflicted with a proposal in the NPRM. FRA has included the email and an attachment received by the staff director in the public docket for this rulemaking and is treating the email and its attachment as a comment on this rulemaking.

FRA appreciates and carefully considered all comments it received regarding this rulemaking. The comments raised issues on what type of technology FRA considered when developing this rulemaking, whether FRA would modify its proposal in § 238.135(b) that exterior side doors and trap doors must be closed between

stations, and whether a specific safety procedure would be an allowable exception to the proposed requirement to keep the doors closed. FRA also received one comment that was not germane and outside the scope of this rulemaking. FRA did not change any of the regulatory text in this final rule based on the comments it received but addresses each comment below. The full text of every comment FRA received on the NPRM is in the public docket for this rulemaking at www.regulations.gov. Please note that the order in which the comments are discussed in this document is not intended to reflect the significance of the comment raised or the standing of the commenter.

Sensotech submitted a comment commending FRA for its efforts to improve passenger safety and comfort. However, Sensotech stated it did not see in the NPRM any information about the use of acoustic technology to support passenger door safety. According to Sensotech, “[a]coustic technology is the most suitable technology for remote sensing for rail doors” because it is not sensitive to metallic carbon dust created by moving trains and brake pads, and the technology is programmed to distinguish between outdoor elements (like hail, snow, and rain) versus a person or other hard objects. As a result, according to Sensotech, acoustic technology is more reliable in supporting passenger door safety than other technologies. Sensotech described an acoustic technology door sensor system it developed for transit bus doors implemented in buses. In addition, Sensotech described an application it developed specifically for passenger rail door application, stating that it has been installed more recently on a commuter rail system.

FRA thanks Sensotech for providing information about the use of acoustic technology to promote door safety. However, FRA did not specify in the NPRM, and declines to specify in this final rule, what specific type of technology railroads must use to comply with the requirements of this final rule. FRA sought to develop requirements that are performance-based. FRA believes that allowing railroads the freedom to decide how best to comply with the requirements in this final rule allows railroads to make the most efficient decisions to meet FRA’s safety requirements and minimize the costs of the rule.

SEPTA submitted a comment expressing concern regarding the proposed requirement that all exterior side doors and trap doors be closed when a train is in motion between stations. (See the Technical Background,

Section IV.A, for an overview of trap doors). SEPTA noted that, in a letter to FRA’s Associate Administrator for Railroad Safety/Chief Safety Officer dated February 17, 2010, SEPTA committed to operating all its trains with two or fewer cars in passenger service with all their side doors closed between stations. In addition, SEPTA noted that any train with three or more cars in passenger use would be required to operate with its side doors closed between stations depending on the number of crewmembers assigned to the train. SEPTA added these requirements to its operating manual as a crew responsibility.

However, since sending this letter to FRA in 2010, SEPTA replaced its Silverliner II and Silverliner III cars with manual doors and trap doors with new Silverliner V cars. According to SEPTA, these Silverliner V cars have power-operated doors with manual trap doors located inside the cars. SEPTA specifically raised concern about the requirement proposed in § 238.135(b) that trap doors must be closed between stations. SEPTA stated that when the trap doors are open and the side doors are closed, a passenger could not fall out of the car from the passenger compartment. Therefore, according to SEPTA, the cars can move safely between stations with the cars’ side doors closed and its trap doors open. However, SEPTA noted that the proposed language in § 238.135(b) does not make an allowance for this car design. SEPTA also stated that as part of its capital program it estimates that in 2020 it will begin to replace its current Silverliner IV fleet with new Silverliner VI cars, which it anticipates will be fully compliant with the requirements of 49 CFR 238.135. In the meantime, SEPTA suggested FRA allow an exception “[w]hen the open trap [door] is located within the car allowing the side door to completely close over the opening preventing any access to the outside of the car from the passenger compartment.”

In its comment to FRA, Veolia also expressed concern about the requirement that exterior side doors and trap doors be closed when a train is in motion between stations in proposed § 238.135(b). Veolia described a “redundant safety procedure” at a particular interlocking where it requires conductors to verify the signal indication. Veolia believed this procedure may necessitate opening a door while the train is moving and sought to continue this practice. In addition, Veolia noted that some conductors open their workstation door as their train approaches the limits of its

authority, red signals, or other areas of particular concern. Veolia sought clarification on whether these practices would violate the requirements proposed in § 238.135(b).

After carefully considering the SEPTA and Veolia comments, FRA has decided not to change the language proposed in § 238.135(b). However, as discussed further below, FRA is providing additional time for railroads to comply with the requirement that exterior side doors and trap doors remain closed when a train is in motion between stations. The exceptions to this requirement apply when a train is departing or arriving at a station and a crewmember needs to observe the station platform and the open door is attended by a crewmember, and when a crewmember must perform on-ground functions, such as, but not limited to, lining switches, making up or splitting trains, providing crossing protection, or inspecting the train.

While the scenarios described by SEPTA and Veolia in their separate comments do not fall under either of these defined exceptions, § 238.135(c) allows a railroad to apply for special approval from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to operate passenger trains with exterior side doors or trap doors, or both, open between stations. Any request for relief must include a written justification, a detailed hazard analysis, and be signed by the railroad's chief executive officer or equivalent. FRA believes this approval process is the appropriate way to handle issues involving railroads that may need relief from the requirement in § 238.135(b), rather than establish additional, generally-applicable exceptions that are better addressed on a case-by-case basis. By requiring passenger railroads to conduct a safety analysis and apply to FRA for approval for a special exception, FRA will be able to make individualized determinations that tailor any such exception to the specific circumstances involved and the safety of the affected passengers and train crews.

FRA received an additional anonymous comment regarding hours of service issues involving the trucking industry and a Federal Motor Carrier Safety Administration proposal. Since the comment is not germane to passenger door safety issues or this rulemaking, and its scope is not within FRA's jurisdiction, FRA did not address this comment in this final rule.

With the exception of the issues the commenters raised and FRA discussed above, FRA did not receive any comments on the proposed rule.

Therefore, unless specifically noted, FRA has adopted the requirements proposed in the NPRM in this final rule.

IV. Technical Background

A. Overview

Passenger railroads have responded to growth in ridership by expanding rail service, investing in new rail equipment, and incorporating new technologies into their passenger equipment. This has resulted in the varied arrangements of powered exterior side doors in passenger trains today. Many types of these power door systems have safety features to alert train crewmembers of an obstruction in a door.

These power door systems are complex. They employ components and electrical circuits to open and close the exterior side doors, contain door status indicators, and provide a means to determine motion and the end of the train. Power door systems operate electrically from commands given by train crews through signals from door switches, sensors, relays, and other devices that interface with and monitor the exterior side doors individually and throughout the entire trainline circuit. These various appurtenances typically act to provide a warning when exterior side doors are closing, respond to obstructions to closing doors, and prevent the doors from opening when a train is in motion. When connected to the propulsion system, these devices will inhibit the development of tractive power if an exterior side door is prevented from closing. Lock-out and by-pass systems are also employed to allow trains to operate even when equipment related to the exterior side doors is malfunctioning.

However, not all passenger cars are equipped with powered exterior side door systems. In fact, for those passenger railroads with cars equipped with manually operated exterior side doors or trap doors, some have allowed the doors to remain open between train stations to increase operating efficiency. Trap doors are metal plates that, when raised, reveal a fixed or moveable stairwell to facilitate low-level boarding. To provide high-level platform boarding, the train crew closes (or keeps closed) the trap to cover the stairwell. Trap doors are not exterior side doors, but are manually operated by the train crew to enable boarding and alighting through the exterior side doors.

B. Scope of FRA Safety Assessment of Passenger Railroads

FRA reviewed accident data involving passenger train exterior side doors

immediately following the incident in Bradley Beach, New Jersey, discussed in Section II.B., above. From its review, FRA determined that while accidents were infrequent they could have severe consequences. FRA identified numerous factors, conditions, and components that could adversely impact the safe operation or the integrity of the door safety system of a passenger train. These include door position, controls, and status indicators, no-motion and end-of-train circuits, power failure, traction-inhibit, throttle movement, mixed consist operation, malfunctioning equipment, door operating rules, and employee knowledge of the door safety system(s) on the train he or she is operating.

As noted above, FRA decided to perform a safety assessment of 24 railroads operating passenger trains utilizing many different models of equipment in the United States. These assessments were performed to identify the risks endangering passenger and crew safety, specifically when passengers were riding upon, boarding, or alighting from trains. FRA employed analytical techniques to identify any limitations of the safety features engineered into the trains' exterior side doors and of the railroads' rules governing their employees who operate them. Each of the passenger railroads was assessed individually, and exterior side door safety concerns were found with virtually all the railroads surveyed. However, the door safety concerns varied among the railroads in nature and degree.

There are various types of trains that are designed for particular purposes. The type and sequence of locomotives and cars assembled or coupled together to form a train is referred to as the train consist. A train consist can typically be changed frequently at the railroad's discretion. As part of its assessment, FRA reviewed the predominant types of passenger train service utilized in the United States to determine the risks posed to passengers and train crews by exterior side door safety systems.

One type of service involves passenger trains with conventional locomotives in the lead pulling consists of passenger coaches and sometimes other types of cars such as baggage cars, dining cars, and sleeping cars. Such trains are common on long-distance, intercity rail routes operated by Amtrak.

Most passenger rail service in the Nation is provided by commuter railroads, which typically operate one or both of the two most common types of service: Push-pull service and multiple-unit (MU) locomotive service. Push-pull service is passenger train service

typically operated in one direction of travel with a conventional locomotive in the rear of the train pushing the consist (the “push mode”) and with a cab car in the lead position of the train. The train can then transition into the opposite direction of travel, where the service is operated with the conventional locomotive in the lead position of the train pulling the consist (the “pull mode”) with the cab car in the rear of the train. A cab car is both a passenger car and a locomotive. The car has both seats for passengers and a control cab from which the engineer can operate the train. Control cables (or electric couplers) run the length of the train to facilitate commands between the control cab, passenger cars, and the conventional locomotive. These control cables make up an electric circuit called the trainline circuit. Electrical cables also run the length of the train to provide power for heat, light, and other purposes.

Self-propelled electric or diesel MU locomotives may operate individually in passenger train service, but typically operate semi-permanently coupled together as a pair or triplet with a control cab at each end of the train consist. During peak commuting hours, multiple pairs or triplets of MU locomotives are combined and operated together to form a single passenger train.

In Amtrak’s Northeast Corridor, high-speed Acela Express passenger train service is provided using trainsets. Acela Express trainsets are train consists of specific types of passenger cars such as first class, business class, and café cars that are semi-permanently coupled between power cars located at each end of the consist. These trainsets virtually never change as the power cars and passenger cars are semi-permanently coupled and integrated together with computer controls. The power cars provide tractive power to both ends simultaneously and have a control cab from which the engineer can operate the train, but do not carry passengers.

C. Uses of Passenger Car Exterior Side Doors

Passenger car exterior side doors are designed for various purposes on passenger trains. Most exterior side doors are used for passenger boarding and alighting at train stations. However, exterior side doors also have other uses. For example, exterior side doors can be used for emergency responder access and passenger egress during emergency situations, whether or not the doors are normally used for passenger boarding or alighting. As previously stated, exterior side doors can also be used for non-passenger functions such as loading

baggage or stocking dining car supplies. Exterior side doors that serve these purposes often vary greatly in size and dimension. In some instances, these exterior side doors are full-sized doors, while on other equipment the doors are essentially just small hatches or are compartment-sized.

D. Types of Passenger Car Exterior Side Doors

Through its safety assessment of exterior side door safety systems on passenger trains, FRA reviewed several generations of equipment. FRA found a wide range of doors and corresponding door safety features with varying levels of sophistication. The level of sophistication was generally limited by the technology that was available at the time that the passenger car was manufactured and the railroad’s ability to purchase, or retrofit, equipment with more sophisticated door safety features.

There are three types of exterior side doors in service today: Hinged, sliding, and plug. Hinged doors on a passenger car operate like a door in a home entranceway. They swing inward into the car, to open, and back towards the exterior of the car, to close. Exterior sliding doors on a passenger car are moving panels of various sizes that retract into pockets within the side walls of the passenger car when opening. Sliding doors can be designed with one panel or leaf that slides open and closed. Sliding doors can also consist of two bi-parting panels or leaves, which open by retracting from each other into the side wall and close by joining together in the center of the doorway. Plug doors on a passenger car are comprised of a sliding panel which opens and slides along the side of the car to open the exterior side door. However, the sliding panel does not retract into a pocket like a sliding door; instead, when closed, the door conforms to the side of the passenger car to seal out environmental noise and minimize aerodynamic resistance.

E. Exterior Side Door Configurations and Operation

Passenger railroads use a variety of configurations for the exterior side doors on the passenger cars in their fleets. FRA reviewed passenger cars with exterior side doors located at multiple locations along the sides of the cars: At each end, at their quarter points, and in the middle.

Passenger car exterior side doors may be operated manually, or with either electro-mechanical or electro-pneumatic power. Manually operated exterior side doors are simple hinged or sliding doors that are manually operated by

passengers or crewmembers at each station stop. Powered electro-mechanical doors are doors that employ an electric motor to drive a mechanical operator for opening and closing. Powered electro-pneumatic doors, like electro-mechanical doors, employ a mechanical operator for opening and closing. However, powered electro-pneumatic doors use compressed air to drive the mechanical operator instead of an electric motor. The mechanical operators provide opening and closing force to each door panel or leaf through mechanical linkage and a gearbox or similar device. All powered door systems require mechanical door operators.

F. Assessment Findings

FRA identified a number of key factors, conditions, and components that could impact passenger and crew safety from the use and operation of passenger train exterior side doors. These are addressed, individually, in detail below.

1. Door Position

FRA reviewed the risk posed by the open position of exterior side doors while passenger trains were in motion. FRA determined that railroads operating passenger trains with manually operated exterior side doors cannot control whether an individual door is opened or closed unless a crewmember is present at each door. When a crewmember is not present, passengers themselves can open the exterior side doors of the cars and exit or enter the train. Therefore, the potential exists for passengers to jump off or on moving trains at stations. At the same time, FRA found that other passenger trains were purposefully run with their manually operated exterior side doors in an open position even though train crewmembers sometimes were not stationed at the doors.

Passenger trains with powered exterior side doors are normally operated with the doors closed between stations. However, some passenger railroads operated trains with their doors open between stations. These passenger stations are in close proximity to each other and alternate between high- and low-level platforms for passenger boarding and alighting. The operation of passenger trains with open exterior side doors presents significant safety concerns as passengers and crewmembers could potentially fall out of an open door while the trains are moving. Due to the safety hazards arising from operating a passenger train with open exterior side doors, FRA has determined that, with limited exceptions for crew use only, passenger

trains should have their exterior side doors closed when they are moving between stations.

2. Door Control Panels

Powered exterior side doors on passenger cars are controlled and operated by door control panels, which are usually located on both sides of each car. These panels provide an interface between the train's door system and the train crew, and typically require activation with a door key. The door key is inserted into the control panel and is then used to turn the panel on or off. Once the panel is turned on, a conductor can issue commands to open or close exterior side doors by pressing buttons on the panel. Some passenger trains have door control panels that allow only local control of the exterior side doors. This means the conductor can operate the exterior side doors only in the same car as the door control panel. Other passenger trains allow their door control panels to operate all exterior side doors on the side of the train where the panel is activated. This allows the door control panel in any passenger car to open simultaneously all the exterior side doors on one side of the train. The conductor also can open or close only those doors forward of the activated panel, those doors rearward of the activated panel, or simply the single door directly adjacent to the activated panel.

FRA found many instances in which door control panels were left energized after the door control panel key was removed. This can occur when the keyhole for the door control panel key is worn or not maintained and the conductor removes the key without actually turning off the door control panel. With the door control panel energized, passengers can press the door-open button on the panel and open one or more exterior side doors on the train even when the train is still moving. This situation can occur on many different types of equipment.

3. Failure Modes, Effects, and Criticality Analysis (FMECA)

As part of its assessment, FRA evaluated how the door systems on various passenger trains responded to a loss of door control power by de-energizing the door control circuit breaker. FRA found significantly different responses on various railroads when door control systems experienced a circuit failure causing a loss of power. Some exterior side doors closed, some did not close at all, and others simply stopped where they were if they were moving at the time of the failure. Additionally, in a number of instances,

the train could still produce tractive power even though the door control circuit failure allowed the exterior side doors to remain open.

Employees who operate the exterior side doors of a passenger train should understand how a safety system for a door they control will respond to a loss of power. Employees can then take steps to safeguard against any safety hazards raised by the loss of power. This final rule requires all door systems on new passenger cars, and connected door systems on new locomotives used in passenger service, to be subject to a formal safety analysis that includes a FMECA before being placed into service. By requiring new passenger cars and locomotives used in passenger service to be subjected to this analysis before being placed into service, railroads will help ensure that the failure of a single component of a door safety system will not create an unsafe condition for passengers and train crewmembers.

4. Power Door Status

Power door status is monitored by door position switches and can be conveyed locally or through the trainline circuit using various arrangements of lights to relay the condition of the doors to the train crew. On most passenger trains, one or more lights illuminate on the interior or exterior of a passenger car above the exterior side door that is open. The lights then extinguish when the exterior side doors are closed.

If the train's door status is configured with a door summary circuit for trainline display, one or more lights illuminate on the active door control panel when all the doors are closed on that side of the train. Therefore, if a power door did not close, the external and internal lights would remain illuminated and the trainline door status light on the door control panel would not illuminate. This door status trainline circuit is often, but not always, displayed to the engineer as a door closed light in the locomotive cab. When the light is illuminated it tells the engineer that the exterior side doors on both sides of the train are closed and the train is ready to safely leave the station.

FRA found that all trains with powered exterior side door systems had some type of door status indicators train crews could use to determine if there was an obstruction in the exterior side doors. However, in many instances on-board personnel were not using the door status indicators as intended. In some cases, crewmembers did not use these indicators because the indicators' lens color was not maintained properly and,

therefore, the indicators were not reliable. In other cases, FRA found that train crews looked in the general location of an indicator light on a door control panel, but at times mistakenly read a different indicator as the door status indicator because the lens color was not uniformly maintained. Door status indicators need to be maintained properly for ready and reliable reference by crewmembers tasked with safely operating the door systems. If properly maintained, these indicators should alert train crewmembers about a possible obstruction in an exterior side door.

5. No-Motion Circuit

No-motion is an electric circuit the door safety system uses to determine if a passenger car or train is moving or not. This circuit is designed to prevent the exterior side doors of a train from opening while the train is in motion, except for a crew access door. A crew access door can be any exterior side door on a passenger train that a crewmember opens for his or her use with a door control power key. No-motion circuitry will also cause the exterior side doors to close when the train accelerates above a pre-determined speed. If the no-motion circuit (also referred to as a "no-motion system" in this document) malfunctions, the conductor cannot open the exterior side doors using trainline commands since the circuit is designed to fail safely and the door system assumes that the train is in motion. However, if such a malfunction occurs, many passenger cars are equipped with a by-pass switch that can override the no-motion circuit and enable the exterior side doors to open.

During its assessment, FRA discovered that some railroads train crews actually used the no-motion circuit to close the exterior side doors when departing stations. In these instances, train crewmembers were not closing the exterior side doors using a door control panel, but instead were using the throttle to accelerate the train and close the exterior side doors through the no-motion circuit. The assessment also identified that passenger and train crew safety was at risk on many railroads because safety-sensitive switches that could impact the door system, such as the no-motion by-pass switch, were not properly positioned or protected. An improperly positioned no-motion by-pass switch presents the risk of an undesired opening of an exterior side door while the train is in motion, which could go undetected by the train's crew.

Exterior side doors should be closed only after the train crew determines it is safe for the train to depart the station. To protect passenger and train crew safety, the no-motion by-pass switch should be secured or sealed. This will mitigate the potential of an accidental activation of this safety-critical device.

6. End-of-Train Circuit

The end-of-train circuit is part of the door safety system. The circuit is used to identify the last passenger car in the train consist, or the physical end of the train, or both. Door control system manufacturers have utilized various ways to identify and convey the end of the train to the door safety system. The end of the train is identified on different passenger cars by using jumpers, manual or automatic switches, circuitry in electric couplers, marker lights, or other devices. Door safety circuits can become compromised when the end of the train is established somewhere other than the last car of the train. This situation can occur by the unintentional activation of the end-of-train circuit. For example, some passenger cars toggle switches, which are readily accessible to passengers, are used to establish the end of the train. If improperly positioned and activated by a passenger or train crewmember at a location that is not at the end of the train, all passenger cars rearward of the car with the activated end-of-train circuit would not be recognized by the door safety system. Because the door safety features in those cars would not function, this would increase the risk of a passenger becoming entangled in a door and dragged when the train departs the station.

FRA's assessment identified eight railroads on which end-of-train circuit switches were not properly positioned or protected. These switches should be secured and protected to prevent access by unauthorized personnel and unintentional activation which could compromise the safety of the door control system and go undetected by the train crew.

7. Door Safety Features

As touched on above, the sophistication of passenger car door safety features is just as varied as the arrangement of the exterior side doors themselves. Hinged-type manually operated exterior side doors do not utilize any specific door system safety features. Yet, FRA found that all but one model of passenger cars with manual or powered sliding-type doors employed a flexible, rubber-like strip of varying widths on the leading edge of the door. This flexible strip runs from the floor to

the ceiling along the edge of the door to seal the car interior from environmental conditions. Although not necessarily intended for a door system safety purpose, this flexible strip or seal on the edge of the door is pliable and bends, which aids in pulling an obstruction free from the door. In addition, FRA found that some power door systems added a door push-back feature intended to aid in freeing an obstruction in a door. The push-back feature allows someone to push back on a closing door so that the individual can open or partially open the door and clear an obstruction. However, not all passenger cars that have a flexible strip on the edge of the door have a door push-back feature.

Power door systems on passenger cars can also be outfitted with obstruction detection systems. Obstruction detection systems use sensors to determine if something is preventing an exterior side door from closing as intended. The system will cause the exterior side door to react to an obstruction by automatically stopping the door from closing or by reversing the door movement like elevator doors. Most obstruction detection systems require the exterior side door to actually physically impact the obstruction to detect it. These types of obstruction detection systems use a pressure-sensitive edge on the leading edge of the exterior side door or door jamb, or both. If something is caught in the door, the sensitive edge becomes compressed and causes the door to react to the obstruction by stopping the closing door or by reversing the door movement. Other obstruction detection systems employ a tilting switch that detects when the door is bumped off balance by an obstruction and causes a reaction similar to doors employing a sensitive edge for obstruction detection.

There are also systems that use more sophisticated technologies to detect obstructions. These advanced systems monitor motor amperage, or air pressure in passenger cars with powered electro-pneumatic exterior side doors. These systems detect an increase in the electric current or air pressure, which tells the door safety system there is an obstruction in the exterior side doors. Other advanced obstruction detection systems do not actually require the exterior side doors to impact an obstruction to detect it. Instead, they may use photo optics or laser light beams to prevent the door from closing if something interrupts a light beam that runs along the path of the closing exterior side door. They may also use other technologies; *see* the discussion of

Sensotech's comment in Section III., above.

However, FRA found during its assessment that it was possible to become entangled in a powered exterior side door on numerous different models of equipment, even when door obstruction detection systems were utilized. In these cases, the door obstruction detection systems failed to detect either small obstructions (*e.g.*, a human hand) or large obstructions (*e.g.*, a wheelchair).

FRA believes that while door obstruction detection systems reduce the risks to passenger safety and newer systems utilize more reliable technology, they do have limitations. Therefore, train crews need a clear understanding of the limitations of the safety features on the exterior side doors of the trains they are operating. When train crews do not thoroughly understand the limitations of their trains' exterior side door safety features, passengers and train crews alike could face an increased risk of serious injury or death. Crews must realize the limits of the safety features of each powered door safety system for each type of passenger vehicle they operate.

8. Traction Inhibit

As mentioned above, door control safety systems can be connected to a train's propulsion system. On these systems, the status of powered exterior side doors is communicated through the trainline, and the door summary circuit is interlocked with the train's propulsion system. Therefore, when a powered exterior side door is open, the train cannot produce tractive power and move, a function commonly referred to as "traction inhibit." Similarly, if an exterior side door on a train is not completely closed, and there is an obstruction in the door, the traction inhibit function prevents the train from developing tractive power and departing the station. Only after all the exterior side doors are closed as intended can the train produce tractive power and leave the station.

During its assessment, FRA found many different models of equipment in which the exterior side door safety systems were not connected to the propulsion system of the train. Consequently, these trains could produce tractive power whether or not the exterior side doors were open or closed. Thus, if a passenger became entangled in a door, the passenger could be dragged by one of these trains because they lacked a design feature to stop such a train from developing tractive power and leaving the station.

FRA also found that on many different models of passenger cars and locomotives used in passenger service with a door obstruction system and traction inhibit, it was possible for the train to produce tractive power even when an individual became entangled in an exterior side door. This unexpected condition was possible because the door obstruction system did not detect the obstruction and instead conveyed a message that all the exterior side doors were closed. Therefore, the final rule will enhance passenger and train crew safety by requiring all new passenger cars to have door safety systems which include door obstruction detection systems that release obstructions when detected.

9. Malfunctioning Equipment and Door Lock-Out

Due to the complexity of powered exterior side doors and their controls, car manufacturers have designed door systems to respond to equipment malfunctions. If an exterior side door malfunctions, each door can be individually isolated from the trainline circuit without affecting the rest of the train. Train crews refer to this as "cutting out" or "locking-out" a door. This is especially important if the door system is connected to the train's propulsion system, as one malfunctioning exterior side door that cannot close is designed to inhibit the development of tractive power for the entire train. Therefore, many passenger cars are equipped with exterior side door lock-out switches that can disconnect power to the malfunctioning exterior side door while still allowing the trainline circuit to complete so that the train can draw tractive power and move.

During FRA's assessment, FRA observed train crewmembers that did not know how to isolate or lock-out a malfunctioning exterior side door. FRA found that, instead, train crews would often activate the door by-pass system. Such a practice presents a significant risk to safety. Properly locking-out one malfunctioning exterior side door maintains the integrity of the train's door safety system while still providing door obstruction and traction inhibit protection for all other exterior side doors on the train. However, overriding the door safety system through the door by-pass feature can undermine the safety features on all exterior side doors, including traction inhibit. Activating the door by-pass feature this way unnecessarily increases the possibility that a passenger or train crewmember could be caught in a door and dragged by a train.

10. Malfunctioning Equipment and Door By-Pass

If a train crew cannot identify which exterior side door is malfunctioning on its train, the train crew can utilize a door by-pass device to override the door safety system to move the train. However, as noted above, activation of the door by-pass device on many types of equipment negates some or all of the exterior side door safety features.

FRA found during its assessment that many passenger cars had exterior side door safety circuits that could become compromised by the unintentional activation of a door by-pass device. On these models of passenger cars, if a by-pass switch was activated anywhere on a passenger train it would place the entire train in door by-pass mode. This would in essence by-pass the entire train's door safety system, which presents a significant risk to passenger and crew safety. Elsewhere, FRA found that the door by-pass switch would only affect the exterior side doors of the train if it was activated in the controlling locomotive. Overall, FRA found that accidental activation of the door by-pass switch often happened without the knowledge of the train crew, whether the switch was located in the controlling locomotive cab or a trailing locomotive cab. Consequently, door by-pass devices must be sealed in an off position to mitigate the potential of an accidental activation of the door by-pass device.

However, if there is an en-route exterior side door malfunction, railroads must have a procedure for communicating to all train crewmembers that there is a defect in the train's exterior side doors, the door by-pass device has been activated, and the door safety system has been overridden.

11. Effects of Throttle Use on Powered Exterior Side Doors

The locomotive throttle lever is used to control the locomotive's power. It can also be used to issue commands to the powered exterior side doors. As mentioned above, some exterior side doors are manufactured so that the movement of the locomotive throttle from a position of rest to motion automatically issues a command to close all the powered exterior side doors.

However, FRA's assessment found that passenger cars responded differently to application of a train's throttle. For some powered exterior side doors, the movement of the locomotive throttle caused them to close. For other door systems, the doors would stop

closing and freeze if they were in motion when the throttle was applied. Other door systems operated as intended and were not affected by the position of the throttle. In addition, concerns associated with locomotive throttle movement were further exacerbated if the passenger train was in door by-pass mode when the throttle was applied. On these trains, the throttle movement, in combination with the door by-pass feature activation, negated some or all of the exterior side door obstruction safety features.

A train's exterior side doors should be commanded to close only after the train crew determines it is safe to depart. If throttle movement can affect the functioning of a train's exterior side doors, then employee training is necessary to help ensure the train crew understands the risks involved.

12. Mixed Consist Operation

Railroads routinely operate passenger trains comprised of mixed consists or different models of passenger cars, which can have incompatible door systems. Mixed consists can contain passenger cars with different types of exterior side doors, such as manual doors and powered doors, or different types of powered exterior side doors that are not compatible with each other's door safety system. When exterior side door systems are incompatible, they do not properly communicate trainline commands and are not part of a single door summary circuit. These door systems are usually incompatible due to the design of the individual passenger cars or because the door systems utilize different control systems, wiring, or operating voltages, often a result of the varying ages of the different models of passenger cars used in a mixed consist.

The operation of trains comprised of different types of passenger cars with incompatible exterior side door systems requires additional measures to help ensure passenger safety. For example, in a mixed consist train with manual and powered exterior side doors, the portion of the train with the manual doors requires train crewmembers to take extra measures to ensure the doors are closed. The operation of a mixed consist train comprised of passenger cars with different models or types of powered exterior side doors that are not compatible with each other's door safety system requires train crewmembers to take such extra measures as well. The different cars may not communicate door opening and closing commands throughout the length of the train. These door systems usually have different safety features; for example, a portion of

the train could have exterior side doors equipped with a door obstruction detection system, while the remainder of the train's doors do not. The powered door system on a passenger car without a door obstruction system is limited in its ability or unable to detect, announce, or release an obstruction in a door. FRA also found that in these mixed consist trains the door summary circuit did not account for all the exterior side doors, due to incompatible equipment. The door status indicator would therefore be misleading as it would indicate the status for only part of the mixed consist train. As a result, FRA believes there is an inherent, increased risk of becoming entangled in an exterior side door on a mixed consist train.

Train crews may need to take extra measures to ensure the safe functioning of doors in mixed consist trains they operate. These extra measures should ensure the operation of mixed consist trains provides a level of safety at least equivalent to that of a train operating with compatible exterior side door safety systems.

13. Operating Rules

Passenger railroads have established sets of operating rules to provide instruction and guidance to employees on how they should act in given situations. Railroad operating rules for the functioning of passenger train exterior side door systems can vary broadly from railroad to railroad. For example, FRA found that some railroads' operating rules did not require a train's exterior side doors to be closed while the train was in motion between stations. Other railroads' rules did not define the safety limitations of each type of door safety system in the passenger cars their train crews operated and sometimes the train crews were unaware of these limitations. Some railroads had operating rules addressing use of exterior side doors and station stops, and some did require crewmembers to make platform observations for train arrivals at and departures from stations. However, often these rules did not instruct crewmembers to ensure trains did not depart from stations until all passengers had successfully boarded or alighted from the trains. Finally, FRA found that some operating rules did not address the additional steps necessary to provide continued passenger safety following activation of a safety override device, such as a door by-pass or no-motion by-pass switch.

Railroad operating rules are fundamental tools to enhance overall railroad safety. Passenger train crews

need a clear understanding of the risks to safety involved in the operation of exterior side doors. They must understand the limitations of the safety features of each exterior side door system for the equipment they operate. Such an understanding is especially critical when an exterior side door safety system fails and the crew must take action to ensure passenger safety until the system can be restored back to its designed level.

V. Section-by-Section Analysis

Subpart A—General

Section 238.5 Definitions

FRA is amending this section to add the following new definitions to this part: By-pass, door isolation lock, door summary circuit, end-of-train circuit, exterior side door safety system, no-motion system, and trainline door circuit. FRA intends for these definitions to clarify the meaning of significant terms used in this final rule. These definitions will minimize the potential for misinterpretation of the regulatory language. RSAC recommended that FRA add these definitions to this section, and FRA agrees with RSAC's recommendation.

“By-pass” means a device designed to override a function. This term describes devices that override various safety features on a passenger train. For example, a door by-pass is a by-pass feature that when activated overrides the door summary circuit. Among its functions, the door summary circuit indicates to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both. In some instances, train crews must use a by-pass device when a passenger train's exterior side doors or its appurtenances fail en route so the train can reach its destination.

“Door isolation lock” means a cutout/lockout mechanism installed at each exterior side door panel to secure a door in the closed and latched position, provide a door-closed indication to the summary circuit, and remove power from the door motor or door motor controls. FRA added this term because it is in the definition of a door summary circuit and helps clarify what potential information is being relayed to the controlling cab of a train by the door summary circuit.

“Door summary circuit” means a trainline door circuit that, among its functions, indicates to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both. FRA added this term to clarify what this

circuit does in relation to the operation of a passenger train and what information it provides the controlling cab of the train about the exterior side doors.

“End-of-train circuit” means a feature typically used to determine the physical end of the train, or the last passenger car in the train, or both, for the door summary circuit. FRA added this term to make clear what an end-of-train circuit does in a passenger train. For clarity, FRA changed the term to “end-of-train circuit” in the final rule rather than just “end-of-train,” as proposed in the NPRM. For additional discussion about end-of-train circuits, see the Technical Background, Section IV.F.6.

“Exterior side door safety system” means a system of safety features that enable the safe operation of the exterior side doors of a passenger car or train. The exterior side door safety system includes appurtenances and components that control, operate, and display the status of the exterior side doors, and is interlocked with the traction power control. FRA added this term to explain what types of systems or subsystems of safety features make up an exterior side door safety system.

“No-motion system” means a system on a train that detects the motion of the train. This system is normally integrated with the exterior side door safety system.

“Trainline door circuit” means a circuit used to convey door signals over the length of a train. This term is used in the definition of door summary circuit.

Subpart B—Safety Planning and General Requirements

FRA has carefully organized the various requirements in this final rule. These requirements apply to all tiers of passenger cars and locomotives used in passenger service. In the NPRM, FRA made clear that, in addition to requirements for passenger cars, the proposed rule would apply certain requirements to locomotives used in passenger service. FRA invited comment on how the various requirements in the rule should be organized and specifically the approach the NPRM took to applying requirements to locomotives used in passenger service, including comments on any alternative approach. However, FRA did not receive any comment from the public on these or other areas of the NPRM where FRA specifically invited comment.

As discussed above in Section III, Discussion of Specific Comments and Conclusions, FRA did receive and carefully considered comments on the

requirements proposed in the rulemaking. However, FRA has not changed the rule text on the basis of the comments received. FRA is nonetheless modifying the rule text in this final rule to provide the regulated community with greater clarity on the requirements of this rule. FRA describes these changes below in this Section-by-Section Analysis.

Section 238.131 Exterior Side Door Safety Systems—New Passenger Cars and Locomotives Used in Passenger Service

FRA is adding this new section to part 238, addressed below by paragraph.

Paragraph (a) applies to powered exterior side door safety systems on new rail passenger cars, and connected door safety systems on new locomotives used in passenger service, ordered on or after April 5, 2016, or placed in service for the first time on or after February 5, 2016. This paragraph does not apply to new or existing rail passenger cars or locomotives used in passenger service with manual exterior side doors. It also does not apply to existing rail passenger cars or locomotives used in passenger service with powered exterior side doors.

Paragraph (a)(1) requires that all powered exterior side door safety systems on new rail passenger cars and connected door safety systems on new locomotives used in passenger service be built according to APTA Standard PR–M–S–18–10, “Standard for Powered Exterior Side Door System Design for New Passenger Cars” (Standard). APTA’s Rail Standards Policy and Planning Committee approved this APTA Standard on February 11, 2011. The Task Force and Working Group subsequently reviewed and recommended the Standard to the full Committee, which then recommended that FRA use the Standard in this rulemaking. FRA is incorporating by reference this Standard, which contains a set of minimum safety standards for powered exterior side door safety systems on new passenger rail cars and connected door safety systems on new locomotives that are used in passenger service.

The Standard addresses design requirements and safety features that occur at three different levels: The individual door, the car, and the train. Passenger cars and passenger locomotives must be able to communicate with each other to provide for the safe use and operation of exterior side doors in passenger cars. As a result, the Standard requires the train’s door summary circuit to be interlocked with the propulsion system of the train’s

locomotive(s). Specifically, the train may not develop tractive power if an exterior side door in a passenger car is not closed, unless the door is under the direct physical control of a crewmember.

The implementation dates in this paragraph are consistent with other applicability dates FRA imposed, and FRA believes they are achievable. This Standard is available to all interested parties online at www.apta.com. Additionally, FRA made a copy of the Standard part of the docket in this proceeding and it is available for public inspection.

Paragraph (a)(2) requires powered exterior side door safety systems on all new passenger cars and connected door safety systems on new locomotives used in passenger service to be designed based on a FMECA. FRA requires such door safety systems to be subject to a FMECA to ensure door system manufacturers consider and address the failure modes of exterior side doors. As discussed in the Technical Background, Section IV.F.3, FRA learned there was great variability among different models of passenger cars on how exterior side doors reacted to a system failure. For example, when there was a loss of electricity to the door control circuit, some powered exterior side door systems responded by automatically closing the exterior side doors, while in other equipment the doors would stay open. FRA believes that subjecting these door safety systems to a FMECA will ensure that passenger car and locomotive manufacturers consider how these systems may fail and make informed decisions on the safest design approach.

Paragraph (a)(3) requires powered exterior side doors in all new passenger cars to be equipped with an obstruction detection system, and a connected system in all new locomotives used in passenger service, to identify and release an obstruction while preventing the train from developing tractive power until the obstruction is released. An obstruction detection system detects and reacts to both small and large obstructions in the powered exterior side doors. This will make boarding and alighting from passenger trains safer.

This new paragraph is necessary based on FRA’s assessment of powered exterior side doors on various passenger train operations, as discussed specifically in the Technical Background, Section IV.F.7. In many instances, FRA discovered that a passenger, or his or her belongings, could be caught in a powered exterior side door of a passenger car without the door recognizing the passenger or the

obstruction. As a result of this failure, some passenger trains were able to complete the door summary circuit and receive tractive power to depart even though there was an obstruction in a powered exterior side door. These types of incidents have led to serious passenger injuries and even death. FRA also learned that some door systems were unable to identify large obstructions caught in a train’s exterior side doors. For example, some passenger trains could generate tractive power even when a large object like a wheelchair or walker became stuck in the exterior side doors. Passenger door systems that cannot detect these larger obstructions pose substantial safety hazards to passengers with disabilities or other passengers who may need extra assistance to board or alight from a train.

Paragraph (a)(4) prohibits the activation of a door by-pass feature in new passenger cars with powered exterior side doors and in connected locomotives from affecting an exterior side door’s obstruction detection system. As discussed in the Technical Background, Section IV.F.10, FRA discovered that many passenger door safety systems could be compromised by the activation of a door by-pass device. Operating a train in door by-pass mode can negate some or all of the safety features of the exterior side door safety system, including the obstruction detection system and door status indicator.

FRA also discovered that some railroads had obstruction detection systems that were engineered into their passenger trains’ exterior side doors, but did not use them and, instead, operated trains in door by-pass mode. By negating these important door safety features, the railroads created the potential for passengers to get caught in closing exterior side doors and dragged as the trains developed tractive power and departed from stations.

Therefore, FRA is requiring that obstruction detection systems in new passenger cars and connected locomotives used in passenger service function as designed, even if the train in which the equipment is being hauled is operated in door by-pass mode. This will ensure that passenger safety is not compromised by deactivating these safety features in the train’s exterior side doors.

Paragraph (a)(5) requires the train crew to use a door control panel key or some other secure device to access the train’s door control system. The train crew will need a key or other secure device to operate the door control panel to open or close the exterior powered

side doors. FRA does not intend to require passengers in an emergency to use a key to operate any manual override device for opening powered exterior side doors. *See* 49 CFR 238.112. Such manual override devices must be readily accessible to passengers in an emergency. Instead, this requirement is intended to reduce the risk that passengers in non-emergency situations will gain access to the door control system and open the exterior side doors to prematurely exit a train while it is still in motion.

FRA makes clear that although this final rule often states requirements in terms of the duties of railroad crewmembers, any person as defined in § 238.5, including a contractor or subcontractor to a railroad, who performs any function required by this final rule, must perform that function in accordance with this rule. *See* § 238.9(c) (“Responsibility for compliance”). Consequently, the requirements of this final rule apply to contractors and subcontractors performing railroad crewmember functions.

Paragraph (a)(6) is related to paragraph (a)(5). This paragraph makes clear that if the door control panel key or other similar device is removed from the door control panel, the powered exterior side doors on the train cannot be opened or closed from the door control panel. A door control panel key or other similar device is required to operate the powered exterior side doors from the door control panel.

This requirement helps ensure that only the conductor or another qualified crewmember can open or close the exterior side doors from the door control panel. This requirement will minimize the possibility that passengers will open the exterior side doors in non-emergency situations when a train is entering or departing a station. However, FRA notes that under § 238.112, powered exterior side doors must continue to be equipped with a manual override device to allow passengers to open the doors in emergency situations.

Paragraph (a)(7) ensures that train throttle movement will have no effect on the proper functioning of exterior side door safety systems in new passenger cars and connected door safety systems in new locomotives used in passenger service. As discussed in the Technical Background, Section IV.F.11, FRA discovered through its door safety assessment that certain passenger car door systems were designed so that the exterior side doors would automatically close when the train’s throttle was applied. As FRA understands, the rationale behind such

a design is to provide an operational enhancement for the engineer to automatically command the exterior side doors to close when the throttle is applied. However, from FRA’s observations during its door safety assessment, the exterior side doors on some railroads’ trains would stop moving and remain open while other exterior side doors would close when the train’s throttle was applied. This could result in doors being partially open while trains are in motion, thereby increasing the risk that passengers could fall out of trains and suffer injuries. Moreover, FRA also learned that powered exterior side doors on trains running in door by-pass mode reacted very differently when the throttle was applied. On these trains, the throttle movement, in combination with the door by-pass feature activation, negated some or all of the exterior side door obstruction safety features. Therefore, FRA is requiring that, for new passenger cars and locomotives used in passenger service, locomotive throttle movement does not open or close a passenger train’s exterior side doors or have any other effect on the proper functioning of the train’s door safety system.

Paragraph (b) applies to new rail passenger cars, with either manual or powered exterior side doors, and connected door safety systems on new locomotives used in passenger service, ordered on or after April 5, 2016, or placed in service for the first time on or after February 5, 2018. This paragraph does not apply to existing rail passenger cars or locomotives used in passenger service with either manual or powered exterior side doors.

Paragraph (b)(1) requires new passenger cars with manual or powered exterior side doors, and connected door safety systems on new locomotives used in passenger service, to be designed with a door summary circuit to prohibit trains from developing tractive power if the exterior side doors are not closed. This paragraph is necessary to prevent serious injuries from occurring when trains have their exterior side doors open while moving.

However, FRA is allowing an exception for train crew use. This requirement does not apply to an exterior side door that is under the direct physical control of a crewmember for his or her exclusive use when a train generates, or is in the process of generating, tractive power. This limited exception is necessary to help train crews make platform and other observations outside of the train. For example, train crews often open one exterior side door to ensure the train is sitting properly along the station

platform before opening all of the exterior side doors and allowing passengers to board and exit from the train.

Paragraph (b)(2) requires that manual and powered exterior side doors on new passenger cars be connected to interior and exterior door status indicators, and that new locomotives used in passenger service be compatible with such indicators. The exterior side doors must be connected to interior and exterior door status indicators, usually lights, to indicate when a door is not closed. These indicators provide railroad personnel both inside the train and on the station platform a fast, easy way to visually identify whether an exterior side door is not closed as intended. FRA believes that these interior and exterior door status indicators will help train crews determine whether it is safe for trains to depart stations.

Paragraph (b)(3) requires all new passenger cars with manual or powered exterior side doors and all new passenger locomotives to be connected to a door summary status indicator located in the train’s operating cab and viewable from the engineer’s normal operating position. When all the exterior passenger side doors on a train are closed, the door summary status indicator, usually a light, illuminates in the engineer’s operating cab. As a result, the indicator provides an easy way for an engineer to know that all the exterior side doors have been closed as intended and it is safe for the train to depart. If the indicator is not illuminated, the engineer knows that the exterior side doors are not closed and that the train’s brakes should be maintained so the train does not move.

Paragraph (b)(4) requires that, for all new passenger cars with manual or powered exterior side doors, and all new locomotives used in passenger service equipped with a door by-pass system, the door by-pass system will be functional only when activated from the controlling locomotive. Putting a train in door by-pass mode allows the train to develop tractive power regardless of the status of the doors. During its door safety assessment of passenger railroads, FRA found that for many models of equipment the entire passenger train could be put into door by-pass mode by activating one of several different door by-pass switches throughout the train consist. Moreover, FRA even found that by-pass switches could be activated without the knowledge of the train crew—a dangerous situation.

Because this paragraph requires that the door by-pass switch can only be activated in the controlling locomotive of a passenger train, engineers should

always know if the door safety system has been overridden through the use of the door by-pass switch. In addition, having the switch only be activated in the controlling locomotive of the train greatly minimizes the risk that a passenger may activate the device, whether inadvertently or not. Since this device affects vital safety features, FRA believes that all precautions should be taken to ensure that a train is put in door by-pass mode only after careful consideration by the train's crew.

Paragraph (c) identifies other sections in this part that include substantive requirements for exterior side door safety for ease of reference. These include requirements for using side doors in an emergency.

Section 238.133 Exterior Side Door Safety Systems—All Passenger Cars and Locomotives Used in Passenger Service

FRA is adding this new section to part 238, addressed below by paragraph.

Paragraph (a) requires that each passenger train crew verify all exterior side door by-pass devices that could affect the safe operation of the train are sealed in the non-by-pass position when taking control of the train. For example, from its door safety assessment of various passenger railroads, FRA discovered that on some railroads the door by-pass switches in the cabs of trailing locomotives could place an entire train in door by-pass mode if activated anywhere on the train. FRA believes that all train crewmembers should understand when first taking control of a passenger train whether the exterior side doors of the train are in door by-pass mode. However, when there is face-to-face relief of another train crew, the train crew coming on duty will not need to verify the status of the door by-pass devices by visual inspection. This exception will help railroad efficiency by not requiring on-coming train crews to conduct an inspection to verify whether their train is being operated in door by-pass status if they are directly notified by the outgoing crew through face-to-face relief regarding the status of the train's door by-pass devices. When there is no direct face-to-face relief by the crew going off duty, the on-coming train crew must verify the status of their train's door by-pass devices.

However, paragraph (a) also allows railroads to develop a functional test to verify that the door summary status indicator is functioning as intended, instead of a visual inspection of each door by-pass device. Allowing qualified railroad personnel to conduct a functional test instead of a visual inspection of all door by-pass switches

makes the verification process more efficient. Of course, the testing plan the railroad develops to replace individual visual inspections must be adequate to determine that each door safety system is functioning as intended.

Paragraph (b) requires passenger train crewmembers to notify the railroad's designated authority under the railroad's defect reporting system if a door by-pass device that could affect the safe operation of the train is found unsealed during the train's daily operation. If the train crew can test the door safety system and determine the door summary status indicator is functioning as intended, then the train may remain in service until the next forward repair point where a qualified maintenance person (QMP), as defined in § 238.5, can apply a seal, or until its next calendar day inspection, whichever occurs first. If the crew cannot determine that the door summary status indicator is functioning as intended, then the train crew must follow the procedures in paragraph (c) of this section.

Paragraph (c) requires that, when it becomes necessary to activate a door by-pass device while a train is en route, the train may continue to its destination terminal if the train crew: Conducts a safety briefing that includes a description of the location(s) where crewmembers will position themselves on the train to observe the boarding and alighting of passengers; notifies the railroad's designated authority that the train's door by-pass device has been activated; and adheres to the operating rules required by § 238.135 ("Operating practices for exterior side door safety systems"). After the train has reached its destination terminal, the train may continue in passenger service until the train's arrival at the next forward repair point or until its next calendar day inspection, whichever occurs first, if the railroad adheres to the requirements in paragraphs (c)(1) and (2) of this section before moving the equipment with an active door by-pass device.

Paragraph (c)(1) allows a passenger train with a door by-pass device activated to remain in service past its destination terminal if an on-site QMP determines it is safe to use the equipment in passenger service and repairs cannot be made at the time of inspection. If a QMP is not available, a determination to keep the equipment in service may be made based upon an on-site qualified person's (QP), as defined in § 238.5, description of the condition to a QMP offsite. This requirement will help ensure passenger safety by requiring a QMP to make the determination on whether it is safe to

move the train, but will still provide the railroad with sufficient flexibility to handle an activated door by-pass device.

Paragraph (c)(2) requires that either the QP or QMP notify the crewmember in charge of the train's movement that the door by-pass device has been activated. This notification requirement ensures that the crewmember in charge of the train's movement knows the train is operating with its door by-pass device activated and that some or all of the door safety features of the train's exterior side doors may not be properly functioning. In addition, the train crew must then hold a safety briefing that includes information such as the locations where each crewmember will position himself or herself on the train to ensure that passengers board and alight from the train safely. This safety briefing helps to ensure that the train operates with the same level of safety after the door by-pass device has been activated as it did before the device was activated.

Paragraph (d) requires each passenger railroad to maintain a record of any door by-pass activation, unintended opening of a powered exterior side door, and subsequent repair(s) made to the passenger door safety system in the defect tracking system required by § 238.19. While railroads do currently maintain records concerning the malfunction of exterior side doors and subsequent repairs, FRA is not aware that railroads maintain such records when a door by-pass device has been activated or only when there has been an unintentional door opening. Collecting this information will provide useful data concerning test and maintenance intervals that are developed under this part, e.g., § 238.107 and subpart F. Like other records collected under § 238.19, railroads must make these records available to FRA for inspection upon request.

Paragraph (e) is intended to prevent exterior side doors from being operated from a door control panel when the door key or other similar device has been removed. As evidenced by FRA's assessment of various passenger train door operations, this language is necessary because some trains' door safety systems have allowed the door control panel to remain energized after the door control panel key or similar device was removed from the panel. When door control panels can still be operated after the specific door key or similar device has been removed, passengers can open the train's exterior side doors by simply pressing the door open button. FRA is concerned because passengers have opened exterior side

doors to exit trains early before the trains came to a complete stop at stations. Additionally, some passengers have opened the exterior side doors to exit trains while leaving stations because they forgot to exit while the trains were stopped at station platforms. Either of these scenarios could easily result in severe passenger injuries.

Accordingly, this requirement mandates the use of a door panel key or a similar device to energize or activate the door control panel. The door control panel key or device will be held by the train's crew. FRA does make clear that nothing in this paragraph is meant to change any of the requirements in § 238.112 for the accessibility and operation of manual override devices for exterior side doors in an emergency situation. This paragraph does not require passengers in an emergency situation to use a key to operate any manual override device for opening powered exterior side doors required by § 238.112. Passengers and crewmembers must still be able to utilize the manual override devices for exterior side doors in an emergency situation without the use of a door key or other similar device.

Paragraph (f) requires a train to maintain the integrity of its door safety systems by proper activation of the end-of-train circuit. This includes, but is not limited to, securing the end-of-train circuit in a manner that prevents unauthorized access. The railroad must secure the end-of-train circuit to protect the integrity of the train. FRA discovered that, in many models of passenger cars, a simple switch was used to activate the end-of-train circuit and denote the end of the train. This switch was often in the vestibule area of the car and accessible to passengers. FRA also found a switch that was activated in a car other than at the end of the train. Activation of the switch eliminates from the door summary circuit all passenger car exterior side doors beyond the activated switch, allowing the potential for a passenger in one of those cars to become entangled in an exterior side door and dragged when the train departs because the door safety features do not function. This paragraph helps ensure in particular that if a railroad uses end-of-train circuit switches in its trains, the railroad takes sufficient care of the switches to prevent them from being tampered with or inadvertently activated by unauthorized users. FRA added language to this section in this final rule to clarify that railroads must ensure the integrity of the end-of-train circuit and not just prevent unauthorized access to end-of-train circuit switches on trains that use

such switches to affect the end-of-train circuit.

Paragraph (g)(1) requires all exterior side door safety system override devices that could adversely affect a train's door safety system to be inactive and sealed in all passenger cars and locomotives in the train consist. This requirement applies to cab cars and MU locomotives, as well as conventional locomotives. The requirements of this paragraph are subject to the provisions of paragraph (c) of this section for a train when it is necessary to activate a door by-pass device, to ensure the train may safely continue to its destination terminal.

Paragraph (g)(2) is similar to paragraph (g)(1). However, this paragraph emphasizes that as part of the calendar day inspection, QMPs will verify that all exterior side door safety system override devices are inactive and sealed in all passenger cars and all locomotives in a passenger train's consist, including cab cars and MU locomotives, if they are so equipped. Passenger cars or locomotives that QMPs find with unsealed or active exterior side door safety system override devices are considered defective under the regulation and subject to the movement-for-repair provisions of this part.

Section 238.135 Operating Practices for Exterior Side Door Safety Systems

FRA is adding this new section to part 238, addressed below by paragraph.

Paragraph (a) requires each crewmember to participate in a safety briefing that identifies each crewmember's responsibilities for the safe operation of the exterior side doors on the crewmember's train. The briefing takes place at the beginning of each crewmember's duty assignment before the train departs. This requirement helps ensure all the crewmembers involved in the operation of a passenger train understand their roles and responsibilities for the safe operation and use of the exterior side doors.

In this final rule, FRA revised the language in this paragraph to clarify that the required safety briefing must address possible door safety issues arising anytime during the crew's operation of the assigned train, including when the train arrives at and departs from a station. The briefing requirement applies to providing direction throughout the crew's entire operation of the assigned train. For example, if construction or other work will be conducted at a station platform that could negatively impact the boarding and alighting of passengers or crewmembers at a station, the crew must discuss the platform work and the

steps necessary to ensure the train's doors can be safely operated at the station.

FRA invited comment from the railroad industry and the greater public on how this safety briefing should occur, but did not receive any comments during the comment period. Nonetheless, FRA makes clear that the safety briefing may be made part of other safety briefings or discussions involving the operation of the passenger train, provided each crewmember's role in the safe operation and use of the exterior side doors is clearly established.

Paragraph (b) requires all passenger train exterior side doors and trap doors to be closed when a train is moving between stations, except as provided in paragraphs (b)(1) and (2). As stated previously in Section III, Discussion of Specific Comments and Conclusions, above, FRA received comments from SEPTA and Veolia regarding this paragraph. Both SEPTA and Veolia asked FRA to allow additional circumstances when passenger train exterior side doors and trap doors may be open when a train is moving between stations. As previously explained, FRA declines to establish additional, generally-applicable exceptions beyond what is provided in paragraphs (b)(1) and (2). However, FRA is providing additional time for railroads to comply. Paragraph applies after April 5, 2016, or 60 days after the final rule takes effect. As proposed, paragraph (b) would have become applicable when the final rule took effect. In particular, this additional time will facilitate the process for SEPTA, Veolia, and any other entity to seek relief from the requirements of § 238.135(b) by applying for special approval under § 238.135(c) from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. Section 238.135(c) allows FRA to make individualized determinations that tailor any additional exceptions to the specific circumstances involved and the safety of the affected passengers and train crews. For more discussion of SEPTA's and Veolia's comments on this rulemaking, and FRA's response, see the Discussion of Specific Comments and Conclusions, Section III.

Paragraph (b)(1) allows a passenger train to depart from or arrive at a station with an exterior side door or trap door open when a crewmember needs to observe the station platform (paragraph (b)(1)(i)) and the open door is attended by the crewmember (paragraph (b)(1)(ii)). For instance, observing the station platform is necessary when arriving at stations so that crewmembers can determine if their train is properly

positioned along the platform before opening the exterior side doors. In addition, crewmembers may need to open an exterior side door on their train to observe the station platform to help ensure the safety of late-boarding passengers for station departures. With a crewmember stationed at each open exterior side door or trap door when departing from or arriving at a station, the train crew can better protect passengers from placing themselves in harm's way and more quickly react to an emergency occurring on the station platform.

Paragraph (b)(2) allows a passenger train to move between stations with its exterior side doors and trap doors open when a crewmember must perform on-ground functions. On-ground functions include, but are not limited to, lining switches, making up or splitting the train, providing crossing protection, and inspecting the train. This exception was created because the Door Safety Subgroup thought it would be too cumbersome and an undue hardship on passenger railroads to require them to operate their trains with their exterior side doors and trap doors closed when performing on-ground functions. For example, passenger train conductors often have to exit and reenter their trains several times when lining switches to establish the proper track route for their trains. However, FRA expects that crewmembers will close any such open exterior side doors or trap doors on their trains as soon as it is practical after completing the necessary on-ground functions.

As discussed above, paragraph (c) requires that passenger railroads receive approval from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to operate passenger trains with their exterior side doors or trap doors, or both, open between stations except as provided in paragraph (b) of this section. Any request to FRA must include: A written justification explaining why the passenger railroad needs to operate its trains in this manner (paragraph (c)(2)(i)); and a detailed hazard analysis conducted by the railroad analyzing the hazards of running its trains in this manner, including specific mitigations to reduce the safety risk to passengers and train crews (paragraph (c)(2)(ii)). The chief executive officer (CEO), or equivalent, of the organization(s) making the request must sign the request (paragraph (c)(3)). In addition, FRA added paragraph (c)(4) to this final rule to clarify that railroads may need to submit other documents and different types of information to support the request. Passenger railroads must seek this special approval from

FRA before operating trains in the requested manner, so that FRA can determine if passengers and train crews riding on such trains are adequately safeguarded against personal injury. FRA makes clear that if a passenger railroad must take additional steps to adequately safeguard passengers and train crews against personal injury, FRA may condition the grant of any special approval on the implementation of any such measures within the timeframes in the approval.

Paragraph (d) requires railroads to adopt and comply with operating rules on how to safely override a door summary circuit or a no-motion system, or both, if there is an en route exterior side door failure or malfunction on a passenger train. Under this section's requirements, the railroads must provide these written rules to their employees and make them available for FRA inspection. The written rules must include: (1) Instructions to crewmembers and control center personnel describing what conditions must be present to override the door summary circuit or the no-motion system, or both (paragraph (d)(1)); and (2) steps crewmembers and control center personnel must take after the door summary circuit or no-motion system, or both, have been overridden, to help ensure continued passenger safety (paragraph (d)(2)). These paragraphs are intended to ensure a mechanism exists to communicate that a defect has occurred in a critical safety system on a passenger train and that passenger safety continues to be provided after the critical safety system is overridden.

FRA is allowing a three-year period for the requirements in this paragraph to be implemented. FRA believes this three-year period will provide railroads with adequate time to develop and train their crewmembers and control center personnel on the operating rules and instructions, and minimize any cost. FRA wants to make clear that the term "control center personnel" in this final rule includes both railroad employees and railroad contractors and subcontractors who perform control center functions. See § 238.9(c). Use of the term "control center personnel" is also consistent with 49 CFR part 239, Passenger Train Emergency Preparedness, which uses the term "control center personnel" to describe the same persons. While crewmembers will continue to have the majority of the responsibilities under this section, control center personnel play an important role in how to safely override a door summary circuit or no-motion system, or both.

Paragraph (e) requires each crewmember to be trained on: (1) The requirements in this section; and (2) how to identify and isolate equipment with a malfunctioning exterior powered or manual side door. For example, FRA expects that this training will cover how a crewmember determines which exterior side door is malfunctioning. FRA believes that training crewmembers is necessary to ensure that a passenger train's door safety systems are utilized to their designed level of safety. Crewmembers operating exterior side doors on passenger trains and tasked with providing passenger safety must understand the safety risks involved in the use and operation of exterior side doors.

FRA makes clear that these requirements apply to both manual and powered exterior side doors. FRA is allowing a three-year period for railroads to implement the requirements of this paragraph. This three-year period affords the railroads adequate time to train their crewmembers and minimize any cost.

Paragraph (f) requires each railroad to adopt and comply with operating rules requiring its crewmembers to determine the status of their train's exterior side doors so their train may safely depart a station. In particular, this paragraph requires crewmembers to determine there are no obstructions in their passenger train's exterior side doors before the train departs. This operating rule requirement will safeguard against passengers becoming entangled in the exterior side doors of a train when boarding and alighting the train. FRA is allowing railroads a three-year period to implement the requirements of this paragraph. In the NPRM, this requirement was proposed under § 238.135(g). However, in this final rule FRA has switched proposed §§ 238.135(f) and (g) because it flows logically that requirements about operating rules should come before requirements for conducting tests on those rules.

Paragraph (g) requires that each railroad periodically conduct operational (efficiency) tests and observations of its operating crewmembers and control center personnel to determine each individual's proficiency with the side door safety procedures for both the railroad's exterior powered and manual passenger train side doors. FRA recognizes the critical role control center personnel have in ensuring the safe movement of trains. These individuals must receive operational (efficiency) testing appropriate to their role providing door operations support

to train crews. For example, control center personnel must understand the implications of a crew's activation of a door by-pass device. Due to additional safety precautions the crew must take, a train might need extra time at station platforms to allow for the safe boarding and alighting of passengers, which may affect the crew's ability to adhere to the train schedule. Control center personnel must be prepared to respond appropriately to safely direct train movements.

As in paragraph (e), FRA makes clear that this paragraph applies to both manual and powered exterior side doors. The rule provides railroads a three-year implementation period before requiring them to conduct operational (efficiency) tests and observations of their operating crewmembers and control center personnel to determine each individual's knowledge of the specific railroad's powered and manual exterior side door safety procedures for its passenger trains. This three-year implementation period affords the railroads adequate time to train and then begin testing their crewmembers and control center personnel on exterior side door safety procedures, and minimize any expense.

Finally, as stated above, this requirement was proposed under § 238.135(f) in the NPRM. However, in this final rule FRA has switched proposed §§ 238.135(f) and (g) for clarity.

Section 238.137 Mixed Consist; Operating Equipment With Incompatible Exterior Side Door Systems

FRA is adding this new section to part 238. FRA modified the language proposed in the NPRM for each paragraph of this section to clarify FRA's intent regarding each paragraph. Through this section, FRA is creating a positive requirement for railroads to take action to ensure that when they operate "mixed consist" trains, they operate them safely. In addition, FRA is also modifying the language proposed in paragraph (b) to clarify that entities subject to the requirements of this rule must adopt and comply with operating rules to ensure the safe operation of mixed consist trains. Each paragraph is addressed below.

Paragraph (a) requires a train made up of equipment with incompatible exterior side door systems to be operated within the constraints of each exterior side door safety system on the train. As evidenced by FRA's safety assessment of passenger railroad door systems across the country, some passenger railroads mix and match different models of

passenger cars with different door safety systems when they assemble individual trains. These trains are referred to as mixed consist and can contain passenger cars with different types of exterior side doors, such as manual and powered doors. They can also be comprised of passenger cars with different models or types of powered exterior side doors that are not compatible with each other's door safety system. Because the door safety systems on mixed consist trains are not able to properly communicate the presence of an obstruction in a door, or the door's status otherwise, this paragraph requires train crewmembers to take extra steps to enhance passenger safety to a level at least equivalent to a train operating with compatible exterior side door systems. In this regard, FRA notes that in mixed consist trains with both manual and powered exterior side doors, the manual exterior side doors require extra attention by crewmembers to ensure that they are closed and it is safe to depart. In addition, FRA slightly modified the proposed language for this paragraph in this final rule to state the requirement more clearly.

Paragraph (b) requires railroads to adopt and comply with operating rules to provide for the safe use of passenger cars and locomotives used in passenger service with incompatible exterior side door safety systems when they are operated together in a mixed consist train. Once the operating rules have been adopted, complying with these rules will ensure the mixed consist train is operated with at least the same level of safety as a train with compatible exterior side door safety systems, even though the door safety systems on the various cars are incompatible. These rules must take into consideration the constraints of the door systems of the equipment operated by the railroad. For example, the operation of a mixed consist train may require additional measures to help ensure passenger safety, such as operating rules on crew positioning or providing a second look at the station platform to determine whether it is safe for the train to depart a station.

FRA also modified the proposed language in this paragraph to clarify its requirements. The modified language makes the regulatory language consistent with the regulatory language for § 238.135(d) and (g) in this final rule, which also contain requirements involving railroad operating rules.

Appendix A to Part 238—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties for use to enforce this

part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the penalty schedule. However, FRA did not receive any comments.

Accordingly, FRA is amending the penalty schedule to reflect the addition of the following sections to this part: § 238.131, Exterior side door safety systems—new passenger cars and locomotives used in passenger service; § 238.133, Exterior side door safety systems—all passenger cars and locomotives used in a passenger service; § 238.135, Operating practices for exterior side door safety systems; and § 238.137, Mixed consist; operating equipment with incompatible exterior side door systems.

VI. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with Executive Order 12866 (*Regulatory Planning and Review*), Executive Order 13563 (*Improving Regulation and Regulatory Review*), and DOT policies and procedures. A regulatory evaluation has been prepared addressing the economic impact of the final rule over a 20-year period. The economic impacts of the final rule are estimated at well under \$100 million per year. This section summarizes the economic impacts of the final rule.

The intent of the final regulation is to increase safety by reducing the injuries caused by the operation of a passenger train's exterior side doors. The doors can cause injuries to passengers from striking or holding them as they board or alight from trains. These injuries are unintended consequences that result from normal train operations. Railroad rules governing the operation of the doors may not provide adequate information to crewmembers, for example, about when and how to use door by-pass devices and the interaction of the doors with other train systems. Although most passenger trips occur without a door incident, the consequences of improper door operations can and have resulted in serious harm and even death. In November 2006, a passenger died after being caught in the doors of a departing NJT train at the Bradley Beach, NJ station.

FRA intends to reduce door incidents and injuries in two ways. First, the final rule addresses the railroads' rules and procedures for operating doors. The final rule requires railroads to have and

implement operating rules for their employees that emphasize understanding the capabilities and limits of the door safety systems installed on the passenger cars and connected locomotives used in passenger service that they operate. The overall intent of the operating rules requirement is that the train crew should be aware of the status of the door safety systems on their train, such as if the train is operating in by-pass mode (which overrides certain door safety features), if a door is locked-out because of a malfunction, or if they are working on trains that have cars with different door safety systems. Specific requirements include the need for the train crew to verify that the door by-pass devices are sealed on the train they are operating, to report instances when a by-pass device is found unsealed, and to understand crew responsibilities to safely operate the train when by-pass mode has been activated. The final rule also contains provisions to mitigate existing practices that may unintentionally increase the risk of door-caused injuries. For example, the final rule requires door control panels (used to open and close the doors) to become and remain inactive if a door control key or some other secure device is removed from the panel. Also, if switches are used to denote the end of the train circuit, then these switches need to be secured. Securing the switches used to denote the end of the train reduces the opportunity for part of the train to be cut-off from the summary circuit and be left unprotected by the door safety system (a situation which could occur if the end-of-train circuit switches are activated at some location other than at the actual end of the train). Additionally, FRA is concerned about the inherent risk posed by a few railroads' practice of running trains with the doors open between stations. However, FRA allows railroads the flexibility to continue the practice, but only by special approval supported by a hazard analysis including risk mitigation measures. Other requirements for operating rules task the crew with determining that the doors are free of obstructions so that the train may safely depart a station, and with procedures for safely operating trains that consist of mixed passenger cars and locomotives used in passenger service, such as cars with different door systems. For these operating rules and operating rules describing procedures to maintain safety when the train is in by-pass mode, FRA allows three years for implementing compliance. Passenger railroads also have a three-year period

to train crewmembers on these operating rules. To determine that the employees understand such operating rules, railroads have three years to begin conducting periodic operational (efficiency) tests of its crewmembers and control center personnel, as appropriate to their roles ensuring the safe operation of the exterior side doors and the door by-pass devices.

The second part of the final rule concerns requirements for doors on new passenger cars and connected locomotives used in passenger service. FRA is adopting the APTA Standard discussed above containing the design requirements for door safety systems on new passenger cars ordered with powered exterior side doors, and for connected door safety systems on new locomotives used in passenger service. For example, new cars with powered exterior side doors need an obstruction detection system, a key or other secure device to activate (*i.e.*, turn on) a door control panel, and the doors may not close or open by moving the locomotive throttle control (*i.e.*, the doors should be controlled by the crew instead of by the movement of the train). The Standard is structured in a hierarchical order, addressing the door safety features at the individual door level through the overall system level. The Standard is structured this way to potentially prevent or mitigate unsafe door conditions at one of several levels. This structure also provides railroads flexibility to determine the most appropriate equipment design for their particular operations. In this way, the Standard is performance-based. Additionally, the final rule includes some minimum safety standards for manual and powered exterior side doors on new passenger cars and for connected door safety systems on new locomotives used in passenger service. These types of new passenger equipment need to have a door summary circuit that prevents the train from taking power and moving if an exterior side door is open. Other safety requirements that apply to new cars with either powered or manual exterior side doors are door status lights or indicators, a door summary status indicator or light that is easily viewable by the engineer, and by-pass devices that work only when activated from the operating cab of the train. The final rule notes that these requirements for passenger trains with manual or powered doors apply to both commuter and intercity passenger service railroads (but not to private equipment).

FRA is requiring additional door safety features on new cars and connected locomotives. These safety

features can be installed more cost-effectively in such new equipment compared to potentially requiring the retrofit of existing equipment. These safety features on new cars and connected locomotives are all currently available.

FRA analyzed the economic impacts of this rule against a "no action" baseline. The no action baseline reflects the state of the world in the absence of this final rule. The estimated costs resulting from the final rule over the 20-year period of analysis total \$15.2 million undiscounted, with a present value of about \$8.3 million calculated using a 7-percent discount rate (PV, 7%), and a present value of \$11.5 million calculated using a 3-percent discount rate (PV, 3%). The estimated quantified benefits over a 20-year period total \$83.9 million undiscounted, \$43.3 million (PV, 7%), and \$61.7 million (PV, 3%). These costs and benefits result in net positive benefits over 20 years of about \$68.7 million undiscounted, \$35.0 million (PV, 7%), and \$50.2 million (PV, 3%).

In the regulatory evaluation accompanying the final rule, the burdens accounted for remain primarily the same as in the regulatory evaluation accompanying the proposed rule. The most significant change was expanding the costs resulting from section 238.135(c), which requires railroads to receive special approval from FRA to operate passenger trains with open doors between stations in circumstances other than those specifically allowed by the rule. The costs for this provision were expanded to include potential mitigations that a railroad may have to put in place to reduce the risk to passengers. In addition, after the proposed regulatory evaluation was published, DOT issued new guidance in June 2014 for the value of a statistical life that is used in estimating benefits. The guidance also updated the median growth rate in wages that affects the cost estimates. The costs and benefits have been revised in the final regulatory evaluation to reflect this new guidance. Also, the start of the period of analysis, *i.e.*, year 1, has been changed from 2014 to 2015 to reflect the passage of time since the proposed rule was published. These changes are explained in the final regulatory evaluation accompanying the final rule. Furthermore, DOT again revised the value of a statistical life guidance in June 2015 for analyses prepared in 2015. The June 2015 guidance increases the value of a statistical life from \$9.2 million to \$9.4 million. The new value would not alter the benefits or costs enough to change the resulting net-benefit outcome for

this final rule. As the final regulatory evaluation updates the 2014 analysis for the proposed rule, and the benefit-cost decisions would not be affected by the new DOT guidance, this final analysis continues to use the DOT guidance for the value of a statistical life issued in June 2014 for estimating impacts.

The final rule incurs relatively small costs and therefore has relatively high net benefits. Most of the initial burdens are expected from changes to railroad operating rules, and from the safety standards for door safety systems on new passenger trains where they can be installed cost-effectively. The largest contributor to costs is the crewmembers' task of verifying that the door by-pass devices on the train are sealed in the

normal, non-by-pass mode. The quantified benefits result primarily from reduced injuries based on a count of door injuries in the past (2001–2005), and the assumption that the final rule would be 50-percent effective in reducing similar injuries and fatalities in the future. The count of door injuries used the descriptive, narrative statements on accident reports to better identify door-caused injuries (yielding about 19 potentially avoided injuries per year on average). A count of door-caused injuries using more recent data from 2011 yielded 19 injuries, similar to the average of previous years' results. There may be other additional benefits that were not quantified, such as fewer

passenger claims for personal property damage. Also, as door incidents are often well-publicized in the media, reducing the number of door incidents will maintain and enhance the public's perception of safe passenger service, or goodwill toward passenger service. Furthermore, railroads for which the APTA standard may serve as an incentive to purchase new cars may have reduced door system maintenance costs as a result, as newer passenger cars can be expected to have more reliable door systems than older cars.

The costs and benefits are summarized in the tables Costs Summary and Benefits Summary, respectively.

TABLE—COSTS SUMMARY

| Final rule reference (and regulatory evaluation reference) | Cost category | Total undiscounted costs | Total present value of costs discounted at 7% | Total present value of costs discounted at 3% |
|---|--|--|--|---|
| 238.133(a) (8.2(a)), By-Pass Device Verification. | Verify Door By-Pass Devices Are Sealed and Ensure Integrity of the Train. | \$11,140,576 | \$5,499,252 | \$8,032,569. |
| 238.133(a) (8.2(a)), Developing a Written Functional Test Plan. | As an Alternative, Develop a Written Functional Test Plan to Comply with 238.131(a) By-Pass Device Verification. | \$9,805 | \$8,085 | \$8,913. |
| 238.133(b) (8.2(b)), Unsealed Door By-Pass Device. | Apply Seal to Door By-Pass Devices when Found Unsealed, Report Defect. | \$557,029 | \$274,963 | \$401,628. |
| 238.133(c) (8.2(c)), En Route Failure. | Determine if Safe to Proceed with Door By-Pass Activated, and Hold Crew Safety Briefing. | \$78,093 | \$40,723 | \$57,686. |
| 238.133(d) (8.2(d)), Records. | Record the Door By-Pass Activation. | \$13,051 | \$6,806 | \$9,640. |
| 238.133(d) (8.2(d)), Records. | Record Unintended Door Openings. | \$52,203 | \$27,222 | \$38,561. |
| 238.133(e) (8.2(e)), Door Control Panels. | Average of Engineering and Operating Rule Solutions to Prevent Unauthorized Access to Door Control Panels. | $(0.5 \times \$186,574) + (0.5 \times \$26,839) = \$106,707.$ | $(0.5 \times \$174,369) + (0.5 \times \$24,186) = \$99,277.$ | $(0.5 \times \$181,140) + (0.5 \times \$25,643) = \$103,391.$ |
| 238.133(f) (8.2(f)), End-of-Train Circuit. | Secure End-of-Train Circuit Switches, if Used. | \$205,635 | \$192,182 | \$199,645. |
| 238.133(g)(1) (8.2(g)(1)), Exterior Side Door Safety System Override Devices. | Seal By-Pass Devices, if so Equipped. | Accounted for in Sections 238.133(a), 238.133(b), and 238.133(g)(2). | | |
| 238.133(g)(2) (8.2(g)(2)), Calendar Day Inspection. | Verify Door By-Pass Devices Sealed; Cost for Events Requiring Additional Troubleshooting. | \$79,467 | \$41,440 | \$58,701. |
| 238.135(a) (8.3(a)), Participate in Daily Safety/Job Briefing. | Emphasize Crew Responsibilities for Safe Door Operations. | Can Combine with Other Safety Briefings, Minimal Marginal Cost. | | |

TABLE—COSTS SUMMARY—Continued

| Final rule reference (and regulatory evaluation reference) | Cost category | Total undiscounted costs | Total present value of costs discounted at 7% | Total present value of costs discounted at 3% |
|--|---|---|--|--|
| 238.135(b), 238.135(c) (8.3(b), 8.3(c)), Operate with the Exterior Side Doors and Traps Closed when Traveling Between Stations, and Special Approval to do so. | Railroads that File a Written Justification with FRA Requesting Special Approval to Operate with the Exterior Side Doors Open Between Stations, Install Typical Risk Mitigations (Signage, Markings, Lighting). | File Justification = \$3,122, Install Typical Mitigations = \$150,000, Total = \$153,122. | File Justification = \$2,918, Install Typical Mitigations = \$140,187, Total = \$143,105. | File Justification = \$3,031, Install Typical Mitigations = \$145,631, Total = \$148,662. |
| 238.135(d), 238.135(f), 238.137(b) (8.3.1), Develop Operating Rules, Mixed Consist. | Developing Operating Rules for Overriding Door Safety Systems, Determining That Passengers are Clear of the Doors, and Operating a Train with Incompatible Door Safety Systems. | \$153,632 | \$107,862 | \$130,219. |
| 238.135(d) (8.3.1), Additional Requirement to Provide Written Operating Rules for By-Pass. | Provide Written Operating Rules to Crewmembers and Control Center Personnel for Safely Overriding Door Safety Systems, Allow Time for These Affected Individuals to Read Operating Rules. | Enter, Copy, Distribute Rules = \$2,199, Read = \$100,591, Total = \$102,790. | Enter, Copy, Distribute = \$1,487, Read = \$67,678, Total = \$69,165. | Enter, Copy, Distribute = \$1,836, Read = \$83,807, Total = \$85,642. |
| 238.135(e) (8.3.2), Training | Review and Revise Existing Training Plans for Training on Exterior Side Door Safety Systems and Operating Rules, Perform Training. | Review and Revise Training Plans = \$11,235, Perform Training = \$576,540, Total = \$587,776. | Review and Revise Training Plans = \$8,547, Perform Training = \$391,380, Total = \$399,927. | Review and Revise Training Plans = \$9,910, Perform Training = \$482,143, Total = \$492,053. |
| 238.135(g) (8.3.2), Operational (Efficiency) Tests and Observations. | Conduct Operational (Efficiency) Testing for Exterior Side Door Safety Procedures. | \$116,019 | \$52,666 | \$81,067. |
| 238.131(a) (8.4), New Passenger Cars and Loco's Used in Passenger Service, Safety Systems for Powered Exterior Side Doors. | Implement APTA Standard for Powered Exterior Side Door Systems on New Passenger Cars and Connected Loco's Used in Passenger Service. | \$300,000 | \$280,374 | \$291,262. |
| 238.131(b) (8.5.1), Manual and Powered Door System Standards for New Passenger Equipment. | Implement Some Safety Features for New Passenger Cars With Either Powered or Manual Exterior Side Doors and Connected Loco's Used in Passenger Service. | \$1,576,608 | \$1,068,506 | \$1,328,884. |
| Total | | \$15,232,512 | \$8,311,555 | \$11,468,527. |

TABLE—BENEFITS SUMMARY

| Rule year | (VSL=\$9.2 million) AIS level dollar value | Estimated reduction in injuries, monetary value | Estimated reduction in injuries, monetary value at 50% effectiveness | Estimated reduction in fatalities, monetary value at 50% effectiveness | Total value of reductions in injuries and fatalities |
|-----------|--|---|--|--|--|
| 1 | \$301,389 | \$5,605,832 | \$2,802,916 | \$941,840 | \$3,744,756 |
| 2 | 304,945 | 5,671,981 | 2,835,991 | 952,954 | 3,788,944 |
| 3 | 308,544 | 5,738,910 | 2,869,455 | 964,199 | 3,833,654 |
| 4 | 312,184 | 5,806,630 | 2,903,315 | 975,576 | 3,878,891 |
| 5 | 315,868 | 5,875,148 | 2,937,574 | 987,088 | 3,924,662 |
| 6 | 319,595 | 5,944,475 | 2,972,237 | 998,736 | 3,970,973 |
| 7 | 323,367 | 6,014,619 | 3,007,310 | 1,010,521 | 4,017,830 |
| 8 | 327,182 | 6,085,592 | 3,042,796 | 1,022,445 | 4,065,241 |

TABLE—BENEFITS SUMMARY—Continued

| Rule year | (VSL=\$9.2 million) AIS level dollar value | Estimated reduction in injuries, monetary value | Estimated reduction in injuries, monetary value at 50% effectiveness | Estimated reduction in fatalities, mone- tary value at 50% effectiveness | Total value of reductions in inju- ries and fatalities |
|--------------------|--|--|--|--|--|
| 9 | 331,043 | 6,157,402 | 3,078,701 | 1,034,510 | 4,113,211 |
| 10 | 334,949 | 6,230,059 | 3,115,030 | 1,046,717 | 4,161,747 |
| 11 | 338,902 | 6,303,574 | 3,151,787 | 1,059,068 | 4,210,855 |
| 12 | 342,901 | 6,377,956 | 3,188,978 | 1,071,565 | 4,260,543 |
| 13 | 346,947 | 6,453,216 | 3,226,608 | 1,084,210 | 4,310,818 |
| 14 | 351,041 | 6,529,364 | 3,264,682 | 1,097,003 | 4,361,685 |
| 15 | 355,183 | 6,606,410 | 3,303,205 | 1,109,948 | 4,413,153 |
| 16 | 359,375 | 6,684,366 | 3,342,183 | 1,123,045 | 4,465,228 |
| 17 | 363,615 | 6,763,242 | 3,381,621 | 1,136,297 | 4,517,918 |
| 18 | 367,906 | 6,843,048 | 3,421,524 | 1,149,706 | 4,571,230 |
| 19 | 372,247 | 6,923,796 | 3,461,898 | 1,163,272 | 4,625,170 |
| 20 | 376,640 | 7,005,497 | 3,502,748 | 1,176,999 | 4,679,747 |
| Total undiscounted | | | 62,810,558 | 21,105,698 | 83,916,257 |
| Total PV @7% | | | 32,423,683 | 10,895,055 | 43,318,737 |
| Total PV @3% | | | 46,189,262 | 15,520,585 | 61,709,847 |

Notes:

Average estimated reduction in injuries = 18.6 injuries per year.

Average estimated reduction in fatalities = 0.20 fatalities per year.

Average Abbreviated Injury Scale (AIS) level for door injuries = 1.67

Value of a Statistical Life (VSL) = \$9.2 million in base year 2013, increased at a rate of 1.18 percent annually, to equal \$9.4 million in rule year

- PV = Present Value.

B. Regulatory Flexibility Act and Executive Order 13272; Certification of No Significant Economic Impact on a Substantial Number of Small Entities

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must conduct an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a proposed rule does not have a significant economic impact on a substantial number of small entities. When an agency prepares a final rule, the agency needs to prepare a final regulatory flexibility analysis (FRFA), or if a FRFA is not prepared, the head of the agency must certify that the final rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 604(a) and 605(b).

FRA prepared an IRFA at the time the proposed passenger door rule was published in the **Federal Register**. FRA requested comment on potential small business impacts of the requirements in the proposed rule. No small entities submitted public comments, nor did anyone submit comments regarding the costs of the proposed rule on small entities.

However, stakeholders submitted four comments about the requirements in the NPRM. Sensotech, Inc. wanted FRA to consider Sensotech’s acoustic technology for a door safety system. In

response, FRA notes that it leaves the specific type of technologies used for door safety systems up to the discretion of the regulated entities. A regulated entity can choose the technology that is most cost-effective for its operations to comply with the final rule’s requirements. In its comment, SEPTA asked for an additional exception from § 238.135(b). Section 238.135(b) generally requires side and trap doors to remain closed as the train travels between stations. SEPTA has operational concerns with this requirement. Veolia also expressed concern about the same section of the rule. Veolia uses a procedure that requires a conductor to verify a signal indication at a particular location. In order to verify the signal indication, Veolia believes a conductor may have to open a door while the train is moving. Veolia asked for clarification about whether its procedure would violate § 238.135(b). For both commenters, FRA responds that there are exceptions in § 238.135(b) for crew observations of a station platform and for on-ground functions such as lining switches. Furthermore, if a railroad does not qualify for the exceptions in § 238.135(b), a railroad may apply for relief under § 238.135(c). Rather than create an additional permanent exception in the final rule, FRA believes that the process in § 238.135(c) is the appropriate way to consider exceptions. Finally, one anonymous person commented about hours of service

issues in the trucking industry and a Federal Motor Carrier Safety Administration proposal. Since the comment does not apply to this passenger door safety rulemaking, FRA is not addressing this comment in this final rule. The full text of the comments can be found in the public docket for this rulemaking on www.regulations.gov.

FRA made no changes in the final rule for these public comments but did revise the regulatory language in a few sections for clarity. Some clarifications for particular sections of the rule are discussed below.

In § 238.135(a) about the crew participating in daily safety/job briefings, FRA added language to clarify that the safety briefing must discuss safe operation of the doors for situations that the crew may encounter throughout the duty dour. For example, if there was work being done on a station platform so that a portion of the platform was not available, the crew would need to discuss safely operating the doors when arriving or departing that station. The regulatory analysis for the proposed rule assumed that job briefings currently cover the variety of door-related tasks that the crew performs, including safe door operations. Both the proposed and final rules add emphasis for the crew to be aware of safe door procedures, which will reasonably include discussing situations along their route that could affect door safety. This briefing could be combined with existing safety briefings

at minimal extra cost. No change is therefore made to the previous cost estimates in the proposed rule.

Section 238.135(c) was modified to make it explicit that FRA may request additional information from a railroad in support of its request to operate with the doors open in circumstances other than those allowed under § 238.135(b). FRA expects only a few railroads to make such a request, none of them small entities. In addition, the regulatory analysis accompanying the NPRM already allocated time for a substantive, well-documented request, minimizing the effort that would be needed to gather additional supporting documentation.

Sections 238.137(a) and (b) concern operation of trains with mixed equipment, such as cars with different door safety systems. In the final rule, FRA is clarifying the language to make it clear that railroads must not only adopt such rules, but comply with them. In the regulatory evaluation for the proposed rule, the costs for operating rules for mixed consist trains were accounted for along with the other operating rules. Thus, it was assumed that railroads would both adopt and comply with such rules. In addition, the regulatory evaluation could not claim benefits from the operating rules in terms of reduced injuries if the operating rules were not actually used. The compliance costs result from training crewmembers in the operating rules. These costs were already accounted for in the proposed regulatory evaluation and no change in this burden is made in the final regulatory evaluation.

In discussing changes to the final regulatory evaluation, the type of burdens accounted for remain primarily the same as in the proposed rule regulatory evaluation. However, after the proposed regulatory evaluation was published, DOT issued new guidance for the value of a statistical life that is used in estimating benefits. The guidance also updated the median growth rate in wages that affects the cost estimates. The costs and benefits have been revised in the final regulatory evaluation to reflect this new guidance. Also, the start of the period of analysis, *i.e.*, year 1, has been changed from 2014 to 2015 to reflect the passage of time since the proposed rule was published. These changes are explained in the final regulatory evaluation prepared to accompany the final rule.

The analysis to support that the final rule will not have a significant economic impact on a substantial number of small entities is presented after some information about the final rule to aid discussion.

1. Reasons for Considering Agency Action

As background, and as noted in the IRFA, the primary goal of this rulemaking is to improve the safety of passengers and employees on intercity passenger and commuter trains as they board and alight through the exterior side doors of passenger cars. For convenience, unless otherwise specified, “doors” in this analysis refers to the exterior side doors intended and normally used by passengers for boarding and alighting from the train. For most train operations, passengers use these doors getting on and off the train without incident. They generally take for granted that the doors will function safely. However, there have been some casualties that have occurred in the past, some of which had tragic consequences. These injuries and fatalities are unintended, harmful consequences to passengers and employees that have resulted from normal train operations.

Most passengers and employees have an expectation that the train exterior side doors will function safely when boarding and alighting from the train. Therefore, passengers and employees may not properly assess the potential safety risks of a door problem because door incidents are low-frequency, but potentially high-consequence events. Passengers and employees may not have all the necessary information about how a train’s exterior side doors will operate in case of a problem. This information gap affects the passengers’ interaction with the doors and the employees’ control of the doors. For example, passengers may assume passenger train exterior side doors will bounce back continuously when an obstruction prevents the doors from closing like most elevator doors do. However, not all passenger train cars are equipped with this safety feature. Additionally, employees might not know whether the exterior side doors on a train will open or close when there has been an interruption in power. Furthermore, for trains that use marker light switches to denote the end of the train, employees may not know that activating these switches at a point other than the physical end of the train will complete the trainline door circuit at that car. This situation would effectively leave the passenger cars after the car with the marker light switch on without any exterior side door safety features.

This final rule will improve railroad safety through regulatory language establishing new design requirements, and requirements for operating practices for the use of exterior side door safety

systems on passenger cars and connected locomotives. Specifically, this final rule incorporates by reference the standards for powered exterior side door safety systems on new passenger cars and connected door safety systems on new locomotives used in passenger service, from the APTA Standard PR-M-S-18-10 (“Standard for Powered Exterior Side Door System Design for New Passenger Cars”), discussed above.

2. Description of Regulated Entities

The “universe” of the entities considered generally includes only those small entities that can reasonably be expected to be directly regulated by this action. Small railroads that provide passenger service are the only types of small entities that may be affected directly by this final rule.

“Small entity” is defined in 5 U.S.C. 601(3) as having the same meaning as “small business concern” under section 3 of the Small Business Act. This definition includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is “for profit” may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Some passenger railroads use contractors to perform many different functions on their railroads. For some passenger railroads, contractors operate trains and perform other safety-related functions. The contract operators are typically large freight railroads, large transportation companies, or Amtrak (a Class I railroad), which perform primary operating and maintenance functions for the passenger railroads. For the purpose of assessing this final rule’s impact, the pertinent contractors are all larger contractors who perform primary operating and maintenance functions for the passenger railroads. Conversely, smaller contractors perform ancillary functions to the primary operations. The large transportation companies that are contractors are typically substantial private companies such as Herzog

Transit Services, Inc., or part of an international conglomerate such as Keolis S.A. Group or Veolia Environnement S.A. These international conglomerates have substantial multidisciplinary workforces and can perform most to all of the operating functions the passenger railroad requires.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified as appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

3. Railroads Impacted

All railroads that provide intercity, or commuter or other short-haul, passenger train service, as provided in 49 CFR 238.3 (Applicability), will have to comply with all the provisions in this final rule. However, the effort to comply with this final rule is commensurate with the size of the entity, the number of trains the entity operates, the number of employees the railroad employs, and the railroad’s current operating rules for the operation of its trains’ exterior side doors. Tourist, historic, and excursion railroads are exempt from this final rule. *See* 49 CFR 238.3.

For purposes of this analysis, there are two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation. Neither is considered a small entity. Amtrak is a Class I railroad and therefore not a small railroad. The Alaska Railroad is a Class II railroad and also not considered to be a small railroad per the definition of small entity in FRA’s published statement of agency policy referenced above. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000. Therefore, they are not considered small entities in this analysis.

In addition to the above intercity passenger railroads, there are currently 28 other railroads that provide passenger train service in the U.S. Most of these 28 railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. Therefore, most of these are not small entities.

However, two of these 28 railroads are considered small entities: The Saratoga & North Creek Railway (SNC), and the Hawkeye Express, which is operated by the Iowa Northern Railway Company (IANR). In 2011, Hawkeye Express transported approximately 5,000 passengers per game over a 7-mile round-trip distance to and from University of Iowa (University) football games. IANR owns and operates the six bi-level passenger cars used for this small passenger operation which runs on average only seven days over a calendar year. IANR has approximately 100 employees and is primarily a freight operation totaling 184,385 freight train miles in 2010. The Hawkeye Express service has a contractual arrangement with the University, a State of Iowa institution located in Iowa City, Iowa. The population of Iowa City is approximately 69,000. The SNC began operation in the summer of 2011 and currently provides intermittent passenger train service over a 57-mile line between Saratoga Springs and North Creek, New York, making seven station stops in between. The SNC is a Class III railroad (*i.e.*, below the \$20 million revenue threshold) and a limited liability company wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III railroad and a subsidiary of Permian Basin Railways, Inc. (Permian). Permian is in turn owned by Iowa Pacific Holdings, LLC (IPH). The SNC primarily transports passengers to Saratoga Springs, tourists seeking to sightsee along the Hudson River, and travelers connecting to and from Amtrak service. It also operates special events trains. The SNC is involved with the operation of passenger trains year round using conventional locomotives in the lead, typically pulling consists of passenger coaches and other cars such as baggage cars and dining cars. The SNC has about 37 total employees, including about 7 engineers and conductors that are responsible for safe door operations under this final rule.

Substantial Number of Small Entities

There are two railroads that are considered small entities for purposes of this analysis and together they comprise about 7 percent of the railroads

impacted directly by this regulation. Thus, 7 percent of the impacted railroads could be considered to be a substantial number of small entities. However, these two small entities represent a much smaller portion of the total railroad industry impacted by this final rule. This is because of the small number of trains operated annually, or the small number of employees employed by these two railroads, or both.

No Significant Economic Impact

Some passenger railroads have voluntarily been in compliance with the requirements in this final rule for some time. FRA expects that most of the skills necessary to comply with the final rule are possessed by operating crew employees and recordkeeping and reporting personnel. For the affected small entities, the additional burden of the requirements is marginal. The nature of the operations of these two small entities indicates lower over-all costs to these railroads. The Hawkeye Express has a very limited operation in the number of days the railroad operates, the low number of cars (6 bi-level cars), and the total trips made by its trains. As a result, the costs for almost all of the final rule’s burdens on the Hawkeye Express are low.⁵ The SNC operates more trains and for more days than the Hawkeye Express, but has a low number of cars and limited number of trips. This type of operation will keep the costs from the final rule’s requirements low. And, as discussed further below, the requirements applicable to purchasing new cars and locomotives do not have any impact on these two small entities because they do not purchase or order new passenger cars or passenger locomotives.

There are reporting, recordkeeping, and compliance burdens associated with this regulation. FRA estimates that the total cost of the final rule for the railroad industry over a 20-year period will be \$15.2 million (undiscounted)—\$8.3 million (discounted at 7 percent), or \$11.5 million (discounted at 3 percent). Based on information currently available, FRA estimates that 1 percent or less of the total railroad costs associated with implementing the final rule will be borne by small entities. FRA estimates that the approximate total cost for small railroads for the 20-year period could range between \$75,000 and \$151,000 (undiscounted) depending on discount rates and the

⁵ In addition, the Hawkeye Express provides service under contract to a State institution (*i.e.*, the University). It may be able to pass some or all of the compliance cost on to that institution.

extent of costs relative to larger railroads. FRA estimates impacts on these two railroads annually could range on average between \$950 and \$1900 to comply with the final rule. The cost to these two small entities will be considerably less on average than that of the other 28 railroads. FRA reasonably believes this will not be a significant economic burden. For a thorough presentation of cost estimates please refer to the regulatory evaluation, which is in the docket for this rulemaking.

Turning now to the economic impacts of specific provisions of the final rule, the regulatory evaluation estimates that the requirements in § 238.133(a) (crewmember door by-pass verification) are the largest cost for railroads, accounting for about two-thirds of total discounted costs. Section 238.133(a) requires verifying that the by-pass devices to override the door safety features are sealed in the normal, non-by-pass mode. The related provision in § 238.133(b) requires by-pass devices that are found unsealed to be reported and has conditions for replacing the seal; it accounts for about 3 percent of costs. However, neither the Hawkeye Express nor SNC operates trains that use by-pass devices, and would therefore have no costs associated with this requirement.

The second most costly provision, accounting for about 16 percent of costs, is § 238.131, which implements door safety standards for new passenger cars and connected locomotives, including the industry APTA Standard. These requirements also do not impact these two small entities because they do not purchase or order new passenger cars or passenger locomotives. In fact, Hawkeye Express' operator owns the cars and locomotives. Due to the limited operations of both entities, and other factors, it is unlikely that these entities will purchase new passenger cars anytime in the near future. In addition, for all railroads, § 238.131 applies to new rail passenger cars and connected locomotives used in passenger service that are ordered on or after 120 days after the date this rule is published in the **Federal Register**, or placed into service for the first time on or after 790 days after the date the rule is published in the **Federal Register**. This time period gives the railroads sufficient time to reach compliance.

For § 238.135, the costs will vary for these two entities. For paragraph (b) of § 238.135, which generally requires exterior side doors and trap doors to be closed when the train is moving between stations, FRA does not anticipate any cost to these small entities because both railroads currently

operate with their trains' exterior side doors closed between train stations.

Paragraphs (d) and (f) of § 238.135 are focused on the railroads having sufficient operating rules to ensure the safe operation of their trains' exterior side passenger doors. Paragraph (e) requires the passenger train crewmembers to be trained on the requirements of the section (*i.e.*, § 238.135), and paragraph (g) requires corresponding operational testing to demonstrate the crewmembers' and control center personnel's knowledge of the door operating rules. Likewise, paragraphs (a) and (b) of § 238.137 require railroads to adopt and comply with operating rules to provide for the safe use of equipment with incompatible exterior side door systems when utilized in a mixed consist. For most railroads some of these requirements will be new burdens with associated costs. Railroads will have to review their existing operating rules and training plans. However, crewmembers responsible for door operations (*i.e.*, the engineer and conductor) would have received some training on door operations as part of their professional training and certification programs. Moreover, § 238.137 would not apply to most railroads because most railroads do not operate mixed consists.⁶ Thus, the economic burdens for § 238.135(b) through (g), as well as § 238.137(a) and (b), depend on whether the railroads' current operating rules already include the door operation requirements in the final rule and whether they operate mixed consists.

The door safety features and their associated operating rules in the final rule are not new or novel procedures, but currently exist. All larger-volume passenger service railroads have some door operating rules; the smaller railroads may have less extensive door operating rules corresponding to the fewer types of equipment they run. In addition, for § 238.135(d) through (g), and § 238.137(b), FRA is giving railroads 1,095 days (3 years) after the date of publication of the final rule in the **Federal Register** to comply (or begin to comply, for § 238.135(g)). Lastly, the cost of all these requirements for small business entities is estimated to be less than two percent of the total cost of the final rule.

Market and Competition Considerations.

The railroad industry has several significant barriers to entry, such as the need to own or otherwise obtain access to rights-of-way and the high capital

expenditure needed to purchase a fleet, as well as track and equipment. Furthermore, the two railroads under consideration only compete with individual automobile traffic and serve to reduce congestion on roadways. One of the two entities, Hawkeye Express, transports passengers to a stadium from distant parking lots. The SNC provides passenger train service to tourist and other destinations between Sarasota Springs and North Creek, New York. FRA is not aware of any bus service that currently exists that competes with either of these railroads. Thus, while this final rule will have an economic impact on all passenger railroads, it will not have an impact on the competitive position of small railroads.

4. Certification

Pursuant to the RFA, FRA prepared and made available for public comment an initial regulatory flexibility analysis describing the impacts of the proposed rule on small entities (5 U.S.C. 603(a)). FRA did not receive any comments from small entities or comments regarding the economic impact on small entities. FRA does not expect the final rule to have a significant economic impact on a substantial number of small entities. Therefore, in lieu of preparing a final regulatory flexibility analysis, FRA will certify the final rule per section 605 of the RFA.

This final rule directly affects all railroads that provide intercity, or commuter or short-haul, passenger train service, of which there are currently 30 for purposes of this analysis (two intercity passenger railroads and 28 other railroads that provide passenger train service). FRA estimates that two of these railroads, or about 7 percent, are small entities. Therefore, this final rule will have an impact on a substantial number of small entities. FRA notes that these entities operate a small number of trains annually and employ a small number of crewmembers responsible for safe exterior side door operations.

However, FRA has determined that the economic impact on entities affected by the final rule will not be significant. The impact of the most burdensome requirement, to verify that by-pass devices are in the normal position and sealed, does not affect these entities because they do not run trains that use by-pass devices. The second most burdensome provision, requiring certain door safety features on new passenger cars and connected locomotives used in passenger service, will also not affect these entities as they are not expected to order new passenger equipment. In addition, the final rule allows additional time to meet these requirements. The

⁶ For example, FRA observed that MARC and MBTA operated mixed consists.

other requirements of the final rule are about adopting and complying with safe door operating rules, and training crewmembers on these door operating rules. The impact of these operating rules will depend on the nature of a railroad's passenger operations. The two small entities have limited numbers of employees and train operations per year to which this rule will apply. Also, the final rule provides flexibility in meeting these requirements by giving railroads

up to three years after the publication of the final rule to adopt and comply with these operating rules and training requirements. Therefore, FRA believes that the economic impact of these operating rules and training requirements will be minimal. Accordingly, the Administrator of the FRA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this final rule for review and approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|-------------------------------|---------------------------|---------------------------|---------------------------|
| 229.47—Emergency brake valve—Marking brake pipe valve as such. | 30 railroads | 30 markings | 1 minute | 1 hour. |
| —DMU, MU, control cab locomotives—Marking emergency brake valve as such. | 30 railroads | 5 markings | 1 minute | .08 hour. |
| 238.7—Waivers | 30 railroads | 5 waivers | 2 hours | 10 hours. |
| 238.15—Movement of passenger equipment with power brake defect. | 30 railroads | 1,000 tags | 3 minutes | 50 hours. |
| —Movement of passenger equipment—Defective en route. | 30 railroads | 288 tags | 3 minutes | 14 hours. |
| —Conditional requirement—Notifications | 30 railroads | 144 notices | 3 minutes | 7 hours. |
| 238.17—Limitations on movement of passenger equipment—Defects found at calendar day insp. & on movement of passenger equipment—Develops defects en route. | 30 railroads | 200 tags | 3 minutes | 10 hours. |
| —Special requisites—Movement—Passenger equip.—Saf. appl. defect. | 30 railroads | 76 tags | 3 minutes | 4 hours. |
| —Crew member notifications | 30 railroads | 38 radio notifications .. | 30 seconds | .32 hour. |
| 238.21—Petitions for special approval of alternative standards. | 30 railroads | 1 petition | 16 hours | 16 hours. |
| —Petitions for special approval of alternative compliance. | 30 railroads | 1 petition | 120 hours | 120 hours. |
| —Petitions for special approval of pre-revenue service acceptance testing plan. | 30 railroads | 10 petitions | 40 hours | 400 hours. |
| —Comments on petitions | Public/RR Industry | 4 comments | 1 hour | 4 hours. |
| 238.103—Fire safety: | | | | |
| —Procuring new pass. equipment—Fire safety analysis. | 2 new railroads | 2 analyses | 150 hours | 300 hours. |
| —Existing equipment—Final fire safety analysis. | 30 railroads | 1 analysis | 40 hours | 40 hours. |
| —Transferring existing equipment—Revised fire safety analysis. | 30 railroads/APTA | 3 analyses | 20 hours | 60 hours. |
| 238.107—Inspection/testing/maintenance plans—Review by railroads. | 30 railroads | 12 reviews | 60 hours | 720 hours. |
| 238.109—Employee/contractor training—Training employees—Mechanical inspection. | 7,500 employees/100 trainers. | 2,500 empl./100 trainers. | 1.33 hours | 3,458 hours. |
| —Recordkeeping—Employee/Contractor Current Qualifications. | 30 railroads | 2,500 records | 3 minutes | 125 hours. |
| 238.111—Pre-revenue service acceptance testing plan: Passenger equipment that has previously been used in service in the U.S. | 9 equipment manufacturers. | 2 plans | 16 hours | 32 hours. |
| —Passenger equipment that has not been previously used in revenue service in the U.S. | 9 equipment manufacturers. | 2 plans | 192 hours | 384 hours. |
| —Subsequent equipment orders | 9 equipment manufacturers. | 2 plans | 60 hours | 120 hours. |
| 238.131—New passenger equipment w/exterior side doors—FMECA analysis for door safety system (New Requirement). | 6 equipment manufacturers. | 3 FMECAs | 4 hours | 12 hours. |
| 238.133—Exterior side door safety systems—Functional test plan (New Requirement). | 28 railroads | 30 plans | 4 hours | 120 hours. |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|-----------------------|--|--|--|
| —Unsealed door bypass device—Crew-member notification to designated authority of unsealed door by-pass device. | 28 railroads | 9,994 notifications | 30 seconds | 84 hours. |
| —Train crew safety briefing after activation of door by-pass device. | 28 railroads | 300 briefings | 2 minutes | 10 hours. |
| —Train crew notification to designated authority. | 28 railroads | 300 notices | 30 seconds | 3 hours. |
| —Qualified person (QP) or qualified mechanical person (QMP) determination that repairs cannot be made and that it is safe to move equipment. | 28 railroads | 300 decisions\consults | 5 minutes | 25 hours. |
| —QP or QMP notification to train crew member in charge of train movement that door by-pass device has been activated. | 28 railroads | 300 notices | 30 seconds | 3 hours. |
| —Train crew safety briefing—regarding their position on train. | 28 railroads | 300 briefings | 10 minutes | 50 hours. |
| —Record of door by-pass activation | 28 railroads | 300 records | 2 minutes | 10 hours. |
| —Record of unintended door opening ... | 28 railroads | 20 records | 2 hours | 40 hours. |
| —Record of unsealed door by-pass devices as part of calendar day inspection. | 28 railroads | 20 records | 4 hours | 80 hours. |
| 238.135—Operating practices for exterior side door safety systems (New Requirements)—RR request for special approval from FRA to operate passenger train w/exterior side doors or trap doors, or both, open. | 28 railroads | 2 requests | 25 hours | 50 hours. |
| —FRA request to passenger RR for additional information regarding RR special request for approval. | 28 railroads | 1 document | 12 hours | 12 hours. |
| —RR written operating rule on how to safely override a door summary circuit or no-motion system, or both. | 28 railroads | 10 operating rules | 42 hours | 420 hours. |
| —Copy of RR written operating rules to employees. | 28 railroads | 10,000 copies | 1 minute | 167 hours. |
| —RR employee training in this section's requirements and how to identify/isolate malfunctioning exterior powered or manual side door. | 28 railroads | 3,383 tr. employees ... | 30 minutes | 1,692 hours. |
| —Training of new RR employees | 5 new railroads | 150 workers | 30 minutes | 75 hours. |
| —Operational/efficiency tests of RR operating crewmembers and control center employees. | 28 railroads | 3,383 tests | 2 minutes | 113 hours. |
| —RR operating rule requiring train crewmembers to determine status of their train's exterior side doors. | 28 railroads | Included above under section 238.135(d). | Included above under sec. 238.135(d). | Included above under sec. 238.135(d). |
| 238.137—RR operating rule to provide for the safe use of equipment with incompatible exterior side door systems when used in a mixed consist (New Requirement). | 10 railroads | Included above under section 238.135(d). | Included above under section 238.135(d). | Included above under section 238.135(d). |
| 238.213—Corner posts—Plan to meet section's corner post requirements for cab car or MU locomotives. | 30 railroads | 10 plans | 40 hours | 400 hours. |
| 238.229—Safety appliances: | | | | |
| —Welded safety appliances considered defective: Lists. | 30 railroads | 30 lists | 1 hour | 30 hours. |
| —Lists identifying equip. w/welded safety appliances. | 30 railroads | 30 lists | 1 hour | 30 hours. |
| —Defective welded safety appliances—tags. | 30 railroads | 4 tags | 3 minutes | .20 hr. |
| —Notification to crewmembers about non-compliant equipment. | 30 railroads | 2 notices | 1 minute | .0333 hr. |
| —Inspection plans | 30 railroads | 30 plans | 16 hours | 480 hours. |
| —Inspection personnel—training | 30 railroads | 60 workers | 4 hours | 240 hours. |
| —Remedial action: Defect/crack in weld—record. | 30 railroads | 1 record | 2.25 hours | 2 hours. |
| —Petitions for special approval of alternative compliance—impractical equipment design. | 30 railroads | 15 petitions | 4 hours | 60 hours. |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|--|---------------------|-------------------------|---------------------------|---------------------------|
| —Records of inspection/repair of welded safety appliance brackets/supports/training. | 30 railroads | 3,060 records | 12 minutes | 612 hours. |
| 238.230—Safety appliances—New equipment—Inspection record of welded equipment by qualified employee. | 30 railroads | 100 records | 6 minutes | 10 hours. |
| —Welded safety appliances: Documentation for equipment impractically designed to mechanically fasten safety appliance support. | 30 railroads | 15 document | 4 hours | 60 hours. |
| 238.231—Brake system—Inspection and repair of hand/parking brake: Records. | 30 railroads | 2,500 forms | 21 minutes | 875 hours. |
| —Procedures verifying hold of hand/parking brakes. | 30 railroads | 30 procedures | 2 hours | 60 hours. |
| 238.237—Automated monitoring: | | | | |
| —Documentation for alerter/deadman control timing. | 30 railroads | 3 documents | 2 hours | 6 hours. |
| —Defective alerter/deadman control: Tagging. | 30 railroads | 25 tags | 3 minutes | 1 hour. |
| 238.303—Exterior calendar day mechanical inspection of passenger equipment: Notice of previous inspection. | 30 railroads | 25 notices | 1 minute | 1 hour. |
| —Dynamic brakes not in operating mode: Tag. | 30 railroads | 50 tags | 3 minutes | 3 hours. |
| —Conventional locomotives equipped with inoperative dynamic brakes: Tagging. | 30 railroads | 50 tags | 3 minutes | 3 hours. |
| —MU passenger equipment found with inoperative/ineffective air compressors at exterior calendar day inspection: Documents. | 30 railroads | 4 documents | 2 hours | 8 hours. |
| —Written notice to train crew about inoperative/ineffective air compressors. | 30 railroads | 100 notices | 3 minutes | 5 hours. |
| —Records of inoperative air compressors. | 30 railroads | 100 records | 2 minutes | 3 hours. |
| —Record of exterior calendar day mechanical inspection. | 30 railroads | 1,959,620 records | 10 minutes + 1 minute | 359,264 hours. |
| 238.305—Interior calendar day mechanical inspection of passenger cars—Tagging of defective end/side doors. | 30 railroads | 540 tags | 1 minute | 9 hours. |
| —Records of interior calendar day inspection. | 30 railroads | 1,968,980 records | 5 minutes + 1 minute | 196,898 hours. |
| 238.307—Periodic mechanical inspection of passenger cars and unpowered vehicles—Alternative inspection intervals: Notifications. | 30 railroads | 2 notices/notifications | 5 hours | 10 hours. |
| —Notice of seats/seat attachments broken or loose. | 30 railroads | 200 notices | 2 minutes | 7 hours. |
| —Records of each periodic mechanical inspection. | 30 railroads | 19,284 records | 200 hours/2 minutes .. | 3,857,443 hours. |
| —Detailed documentation of reliability assessments as basis for alternative inspection interval. | 30 railroads | 5 documents | 100 hours | 500 hours. |
| 238.311—Single car test—Tagging to indicate need for single car test. | 30 railroads | 50 tags | 3 minutes | 3 hours. |
| 238.313—Class I brake test—Record for additional inspection for passenger equipment that does not comply with § 238.231(b)(1). | 30 railroads | 15,600 records | 30 minutes | 7,800 hours. |
| 238.315—Class IA brake test: | | | | |
| —Notice to train crew that test has been performed (verbal notice). | 30 railroads | 18,250 notices | 5 seconds | 25 hours. |
| —Communicating signal tested and operating. | 30 railroads | 365,000 tests | 15 seconds | 1,521 hours. |
| 238.317—Class II brake test—Communicating signal tested and operating. | 30 railroads | 365,000 tests | 15 seconds | 1,521 hours. |
| 238.321—Out-of-service credit—Passenger car: Out-of-use notation. | 30 railroads | 1,250 notes | 2 minutes | 42 hours. |
| 238.445—Automated monitoring: | | | | |
| —Performance monitoring: Alerters/alarms. | 1 railroad | 10,000 alerts | 10 seconds | 28 hours. |
| —Monitoring system: Self-test feature: Notifications. | 1 railroad | 21,900 notices | 20 seconds | 122 hours. |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---------------------|------------------------|---------------------------|---------------------------|
| 238.503—Inspection, testing, and maintenance requirements—Plans. | 1 railroad | 1 plan | 1,200 hours | 1,200 hours. |
| 238.505—Program approval procedures—Submission of program/plans and comments on programs. | Rail Industry | 3 comments | 3 hours | 9 hours. |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, FRA, at 202-493-6292, or Ms. Kimberly Toone, Records Management Officer, Office of Information Technology, FRA, at 202-493-6132, or via email at the following addresses: *Robert.Brogan@dot.gov*; *Kim.Toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should send them directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oir_submissions@omb.eop.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to

include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, an agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule under the principles and criteria in Executive Order 13132. This final rule will not have a substantial effect on States or their political subdivisions, and it will not affect the relationships between the Federal government and States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. In addition, FRA determined this regulatory action will not impose substantial direct compliance costs on States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22-34, repealed and recodified at 49 U.S.C. 20701-20703. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of

Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “essentially local safety or security hazard” exception to section 20106. Moreover, the Supreme Court has interpreted the former LIA to preempt the field of locomotive safety. *See Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605 (1926).

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design or system.

F. Environmental Impact

FRA has evaluated this final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999). FRA has determined this final rule is categorically excluded from detailed environmental review under section 4(c)(20) of FRA’s NEPA Procedures, “Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.” *See* 64 FR

28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA's Procedures, FRA has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to develop and install safer door operating mechanisms and procedures including testing and notification requirements. FRA does not anticipate any environmental impacts from these requirements and finds that there are no extraordinary circumstances present in connection with this final rule.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule under the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This final rule will not have a substantial direct effect on

one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

I. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics, the equivalent value of \$100,000,000 in year 2014 dollars is \$155,000,000.⁷ This final rule will not result in the expenditure, in the aggregate, of \$155,000,000 or more in any one year, and thus preparation of such a statement is not required.

J. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry,

⁷ See DOT guidance "2015 Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995," May 6, 2015 (update), available electronically at <http://www.transportation.gov/office-policy/transportation-policy/2015-threshold-significant-regulatory-actions-under-unfunded>.

advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA has evaluated this final rule under Executive Order 13211. FRA determined this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

K. Privacy Act

Consistent 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.

L. Analysis Under 1 CFR Part 51

As required by 1 CFR 51.5, FRA has summarized the standard incorporated by reference and shown its reasonable availability in the section-by-section analysis of this rulemaking document.

List of Subjects in 49 CFR Part 238

Incorporation by reference, Passenger equipment, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends part 238 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 238—[AMENDED]

■ 1. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Section 238.5 is amended by adding in alphabetical order definitions of "Bypass", "Door isolation lock", "Door summary circuit", "End-of-train circuit", "Exterior side door safety system", "No-motion system", and "Trainline door circuit" to read as follows:

§ 238.5 Definitions.

* * * * *

By-pass means a device designed to override a function.

* * * * *

Door isolation lock means a cutout/lockout mechanism installed at each exterior side door panel to secure a door in the closed and latched position, provide a door-closed indication to the summary circuit, and remove power from the door motor or door motor controls.

Door summary circuit means a trainline door circuit that provides an indication to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both.

* * * * *

End-of-train circuit means a feature typically used to determine the physical end of the train, or the last passenger car in the train, or both, for the door summary circuit.

* * * * *

Exterior side door safety system means a system of safety features that enable the safe operation of the exterior side doors of a passenger car or train. The exterior side door safety system includes appurtenances and components that control, operate, and display the status of the exterior side doors, and is interlocked with the train's traction power control.

* * * * *

No-motion system means a system on a train that detects the motion of the train.

* * * * *

Trainline door circuit means a circuit used to convey door signals over the length of a train.

* * * * *

Subpart B—Safety Planning and General Requirements

■ 3. Section 238.131 is added to subpart B to read as follows:

§ 238.131 Exterior side door safety systems—new passenger cars and locomotives used in passenger service.

(a) *Safety systems for powered exterior side doors.* All powered exterior side door safety systems in passenger cars, and connected door safety systems in locomotives used in passenger service, that are ordered on or after April 5, 2016, or placed in service for the first time on or after February 5, 2018, shall:

(1) Be built in accordance with APTA standard PR-M-S-18-10, “Standard for Powered Exterior Side Door System Design for New Passenger Cars,”

approved February 11, 2011. In particular, locomotives used in passenger service shall be connected or interlocked with the door summary circuit to prohibit the train from developing tractive power if an exterior side door in a passenger car is not closed, unless the door is under the direct physical control of a crewmember for his or her exclusive use. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Suite 1100, Washington, DC 20006 (telephone 202-496-4800; www.apta.com). You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html;

(2) Be designed based on a Failure Modes, Effects, Criticality Analysis (FMECA);

(3) Contain an obstruction detection system sufficient to detect and react to both small and large obstructions and allow the obstruction to be released when detected;

(4) Be designed so that activation of a door by-pass feature does not affect the operation of the obstruction detection system;

(5) Require a door control panel key or other secure device to activate a door control panel;

(6) Not be operated from a door control panel when the door control panel key or other secure device is removed; and

(7) Not be affected by the movement or position of the locomotive throttle. A train's throttle position shall neither open nor close the exterior side doors on the train.

(b) *Safety system for manual and powered exterior side doors.* All manual and powered exterior side door systems in passenger cars, and connected door safety systems in locomotives used in passenger service, that are ordered on or after April 5, 2016, or placed in service for the first time on or after February 5, 2018 shall be:

(1) Designed with a door summary circuit and so connected or interlocked as to prohibit the train from developing tractive power if an exterior side door in a passenger car is not closed, unless the

door is under the direct physical control of a crewmember for his or her exclusive use;

(2) Connected to interior and exterior side door status indicators;

(3) Connected to a door summary status indicator that is readily viewable to the engineer from his or her normal position in the operating cab; and

(4) If equipped with a door by-pass device, designed so that the by-pass device functions only when activated from the operating cab of the train.

(c) *Additional requirements.* In addition to the requirements of this section, requirements related to exterior side door safety on passenger trains are provided in §§ 238.112, 238.133, 238.135, 238.137, and 238.439.

■ 4. Section 238.133 is added to subpart B to read as follows:

§ 238.133 Exterior side door safety systems—all passenger cars and locomotives used in a passenger service.

(a) *By-pass device verification—(1) Visual inspection.* Except as provided in paragraphs (a)(2) and (3) of this section, a member of the crew of each passenger train must verify by observation that all door by-pass devices that can affect the safe operation of the train are sealed in the normal (non-by-pass) position when taking control of the train.

(2) *Functional test.* Instead of a visual inspection of the door by-pass devices, the railroad may develop a plan to perform a functional test to determine that the door summary status indicator is functioning as intended. The functional test plan shall be made available for inspection by FRA.

(3) *Face-to-face relief.* Crewmembers taking control of a train do not need to perform either a visual inspection or a functional test of the door by-pass devices in cases of face-to-face relief of another train crew and notification by that crew as to the functioning of the door by-pass devices.

(b) *Unsealed door by-pass device.* A crewmember must notify the railroad's designated authority pursuant to the railroad's defect reporting system if a door by-pass device that could affect the safe operation of the train is found unsealed during the train's daily operation. If the train crew can test the door safety system and determine that the door summary status indicator is functioning as intended, the train may travel in service until the next forward repair point where a seal can be applied by a qualified maintenance person (QMP) or until its next calendar day inspection, whichever occurs first; if not, the train crew must follow the procedures outlined in paragraph (c) of this section.

(c) *En route failure.* If it becomes necessary to activate a door by-pass device, the train may continue to its destination terminal, provided that the train crew conducts a safety briefing that includes a description of the location(s) where crewmembers will position themselves on the train in order to observe the boarding and alighting of passengers, notifies the railroad's designated authority that the train's door by-pass device has been activated, and adheres to the operating rules required by § 238.135. After the train has reached its destination terminal, the train may continue in passenger service until its arrival at the next forward repair point or its next calendar day inspection, whichever occurs first, provided that prior to movement of equipment with a door by-pass device activated:

(1) An on-site QMP shall determine that repairs cannot be made at the time and it is safe to move the equipment in passenger service. If a QMP is not available on site, these determinations may be made based upon a description of the condition provided by an on-site qualified person (QP) to a QMP offsite; and

(2) The QP or QMP shall notify the crewmember in charge of the movement of the train that the door by-pass device has been activated. The train crew must then hold a safety briefing that includes information such as the locations where each crewmember will position himself or herself on the train to ensure that passengers board and alight from the train safely.

(d) *Records.* The railroad shall maintain a record of each door by-pass activation and each unintended opening of a powered exterior side door, including any repair(s) made, in the defect tracking system as required by § 238.19.

(e) *Door control panels.* Exterior side doors shall not be capable of operation from a door control panel when the key or other similar device is removed.

(f) *End-of-train circuit.* End-of-train circuit integrity shall be maintained. When switches are used to establish the end-of-train circuit, the switches shall be secured in a manner to prevent access by unauthorized personnel.

(g) *Exterior side door safety system override devices.* (1) Exterior side door safety system override devices that can adversely affect the train's door safety system must be inactive and sealed in all passenger cars and locomotives in the train consist, including cab cars and MU locomotives, if they are so equipped.

(2) As part of the equipment's calendar day inspection, all exterior

side door safety system override devices must be inactive and sealed in all passenger cars and all locomotives in the train consist, including cab cars and MU locomotives, if they are so equipped.

■ 5. Section 238.135 is added to subpart B to read as follows:

§ 238.135 Operating practices for exterior side door safety systems.

(a) At the beginning of his or her duty assignment prior to the train's departure, each crewmember must participate in a safety briefing that identifies each crewmember's responsibilities relating to the safe operation of the train's exterior side doors, including responsibilities for the safe operation of the exterior side doors when arriving at or departing a station.

(b) After April 5, 2016, all passenger train exterior side doors and trap doors must be closed when a train is in motion between stations except when:

(1) The train is departing or arriving at a station if:

(i) A crewmember needs to observe the station platform; and
(ii) The open door is attended by the crewmember; or

(2) A crewmember must perform on-ground functions, such as, but not limited to, lining switches, making up or splitting the train, providing crossing protection, or inspecting the train.

(c)(1) Except as provided in paragraph (b) of this section, passenger railroads must receive special approval from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to operate passenger trains with exterior side doors or trap doors, or both, open between stations.

(2) Any request for special approval must include:

(i) A written justification explaining the need to operate a passenger train with its exterior side doors or trap doors, or both, open between stations; and

(ii) A detailed hazard analysis, including a description of specific measures to mitigate any added risk.

(3) The request must be signed by the chief executive officer (CEO), or equivalent, of the organization(s) making the request.

(4) FRA may request that the passenger railroad submit additional information to support its request before FRA approves the request.

(d) No later than December 6, 2018, each railroad shall adopt and comply with operating rules on how to safely override a door summary circuit or no-motion system, or both, in the event of an en route exterior side door failure or malfunction on a passenger train.

Railroads shall provide these written rules to their crewmembers and control center personnel and make them available for inspection by FRA. These written rules shall include:

(1) Instructions to crewmembers and control center personnel, describing what conditions must be present in order to override the door summary circuit or no-motion system, or both; and

(2) Steps crewmembers and control center personnel must take after the door summary circuit or no-motion system, or both, have been overridden to help provide for continued passenger safety.

(e) No later than December 6, 2018, each passenger train crewmember must be trained on:

(1) The requirements of this section; and

(2) How to identify and isolate equipment with a malfunctioning exterior powered or manual side door.

(f) No later than December 6, 2018, each railroad shall adopt and comply with operating rules requiring train crewmembers to determine the status of their train's exterior side doors so that their train may safely depart a station. These rules shall require crewmembers to determine that there are no obstructions in their train's exterior side doors before the train departs.

(g) Beginning December 6, 2018, each railroad shall periodically conduct operational (efficiency) tests and observations of its operating crewmembers and control center personnel as appropriate to their roles, to determine each individual's knowledge of the railroad's powered and manual exterior side door safety procedures for its passenger trains.

■ 6. Section 238.137 is added to subpart B to read as follows:

§ 238.137 Mixed consist; operating equipment with incompatible exterior side door systems.

(a) A train made up of equipment with incompatible exterior side door systems shall be operated within the constraints of each such door system.

(b) No later than December 6, 2018, each railroad shall adopt and comply with operating rules to provide for the safe use of equipment with incompatible exterior side door systems when utilized in a mixed consist.

■ 7. Appendix A to part 238 is amended by adding entries for §§ 238.131, 238.133, 238.135, and 238.137 in numerical order under subpart B to read as follows:

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES ^{1 2}

| Section | Violation | Willful violation |
|---|-----------|-------------------|
| Subpart B—Safety Planning and General Requirements | | |
| * | * | * |
| 238.131 Exterior side door safety systems—new passenger cars and locomotives used in passenger service .. | 10,000 | 15,000 |
| 238.133 Exterior side door safety systems—all passenger cars and locomotives used in a passenger service: | | |
| (a)(1) Failure to verify position of by-pass device or by-pass device not sealed | 2,500 | 5,000 |
| (a)(2) Failure to provide functional test plan | 5,000 | 7,500 |
| (a)(3) Failure to perform visual inspection or functional test | 2,500 | 5,000 |
| (b) Unsealed door by-pass device: | | |
| (b)(1) Door by-pass device not inactive, sealed, or seal ineffective | 2,500 | 5,000 |
| (b)(2) Failure to notify designated authority | 5,000 | 7,500 |
| (b)(3) Movement beyond repair point | 7,500 | 11,000 |
| (b)(4) Door by-pass device not sealed by QMP at calendar day inspection | 2,500 | 5,000 |
| (c)(1) Failure to follow en route by-pass activation procedures; improper movement of defective equipment | 7,500 | 11,000 |
| (c)(2) Failure to use QMP | 5,000 | 7,500 |
| (d) Failure to maintain record | 2,000 | 4,000 |
| (e) Door control panel not inactive when the key or other similar device is removed | 5,000 | 7,500 |
| (f) End-of-train circuit: | | |
| (f)(1) End-of-train circuit integrity not maintained | 5,000 | 7,500 |
| (f)(2) Switches not secured to prevent unauthorized access | 2,500 | 5,000 |
| (g) Door by-pass device not inactive, sealed or seal ineffective | 2,500 | 5,000 |
| 238.135 Operating practices for exterior side door safety systems: | | |
| (a) Failure to conduct proper safety briefing | 7,500 | 11,000 |
| (b)(1) Exterior side doors and trap doors not closed when a train is in motion between stations | 10,000 | 15,000 |
| (b)(2) Failure to follow conditions for operating a train while in motion between stations with an exterior side door or trap door open | 10,000 | 15,000 |
| (d) Failure to adopt and comply with operating rules on how to safely override a door summary circuit or no-motion system | 9,500 | 13,000 |
| (e) Failure to provide training | 9,500 | 13,000 |
| (f) Failure to adopt and comply with operating rules requiring crewmembers to determine the status of the train's exterior side doors | 9,500 | 13,000 |
| (g) Failure to periodically conduct operational (efficiency) tests and observations | 9,500 | 13,000 |
| 238.137 Mixed consist; operating equipment with incompatible exterior side door systems: | | |
| (a) Incompatible exterior side door systems not operated within the constraints of each door safety system | 5,000 | 7,500 |
| (b) Failure to adopt and comply with operating rules to provide for the safe use of equipment with incompatible exterior side door systems when utilized in a mixed consist | 9,500 | 13,000 |
| * | * | * |

Issued in Washington, DC, on November 25, 2015.

Sarah Feinberg,
Administrator.

[FR Doc. 2015–30488 Filed 12–4–15; 8:45 am]

BILLING CODE 4910–06–P

¹ A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$16,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the

Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement.

Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition.

The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

² The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.



FEDERAL REGISTER

Vol. 80

Monday,

No. 234

December 7, 2015

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Aerospace Manufacturing and Rework
Facilities Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2014-0830; FRL-9936-64-OAR]

RIN 2060-AQ99

National Emission Standards for Aerospace Manufacturing and Rework Facilities Risk and Technology Review**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) and the rule review the Environmental Protection Agency (EPA) conducted for Aerospace Manufacturing and Rework Facilities under the national emissions standards for hazardous air pollutants (NESHAP). In this action, we are finalizing several amendments to the NESHAP based on the review of these standards. These final amendments add limitations to reduce organic and inorganic emissions of hazardous air pollutants (HAP) from specialty coating application operations; remove exemptions for periods of startup, shutdown and malfunction (SSM) so that affected units will be subject to the emission standards at all times; and revise provisions to address recordkeeping and reporting requirements applicable to periods of SSM. These final amendments include a requirement to report performance testing through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). This action also makes clarifications to the applicability, definitions, and compliance demonstration provisions, and other technical corrections. The EPA estimates that implementation of this rule will reduce annual HAP emissions by 58 tons.

DATES: This final action is effective on December 7, 2015.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2014-0830. All documents in this docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

<http://www.regulations.gov>, or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Kim Teal, Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5580; fax number: (919) 541-5450; and email address: teal.kim@epa.gov. For specific information regarding the risk modeling methodology, contact Ted Palma, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5470; fax number: (919) 541-0840; and email address: palma.ted@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact Patrick Yellin, Office of Enforcement and Compliance Assurance, (202) 564-2970, yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ADAF Age dependent adjustment factor
 ASTM American Society for Testing and Materials
 CAA Clean Air Act
 CARB California Air Resources Board
 CBI Confidential Business Information
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CFR Code of Federal Regulations
 CTG Control Technique Guideline
 DoD Department of Defense
 EPA Environmental Protection Agency
 ERT Electronic Reporting Tool
 FAA Federal Aviation Administration
 FR Federal Register
 g/L grams/liter
 HAP Hazardous air pollutants
 HCl Hydrochloric acid
 HF Hydrogen fluoride
 HI Hazard index
 HQ Hazard quotient
 HVLP High volume low pressure
 ICR Information collection request

km Kilometer
 lb/gal Pounds/gallon
 MACT Maximum achievable control technology
 MIR Maximum individual risk
 mm Hg Millimeters mercury
 NAAQS National Ambient Air Quality Standards
 NAICS North American Industry Classification System
 NASA National Aeronautics and Space Administration
 NESHAP National Emissions Standards for Hazardous Air Pollutants
 NRDC Natural Resources Defense Council
 NTTAA National Technology Transfer and Advancement Act
 OMB Office of Management and Budget
 PAH Polycyclic aromatic hydrocarbons
 PB-HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
 POM Polycyclic organic matter
 PRA Paperwork Reduction Act (PRA)
 RACT Reasonably Available Control Technology
 RCRA Resource Conservation and Recovery Act of 1976
 REL Reference exposure level
 RFA Regulatory Flexibility Act
 RfC Reference concentration
 RIA Regulatory impact analysis
 RTR Residual risk and technology review
 SIP State implementation plan
 S/L/T State, local, and tribal air pollution control agencies
 SSM Startup, shutdown and malfunction
 TOSHI Target organ-specific hazard index
 tpy Tons per year
 TTN Technology Transfer Network
 UMRA Unfunded Mandates Reform Act
 URE Unit risk estimate
 VCS Voluntary consensus standard
 VOC Volatile organic compounds

Background information. On February 17, 2015 (80 FR 8392), the EPA proposed revisions to the Aerospace Manufacturing and Rework Facilities NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for this rule. We summarize some of the more significant comments that were timely received regarding the proposed rule and we have provided our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the response to comments document titled, *National Emissions Standards for Hazardous Air Pollutants: Aerospace Manufacturing and Rework Facilities (Risk and Technology Review)—Summary of Public Comments and Responses* (Docket ID No. EPA-HQ-OAR-2014-0830). The background information also includes discussion and technical analyses of other issues addressed in this final rule. A "track-changes" version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

- I. General Information
 - A. Does this action apply to me?
 - B. Where can I get a copy of this document and other related information?
 - C. Judicial Review and Administrative Reconsideration
- II. Background
 - A. What is the statutory authority for this action?
 - B. What is this source category and how does the current NESHAP regulate its HAP emissions?
 - C. What changes did we propose for the Aerospace Manufacturing and Rework Facilities source category in our February 17, 2015 RTR proposal?
- III. What is included in this final rule?
 - A. What are the final rule amendments based on the risk review for the Aerospace Manufacturing and Rework Facilities source category?
 - B. What are the final rule amendments based on the technology review for the Aerospace Manufacturing and Rework Facilities source category?
 - C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Aerospace Manufacturing and Rework Facilities source category?
 - D. What are the requirements during periods of startup, shutdown, and malfunction?
 - E. What other changes have been made to the NESHAP?
 - F. What are the effective and compliance dates of the standards?

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 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

| Source category | NESHAP | NAICS Code ^a |
|---|--|---|
| Aerospace Manufacturing and Rework Facilities | Aerospace Manufacturing and Rework Facilities. | 336411, 336412, 336413, 336414, 336415, 336419, 481111, 481112, 481211, 481212, 481219. |

^aNorth American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network

(TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <http://www.epa.gov/ttn/atw/aerosp/aerogp.html>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same Web site.

Additional information is available on the RTR Web site at <http://www.epa.gov/ttn/atw/rrisk/rtrpg.html>. This information includes an overview of the RTR program, links to project Web sites for the RTR source categories and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 5, 2016. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also

provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC North Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. "Major sources" are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems or techniques, including but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the MACT floor for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).¹ For more

¹ The U.S. Court of Appeals for the District of Columbia Circuit has affirmed this approach of implementing CAA section 112(f)(2)(A). *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.")

information on the statutory authority for this rule, see 80 FR 8394 (February 17, 2014).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

1. Description of the Aerospace Manufacturing and Rework Facilities Source Category and Applicability

The NESHAP for the Aerospace Manufacturing and Rework Facilities source category (surface coating) (henceforth referred to as the "Aerospace NESHAP") was promulgated on September 1, 1995 (60 FR 45956), and codified at 40 CFR part 63, subpart GG. As promulgated in 1995, the Aerospace NESHAP applies to the surface coating and related operations (*i.e.*, cleaning and depainting operations) at each new and existing affected source of HAP emissions at facilities that are major sources and are engaged, either in part or in whole, in the manufacture or rework of commercial, civil, or military aerospace vehicles or components. The requirements of the standards are nearly the same for both new and existing sources. The Aerospace NESHAP (40 CFR 63.742) defines "aerospace vehicle or component" as "any fabricated part, processed part, assembly of parts or completed unit, with the exception of electronic components, of any aircraft, including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles." Today, we estimate that 144 facilities are subject to the Aerospace NESHAP. A complete list of facilities subject to the Aerospace NESHAP is available in the Aerospace RTR database, which is available for review in the docket for this rulemaking. Section 63.741(c) defines each affected source in the Aerospace Manufacturing and Rework Facilities source category, and a facility could have a combination of both new and existing affected sources. However, the emission standards for new and existing affected sources are the same for nearly all operations covered by subpart GG. The exceptions are the filter efficiency requirements to control inorganic HAP emissions from primer and topcoat spray application operations in 40 CFR 63.745(g) and from dry media blasting operations in 40 CFR 63.746(b)(4), and the requirements for controls to reduce organic HAP emissions from chemical depainting operations in 40 CFR 63.746(c).

The Aerospace NESHAP applies to organic HAP emissions from cleaning operations, depainting operations, primer application operations, topcoat

application operations, chemical milling maskant application operations, and the handling and storage of waste. The rule also applies to inorganic HAP emissions from primer and topcoat application operations using spray equipment and depainting operations using dry media blasting. The rule provides an exemption for primers, topcoats, and chemical milling maskants used in low volumes, which is defined as 189 liters (50 gallons) or less per formulation, and for which the combined annual total does not exceed 757 liters (200 gallons).

Prior to the amendments being finalized here, the Aerospace NESHAP did not contain control requirements for specialty coating operations, as specified in 40 CFR 63.741(f) and in 40 CFR 63.742 (*i.e.*, the definitions for “exterior primer,” “primer,” and “topcoat” exclude specialty coatings). Appendix A of the Aerospace NESHAP defines 56 separate categories of specialty coatings.

Although the EPA did not include emission limitations for specialty coatings in the Aerospace NESHAP finalized in 1995 or in any subsequent amendments prior to the amendments being finalized here, the EPA included volatile organic compounds (VOC) content limits for the specialty coating categories in the 1997 Aerospace Control Techniques Guidelines (CTG) document.² The CAA requires that state implementation plans (SIPs) for certain ozone nonattainment areas be revised to require the implementation of reasonably available control technology (RACT) to control VOC emissions. The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The Aerospace CTG is intended to provide state and local air pollution control authorities with an information base; recommended emissions limitations; and monitoring, recordkeeping, and reporting requirements for proceeding with their analyses of RACT for their own regulations to reduce VOC emissions from aerospace surface coating operations.

² Guideline Series: Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations. Emission Standards Division, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, December 1997. Publication No. EPA-453/R-97-004.

2. Organic and Inorganic HAP Emission Sources

Organic HAP emissions from cleaning and depainting operations occur from the evaporation of the volatile portion of the cleaning solvents or chemical strippers. Emissions from cleaning operations are typically fugitive in nature and occur at most processing steps. Emissions from depainting operations that occur within a booth or hangar are typically captured and exhausted through a stack, although some emissions may be fugitive in nature (*e.g.*, open tanks).

Organic HAP emissions from coating (primers, topcoats, specialty coatings, and chemical milling maskants) application operations occur from the evaporation of the solvent contained in the coatings. These emissions occur during the application of the coatings on aerospace vehicles or parts, which may take place in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths.

Organic HAP emissions from cleaning solvents and waste occur from evaporation of the volatile portion of the cleaning solvent or waste while it is being handled or stored. These emissions are fugitive in nature, occurring from each solvent and waste container.

Some coatings contain compounds that are inorganic HAP. Inorganic HAP emissions from coatings occur during the application of the coating if it is applied using spray guns. These inorganic HAP emissions are particles of the spray-applied coating, commonly referred to as “overspray,” that do not adhere to the surface being coated. Like the organic HAP emissions from the operations, the emissions of the inorganic HAP may occur in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths. However, coatings that contain inorganic HAP are typically applied in spray booths equipped with exhaust filters to capture coating overspray. Inorganic HAP are not emitted from coatings applied with non-spray methods, such as brushes, rollers, or dip coating, because the coating is not atomized with these methods.

Inorganic HAP emissions from depainting operations may occur from non-chemical methods, such as plastic and other types of dry media blasting, used to strip an aerospace vehicle. (Chemical stripping techniques do not release inorganic HAP.) These emissions occur as particulates that are generated during the blasting process. The operation is typically carried out within a large hangar equipped with a

ventilation system and particulate filtration device (*e.g.*, a baghouse) or in smaller enclosures, also equipped with filtration. The inorganic HAP that are released from the depainting operations are primarily found in the coating being stripped, although some stripping media may contain trace amounts of inorganic HAP.

3. Regulation of Organic and Inorganic HAP Emissions in the Aerospace NESHAP

The Aerospace NESHAP, prior to the amendments being finalized here, specified numerical emission limits for organic HAP emissions from primer, topcoat, chemical milling maskant application operations and chemical depainting operations; equipment and filter efficiency requirements for dry media blasting depainting operations and spray-applied coating operations; composition requirements and equipment standards for cleaning operations; and work practice standards for waste handling and storage operations.

The organic HAP emission rates for primers, topcoats, and chemical milling maskants are in the format of grams of HAP per liter of coating (g/L), or pounds/gallon (lb/gal), less water. Alternative limits are also provided for VOC in the format of g/L (or lb/gal), less water and exempt (non-VOC) solvents. Alternatively, a control system (*e.g.*, a thermal or catalytic oxidizer or carbon adsorption system) can be used to capture and control emissions from the primer, topcoat, or chemical milling maskant application operation. The system must achieve an overall capture and control efficiency of 81 percent. Further, the Aerospace NESHAP specifies which types of coating application techniques may be used.

The Aerospace NESHAP also provides operating requirements for the application of primers or topcoats that contain inorganic HAP, including control of spray booth exhaust streams with either particulate filters or waterwash systems (40 CFR 63.745(g)).

The amendments being finalized here require controlling organic and inorganic HAP emissions from specialty coating operations. They establish organic HAP and VOC content limits for 57 specialty coating categories, and also require specialty coating operations to meet the same inorganic HAP control requirements as for primers and topcoats. (The Aerospace CTG and appendix A to the Aerospace NESHAP define 56 categories of specialty coatings. The number of limits and the number of categories defined are different because some defined

categories are exempt, while others are split into subcategories subject to different HAP and VOC content limits.)

For cleaning operations (including hand-wipe cleaning), the Aerospace NESHAP specifies that cleaning solvents meet certain composition requirements or that the cleaning solvents have a composite vapor pressure of no more than 45 millimeters mercury (mm Hg) (24.1 inches of water) (40 CFR 63.744(b)). Work practice measures are also required (40 CFR 63.744(a)). Four work practice alternative techniques are specified for spray gun cleaning, and work practice standards are specified for flush cleaning operations (40 CFR 63.744(c) and (d)).

The Aerospace NESHAP also specifies requirements for depainting operations. Where there are no controls for organic HAP emissions from chemical depainting operations, the rule prohibits organic HAP emissions from chemical depainting operations, with the exception that 26 gallons of HAP-containing chemical stripper (or, alternatively, 190 pounds of organic HAP) may be used for each commercial aircraft stripped, or 50 gallons (or 365 pounds of organic HAP) for each military aircraft for spot stripping and decal removal (40 CFR 63.746(b)(1) through (3)). Where there are controls for organic HAP emissions from chemical depainting, emissions must be reduced (*i.e.*, captured and controlled) by 81 percent for controls installed before the effective date (*i.e.*, September 1, 1995) and by 95 percent for controls installed on or after the effective date (40 CFR 63.746(c)). For non-chemical depainting operations that generate inorganic HAP emissions from dry media blasting, the operation must be performed in an enclosed area or in a closed cycle depainting system, and the air stream from the operation must pass through a dry filter system meeting a minimum efficiency specified in the rule, through a baghouse or through a waterwash system before being released to the atmosphere (40 CFR 63.746(b)(4)).

The handling and storage of waste that contains HAP must be conducted in a manner that minimizes spills (40 CFR 63.748).

C. What changes did we propose for the Aerospace Manufacturing and Rework Facilities source category in our February 17, 2015, RTR proposal?

On February 17, 2015 (80 FR 8392), the EPA proposed amendments to the Aerospace Manufacturing and Rework Facilities NESHAP that included the following:

- Requirements to limit organic and inorganic HAP emissions from specialty coating application operations;
- The addition of reporting requirements for reporting of performance testing through the EPA's Central Data Exchange (CDX);
- Revisions related to the application of emission standards during SSM periods;
- Amendments to simplify recordkeeping and reporting for facilities using compliant coatings; and
- Several minor technical amendments.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Aerospace Manufacturing and Rework Facilities source category. This action also finalizes other changes to the NESHAP including the following:

- Requirements to limit organic and inorganic HAP emissions from specialty coating application operations;
- The addition of reporting requirements for reporting of performance testing through the EPA's CDX;
- Revisions related to the application of emission standards during SSM periods;
- Amendments to simplify recordkeeping and reporting for facilities using compliant coatings; and
- Several minor technical amendments and clarifications of the applicability of the NESHAP and definitions.

A. What are the final rule amendments based on the risk review for the Aerospace Manufacturing and Rework Facilities source category?

This section introduces the final amendments to the Aerospace Manufacturing and Rework Facilities NESHAP being promulgated pursuant to CAA section 112(f). The EPA proposed no changes to the Aerospace NESHAP based on the risk review conducted pursuant to CAA section 112(f). Specifically, as we proposed, we are finalizing our determination that risks from the Aerospace Manufacturing and Rework Facilities source category are acceptable, considering all of the health information and factors evaluated and also considering risk estimation uncertainty, the ample margin of safety, and the absence of adverse environmental effects. The EPA received no new data or other information during the public comment period that affected that determination. Therefore, we are not requiring additional controls and are thus readopting the existing standards under CAA section 112(f)(2).

B. What are the final rule amendments based on the technology review for the Aerospace Manufacturing and Rework Facilities source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. The EPA proposed no changes to the Aerospace NESHAP based on the technology review conducted pursuant to CAA section 112(d)(6). As explained in section IV.B of this preamble, in response to public comments the EPA conducted a technology review for waste storage and handling operations since proposal. However, the technology review identified no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for waste storage and handling operations. The EPA received no new data or other information during the public comment period that affected the technology review determinations for primer and topcoat application operations; chemical milling maskant application operations; cleaning operations; and chemical and dry media blasting depainting operations. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments pursuant to CAA sections 112(d)(2) and (3) for the Aerospace Manufacturing and Rework Facilities source category?

We are finalizing amendments to the Aerospace NESHAP under CAA section 112(d)(2) and (3) to add emission standards for specialty coating application operations at facilities in the source category, which previously were not subject to control requirements under 40 CFR 63.745. Emission standards for specialty coating operations were included in the proposed amendments published on February 17, 2015. We are finalizing, as proposed, the organic HAP content and alternative VOC content limits for specialty coatings, with the exception of minor changes to the coating category definitions. We are finalizing the proposed requirements for specialty coating application equipment requirements, with the exception of minor changes to clarify the types of equipment and methods that are permitted for certain types of coating materials. We are also finalizing, as proposed, the requirements for controlling inorganic HAP emissions from specialty coating operations, with the exception of minor changes to make these requirements consistent with

those for similar operations in other surface coating NESHAP. We are making other changes in response to comments we received on our proposal.

D. What are the requirements during periods of startup, shutdown, and malfunction?

We are finalizing, as proposed, changes to the Aerospace NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. Table 1 to Subpart GG of Part 63 (General Provisions applicability table) is being revised to change several references related to requirements that apply during periods of SSM. We eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in this source category can meet the applicable emission standards in the Aerospace NESHAP at all times, including periods of startup and shutdown; therefore, the EPA determined that no additional standards are needed to address emissions during these periods.

E. What other changes have been made to the NESHAP?

This rule also finalizes, as proposed, revisions to several other Aerospace NESHAP requirements. We describe the revisions in the following paragraphs.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing, as proposed, a requirement that owners and operators of aerospace manufacturing and rework facilities submit electronic copies of certain required performance test reports through the EPA's CDX Web site using an electronic performance test report tool called the Electronic Reporting Tool (ERT). This requirement to submit performance test data electronically to the EPA does not require any additional performance testing and applies only to those performance tests conducted using test methods that are supported by the ERT.

We are finalizing the proposed amendments to include an alternative compliance demonstration that will allow facilities to use coating manufacturers' supplied data to demonstrate compliance with the HAP and VOC content limits for all coating types (primers, topcoats, specialty coatings, and chemical milling maskants). In response to comments, we

are also finalizing a change that would allow any facility that is not using the averaging provisions in 40 CFR 63.743(d) to keep only annual records of consumption of each coating instead of having to keep monthly records. The EPA originally proposed that facilities using the alternative compliance demonstration could keep annual records instead of monthly records; facilities that were using test methods to determine HAP or VOC content of coatings would still need to keep monthly records.

In response to comments, we are also finalizing a provision that would add EPA Method 311, Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings, as the reference method for determining the HAP content of primers, topcoats, and specialty coatings. This change was made as a result of comments received on the proposed alternative compliance demonstration and on the addition of HAP and VOC content limits for specialty coatings.

Also in response to comments, we are finalizing a change that would allow facilities that use spray booths to control inorganic HAP emissions to use an interlock system between the surface coating equipment and the monitoring system for the booth's filtration system. The interlock system will automatically shut down the surface coating equipment if the monitored parameters for the filtration system deviate from the allowed operating range.

In response to comments, the EPA is clarifying the applicability of the requirements for the handling and storage of spent cleaning solvents and HAP-containing wastes in 40 CFR 63.744(a) and 63.748 relative to subpart GG and the regulations in 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) that implement the Resource Conservation and Recovery Act (RCRA). These changes include removing and reserving 40 CFR 63.741(e), and revising 40 CFR 63.744(a) and 63.748 to specify requirements for spent cleaning solvents and solvent-laden applicators, and for organic HAP-containing waste that are not handled and stored in compliance with the regulations that implement RCRA.

In addition, we are finalizing, as proposed, several miscellaneous minor changes to improve the clarity of the rule requirements.

We are also finalizing minor changes to the NESHAP in consideration of comments received during the public comment period for the proposed

rulemaking, as described in section IV.K of this preamble.

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on December 7, 2015.

The compliance date for the revised SSM requirements and the electronic reporting requirements for existing aerospace manufacturing and rework facilities is the effective date of the standards, December 7, 2015.

The compliance date for existing specialty coating application operations with the requirements to control organic HAP and inorganic HAP emissions from specialty coating application operations in 40 CFR 63.745 is December 7, 2018. The 3-year compliance date is based on the time needed for facilities to identify new coatings that comply with the HAP and VOC content limits and, in some cases, to receive approval to use them in certain aircraft, to upgrade coating application equipment, and to develop recordkeeping and reporting systems to demonstrate compliance. As discussed in section IV.J.3 of this preamble, this was revised from the proposed 1-year compliance period based on public comments.

New sources must comply with all of the standards immediately upon the effective date of the standard, December 7, 2015, or upon startup, whichever is later.

G. What are the requirements for submission of performance test data to the EPA?

The EPA is requiring owners and operators of aerospace manufacturing and rework facilities to submit electronic copies of certain required performance test reports through the EPA's CDX using the CEDRI. As stated in the proposal preamble (80 FR 8422, February 17, 2015), the EPA believes that the electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment and will ultimately result in less burden on the regulated community. Electronic reporting can also eliminate paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public.

As mentioned in the preamble of the proposal (80 FR 8422, February 17,

2015), the EPA Web site that stores the submitted electronic data, WebFIRE, will be easily accessible to everyone and will provide a user-friendly interface that any stakeholder can access. By making the records, data, and reports addressed in this rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having reports readily accessible, our ability to carry out comprehensive reviews will be increased and achieved within a shorter period of time and with less burden on the regulated community to gather and provide data.

We anticipate that fewer or less substantial information collection requests (ICRs) in conjunction with prospective CAA-required technology and risk-based reviews may be needed. We expect this to result in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Air agencies will benefit from more streamlined and automated review of the electronically submitted data. Having reports and associated data in electronic format will facilitate review through the use of software "search" options, as well as the downloading and analyzing of data in spreadsheet format. The ability to access and review air emission report information

electronically will assist air agencies to more quickly and accurately determine compliance with the applicable regulations, potentially allowing a faster response to violations, which could minimize harmful air emissions. This benefits both air agencies and the general public.

For a more thorough discussion of electronic reporting required by this rule, see the discussion in the preamble of the proposal (80 FR 8422, February 17, 2015). In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories, air quality regulations, and enhancing the public's access to this important information.

IV. What is the rationale for our final decisions and amendments for the Aerospace Manufacturing and Rework Facilities source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the Aerospace Manufacturing and Rework Facilities Source Category

1. What did we propose pursuant to CAA section 112(f) for the Aerospace Manufacturing and Rework Facilities source category?

Pursuant to CAA section 112(f), we conducted a residual risk review and

presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the February 17, 2015, proposed rule for the Aerospace NESHAP (80 FR 8392). The results of the risk assessment are presented briefly in Table 2 of this preamble, and in more detail in the residual risk document, *Residual Risk Assessment for the Aerospace Manufacturing and Rework Facilities Source Category in Support of the November 2015 Risk and Technology Review Final Rule*, which is available in the docket for this rulemaking. Based on both actual and allowable emissions for the Aerospace Manufacturing and Rework Facilities source category, the maximum individual risk (MIR) was estimated to be 10-in-1 million, with emissions of strontium chromate from coating operations accounting for the majority of the risk. The total estimated national cancer incidence from this source category, based on both actual and allowable emission levels, was 0.02 excess cancer cases per year, or one case in every 50 years, with emissions of strontium chromate and chromium compounds contributing 66 percent and 15 percent, respectively, to the cancer incidence. The maximum chronic non-cancer target organ specific hazard index (TOSHI) value for the source category based on both actual and allowable emissions was estimated to be 0.5, driven by cadmium compounds emissions from blast depainting. Both chronic cancer MIR and non-cancer hazard index (HI) are determined at the census block with highest estimated risk. While this is generally at off-site locations, in the case of military operations, the census block could be located within the facility boundary (*i.e.*, on the military base).

TABLE 2—AEROSPACE MANUFACTURING AND REWORK FACILITIES INHALATION RISK ASSESSMENT RESULTS

| Maximum individual cancer risk (-in-1 million) ^a | Estimated population at increased risk levels of cancer | Estimated annual cancer incidence (cases per year) | Maximum chronic non-cancer TOSHI ^b | Maximum screening acute non-cancer HQ ^c |
|---|--|--|---|--|
| Actual Emissions | | | | |
| 10 | ≥ 1-in-1 million: 180,000 ≥ 10-in-1 million: 1,500. ≥ 100-in-1 million: 0. | 0.02 | 0.5 | HQ _{REL} = 2 (ethylene glycol ethyl ether acetate). |
| Allowable Emissions ^d | | | | |
| 10 | ≥ 1-in-1 million: 180,000 ≥ 10-in-1 million: 2,000. | 0.02 | 0.5 | |

TABLE 2—AEROSPACE MANUFACTURING AND REWORK FACILITIES INHALATION RISK ASSESSMENT RESULTS—Continued

| Maximum individual cancer risk (-in-1 million) ^a | Estimated population at increased risk levels of cancer | Estimated annual cancer incidence (cases per year) | Maximum chronic non-cancer TOSHI ^b | Maximum screening acute non-cancer HQ ^c |
|---|---|--|---|--|
| | ≥ 100-in-1 million: 0. | | | |

^a Estimated maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

^b Maximum TOSHI. The target organ with the highest TOSHI for the Aerospace Manufacturing and Rework Facilities source category for both actual and allowable emissions is the kidney system.

^c See section III.A.3 of the preamble to the proposed rule (80 FR 8392) for an explanation of acute dose-response values. Acute assessments are not performed on allowable emissions.

^d The development of allowable emission estimates can be found in the memorandum titled, *Aerospace Manufacturing and Rework Facilities RTR Modeling File Preparation*, December 2014, which is available in the docket. The allowable emissions multiplier of 1.02 was based on the ratio between the 20-year historical maximum production utilization rate and the 2008 production utilization rate. Because the allowable emissions were estimated to be only 2 percent higher than the actual emissions, the risk assessment results were the same.

Our screening analysis for worst-case acute impacts based on actual emissions indicated the potential for one HAP, ethylene glycol ethyl ether acetate, from one facility, to have hazard quotient (HQ) values above 1, based on its reference exposure level (REL) value. The EPA evaluated screening estimates of acute exposures and risks for each of the HAP at the point of highest potential off-site exposure for each facility. In the case of military operations, acute impacts could be evaluated within the official fence line of the installation because of the mix of residential, military, industrial, and commercial activities on most military bases. However, the acute impacts would still be evaluated outside the perimeter of the actual aerospace manufacturing and rework facility. Of the 144 aerospace manufacturing and rework facilities, 143 had an estimated worst-case HQ less than or equal to 1 for all HAP.

In the multipathway risk screening analysis, the results of the worst-case Tier I screening analysis indicated that emissions of neither cadmium compounds nor mercury compounds, which are persistent and bioaccumulative HAP (PB-HAP), exceeded the screening emission rates. Neither dioxins nor polycyclic aromatic hydrocarbons (PAH), which are also PB-HAP, are emitted by any source in the source category.

In the environmental risk screening analysis, the Tier 1 screening analysis for PB-HAP (other than lead compounds, which were evaluated differently) indicated that the individual modeled Tier 1 concentrations for mercury and cadmium did not exceed any ecological benchmark for any facility in the source category. For lead compounds, we did not estimate any exceedances of the secondary ambient air quality standards (NAAQS) for lead, indicating adequate protection against damage to animals, crops, and vegetation. For Hydrogen Fluoride (HF)

and Hydrochloric acid (HCl), the average modeled concentration around each facility (*i.e.*, the average concentration of all off-site data points in the modeling domain) did not exceed the ecological benchmarks. In addition, each individual modeled concentration of HCl and HF (*i.e.*, each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

The facility-wide chronic MIR and TOSHI were estimated based on emissions from all sources at the identified facilities (both MACT and non MACT sources). The results of the facility-wide assessment for cancer risks indicated that 44 facilities with aerospace manufacturing and rework processes had a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR was 20-in-1 million, primarily driven by arsenic and chromium (VI) compounds, from internal combustion engines. The maximum facility-wide TOSHI for the source category was estimated to be 0.5, primarily driven by emissions of hexamethylene-1,6-diisocyanate from specialty coatings operations.

We weighed all health risk factors in our risk acceptability determination, and we proposed that the residual risks from the Aerospace Manufacturing and Rework Facilities source category are acceptable.

We then considered whether the Aerospace NESHAP provides an ample margin of safety to protect public health and whether more stringent standards are necessary to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the

costs, technological feasibility and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. As noted in the discussion of the technology review in the preamble to the proposed rule (80 FR 8416–8419), no measures (beyond those already in place or that were proposed under CAA sections 112(d)(2) and (d)(3)) were identified for reducing HAP emissions from the Aerospace Manufacturing and Rework Facilities source category. Therefore, we proposed that the current standards provide an ample margin of safety to protect public health.

Further, we proposed that more stringent standards would not be necessary to prevent an adverse environmental effect, and this determination has not changed.

2. How did the risk review change for the Aerospace Manufacturing and Rework Facilities source category?

During the public comment period, the EPA received only two corrections affecting two emission sources at one facility in the risk modelling database, and both corrections reduced the emissions from that one facility. Because the residual risk analysis performed for the proposed rule had already found that the risks were acceptable with an ample margin of safety, the EPA did not repeat the risk analysis using these revised data.

3. What key comments did we receive on the risk review, and what are our responses?

The comments received on the proposed risk review were generally supportive of our determination of risk acceptability and ample margin of safety analysis. A summary of these comments and our responses can be found in the comment summary and response document available in the docket for this action (EPA-HQ-OAR-2014-0830).

4. What is the rationale for our final approach and final decisions for the risk review?

For the reasons explained in the preamble to the proposed rule, we have determined that the risks from the Aerospace Manufacturing and Rework Facilities source category are acceptable and provide an ample margin of safety to protect public health. In addition, for the reasons explained in the preamble to the proposed rule, we have determined that more stringent standards are not necessary to prevent an adverse environmental effect. Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety or adverse environmental effects have changed. Therefore, we are not revising the Aerospace NESHAP to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and are thus readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the Aerospace Manufacturing and Rework Facilities Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Aerospace Manufacturing and Rework Facilities source category?

The EPA performed a technology review for the Aerospace Manufacturing and Rework Facilities source category and summarized the results of that review in the preamble to the proposed rule (80 FR 8416–8419). The technology review covered the following emission source types in this source category: Primer and topcoat application operations; chemical milling maskant application operations; cleaning operations; and chemical and dry media blasting depainting operations. For each of these emission source types, the EPA's technology review found that there were no new developments in practices, processes and control technologies. As a result, the EPA did not propose to revise the Aerospace NESHAP standard requirements for any of these emission source types pursuant to CAA section 112(d)(6).

For waste storage and handling operations, the EPA determined that the practical effect of the provisions in 40 CFR 63.741(e) is that all HAP-containing wastes generated in aerospace manufacturing and rework operations are subject to RCRA regulations and are not subject to the requirements of 40 CFR 63.748. The EPA proposed that, because all of these HAP-containing wastes are subject to regulation under RCRA and not subject to 40 CFR 63.748,

there would be no need to conduct a technology review of the standards for handling and storage of waste.

2. How did the technology review change for the Aerospace Manufacturing and Rework Facilities source category?

As proposed, the EPA is making no changes to the Aerospace NESHAP standard requirements in the final rule pursuant to CAA section 112(d)(6).

3. What key comments did we receive on the technology review, and what are our responses?

We received comments in support of and against the proposed technology review and our determination that no revisions were warranted under CAA section 112(d)(6). A summary of these comments and our responses can be found in the comment summary and response document available in the docket for this action (EPA–HQ–OAR–2014–0830).

The EPA received one comment that disagreed with the determination that no technology review was needed for the standards for the storage and handling of waste in 40 CFR 63.748. The commenter argued that the EPA may not exempt a major source from CAA section 112 standards and may not evade the need to perform a CAA section 112(d)(6) review by referring to a different statute (*i.e.*, RCRA). In response to this comment, the EPA has completed a technology review for the standards for the storage and handling of waste, which is documented in the memorandum, *Technology Review for Waste Storage and Handling Operations in the Aerospace Source Category*, October 2015, available in the docket for this action. As discussed in the memorandum, we did not identify any developments in practices, processes, or control technologies for the storage and handling of waste. However, as explained in section IV.K of this preamble, in response to public comments, the EPA has revised the standards in 40 CFR 63.748 in the final rule to clarify the applicability of these standards relative to those found in RCRA.

The EPA received a second comment that the EPA's technology review did not address whether the current standards were adequate to control polycyclic organic matter (POM) emissions from the aerospace manufacturing and rework source category. The EPA disagrees with this comment. The only POM compound the EPA identified from Aerospace manufacturing and rework surface coating operations is naphthalene. The EPA conducted a technology review for

the control of all organic HAP emissions, including naphthalene, from cleaning operations, primer and topcoat operations, chemical depainting operations, and chemical milling maskant operations. These technology reviews were included in the docket for the proposed rulemaking. The EPA also compared the 1990 naphthalene baseline emission inventory for the aerospace industry (79 FR 74661, December 16, 2014)³ to the more recent naphthalene emissions from the risk modeling data file. In this comparative analysis between the 1990 baseline inventory and the risk modeling file, we found that emissions of naphthalene from the aerospace manufacturing and rework source category have been reduced by 99.96 percent since the updated 1990 baseline inventory. The results show that the MACT standards for aerospace coating operation, including the limits for total organic HAP, have resulted in naphthalene reductions of a magnitude that is typically associated only with the use of add-on controls. This result also demonstrates that the current approach of regulating total organic HAP and providing the option of using add-on controls is adequate to address naphthalene emissions under the technology review. In addition, the current risk modeling data file shows no POM emissions other than naphthalene from aerospace surface coating operations. Because these operations are not sources of other types of POM, there was no need to consider emissions of the other types of POM in these technology reviews. The full response to this comment can be found in the comment summary and response document available in the docket for this action.

4. What is the rationale for our final approach for the technology review?

For the reasons explained in the preamble to the proposed rule and in section IV.B.3 of this preamble, we determined there were no new developments in practices, processes and control technologies. Since proposal, neither the technology review nor our determinations regarding new developments in practices, processes and control technologies have changed. Therefore, we are not revising the Aerospace NESHAP pursuant to CAA section 112(d)(6) as a result of our technology review.

³ For purposes of CAA section 112(c)(6), EPA developed a 1990 baseline inventory for HAP identified in that section, including POM. This baseline inventory was recently updated. See 79 FR 74656 (December 16, 2014).

C. Legal Basis To Regulate Specialty Coatings

1. What did we propose?

In 2007, the United States Court of Appeals for the District of Columbia Circuit found that the EPA had erred in establishing emissions standards for sources of HAP in the NESHAP for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing (67 FR 26690, May 16, 2003), and consequently vacated the rules.⁴ Among other things, the Court found that the EPA erred by failing to regulate processes that emitted HAP, in some instances by establishing a MACT floor of “no control.” The EPA proposed to correct the same error in the Aerospace NESHAP by proposing to remove the exemption for the use of specialty coatings found at 40 CFR 63.741(f) and to add limits for specialty coating operations (including adhesives, adhesive bonding primers and sealants).

2. What changed since proposal?

The EPA is finalizing, as proposed, the amendments that remove the exemption for specialty coating operations found at 40 CFR 63.741(f) and is adding limits for specialty coating operations, including organic HAP and VOC content limits, application equipment requirements, and requirements to limit inorganic HAP emissions.

3. Comments and Responses

Comment: One commenter noted that the EPA’s risk modeling has shown that specialty coatings account for less than 2 percent of the risk from the facility with the highest modeled risk, and the maximum cancer risk from specialty coatings is less than 1-in-1 million at over 90 percent of facilities and less than 10-in-1 million at all facilities. As a result, specialty coatings do not warrant regulation based on risk.

Response: The standards for specialty coatings were not proposed under the residual risk requirements in CAA 112(f)(2). The standards that were proposed to address organic and inorganic HAP emissions from specialty coating operations are for currently unregulated emission sources, and were proposed under the authority of CAA sections 112(d)(2) and (d)(3). Therefore, we disagree with the commenter’s statement that we should allow the residual risk analysis to determine whether we address unregulated emission sources. The EPA is adding these standards for specialty coatings

because they are a source of HAP emissions from the Aerospace Manufacturing and Rework Facilities source category and the EPA had not previously established MACT standards for these emissions points. These changes are necessary to ensure the emissions standards are consistent with the requirements of the CAA as interpreted by the Courts and are unrelated to the risk findings.

Comment: One commenter argued that the EPA is not compelled to regulate specialty coatings under CAA section 112(d)(2) and (3) by the “Brick MACT” decision. The commenter argued that the situation in the Aerospace NESHAP is different from the situation in the Brick MACT case. According to the commenter, the EPA erred in the Brick MACT case “by failing to regulate processes that emitted HAP, in some instances by establishing a MACT floor of ‘no control.’” The commenter argued that in the Aerospace NESHAP, in contrast, the EPA did not establish a MACT floor of “no control” but instead excluded specialty coatings from that MACT floor because the amount of organic HAP emissions generated by coating-related operations is “relatively small,” the coatings are highly specialized, and subcategorization for specialty coatings “can be significant,” “resulting in lower potential emission reductions.” The commenter argued that the exclusion for specialty coatings is lawful under the Brick MACT decision, and that if the EPA’s interpretation was taken to its logical conclusion, it would be unlawful for the Agency to exempt any subcategory or source from any MACT standard, and this is a result that is not mandated by the Brick MACT decision.

Response: The EPA disagrees with the commenter’s interpretation of the “Brick MACT” decision relative to the regulation of specialty coatings. As explained at proposal, in March 2007 the D.C. Circuit Court issued an opinion vacating and remanding the CAA section 112(d) standards for the Brick and Structural Clay Products Manufacturing source categories in *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007) (Brick MACT). Some key holdings in the Brick MACT case were: (1) Floors for existing sources must reflect the average emission limitation achieved by the best-performing sources, not levels that are achievable by all sources (479 F.3d at 880–81); (2) the EPA cannot set “no-control floors.” (479 F.3d at 883). The court reiterated its prior holdings, including *National Lime Ass’n*, 233 F.3d 625, that the EPA must set floor standards for all HAP emitted by the major source, including

those HAP that are not controlled by at-the-stack control devices; and (3) that the EPA cannot ignore non-technology factors that reduce HAP emissions. “The EPA’s decision to base floors exclusively on technology even though non-technology factors affect emissions violates the Act.” *Id.* The Agency has authority to amend improper MACT determinations, including amendments to improperly promulgated floor determinations, under CAA sections 112(d)(2) and (3). *Medical Waste Institute v. EPA*, 645 F.3d 420, 425–27 (D.C. Cir. 2011) (resetting MACT floor, based on post-compliance data, permissible when originally-established floor was improperly established, and permissibility of the EPA’s action does not turn on whether the prior standard was remanded or vacated).

As explained at proposal, in the Aerospace NESHAP, the EPA made essentially the same error in failing to regulate sources of HAP within this source category (80 FR 8399). Specifically, in the Aerospace NESHAP, the EPA exempted specialty coatings from the standards established for other surface coating operations in the same source category, even though the EPA identified specialty coatings as a “coating related operation” and a source of HAP, as documented in the preamble to the proposed subpart GG. The issues cited by the EPA that complicated the regulation of specialty coatings, which were identified in the preamble to the proposed rule and noted by the commenter, do not remove the EPA’s obligation to regulate these coatings under CAA section 112(d)(2) and (3). Indeed, the EPA identified achievable standards for VOC emissions from the same coatings and incorporated them into the Aerospace CTG only a few years after the NESHAP was promulgated. As previously explained, in developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems or techniques, including but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above. The identified achievable standards for VOC emissions from the same coatings that were incorporated into the Aerospace CTG are processes, measures and

⁴ *Sierra Club v. EPA*, 479 F. 3d 875 (D.C. Cir. March 13, 2007).

methods that the EPA is directed to consider under CAA section 112(d)(2).

Portland Cement Ass'n v. EPA, 665 F.3d 177, 189 (D.C. Cir. 2011) confirms that CAA section 112(d)(6) does not constrain EPA and it may reassess its standards more often, including revising existing floors if need be. As a general matter, an agency remains free to revise improperly promulgated or otherwise unsupportable rules, even in the absence of a remand from a court. *United Gas Improvement Co. v. Callery Props. Inc.*, 382 U.S. 223, 229 (1996) (An agency, like a court, can undo what is wrongfully done by virtues of its order.”).

Moreover, in several recent rulemakings, we have chosen to fix underlying defects in existing MACT standards under CAA sections 112(d)(2) and (3), provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566). We believe that our approach is reasonable because using those provisions ensures that the process and considerations are those associated with initially establishing a MACT standard, and it is reasonable to make corrections using the process that would have been followed if we had not made an error at the time of the original promulgation.

We also disagree with the comment that the EPA is not mandated to regulate *de minimis* HAP. While the EPA’s *de minimis* authority exists to help avoid what might be perceived as excessive regulation of tiny amounts of pollutants, it is unavailable “where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs.” *Alabama Power v. EPA*, 636 F.2d 323, 360–61 &n.89 (D.C. Cir. 1979). Accordingly, a *de minimis* exemption to CAA sections 112(d)(2) and (3) is unavailable because it would frustrate a primary legislative goal by carving out HAP emissions from regulation. Moreover, the EPA’s rejection of the *de minimis* concept has been affirmed by the U.S. Court of Appeals for the D.C. Circuit in *National Lime Ass'n v. EPA*, 233 F.3d 625, 640 (D.C. Cir. 2000), where the Court rejected the petitioner’s claim that in light of both high costs and low

quantities of HAP at issue in that rule, the EPA should read a *de minimis* exemption into the requirement to regulate all HAP emitted by major sources. The Court found that the “EPA reasonably rejected this argument on the ground that the statute ‘does not provide for exception from emissions standards based on *de minimis* principles where a MACT floor exists.’” *National Lime Ass'n*, at 640. We also continue to believe that CAA section 112 is replete with careful definitions of volume or effect based limitations on regulation, indicating that Congress has already defined what amounts of HAP emissions are too small to warrant MACT standards. The requirement to adopt MACT emission limitations, for example, applies without exception to “category or subcategory of major sources . . . of [HAP].” CAA section 112(d)(1). For sources below the major sources threshold, however, the EPA has discretion to require “generally available control technologies or management practices.” CAA section 112(d)(5). Congress has thus defined volumetrically which sources’ emissions are small enough not to warrant mandatory MACT standards.

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule and in our comment responses in section IV.C.3 of this preamble, we determined that the EPA should regulate specialty coating operations pursuant to CAA sections 112(d)(2) and (3). Since proposal, the EPA’s rationale and legal justification for that decision have not changed. Therefore, in the final rule, we are including standards to limit emissions of organic and inorganic HAP from specialty coating operations.

D. Determination of Specialty Coating Limits and Definitions

1. What did we propose?

The EPA proposed to establish standards for specialty coatings at aerospace manufacturing and rework facilities with organic HAP content limits that are equivalent to the VOC content limits for specialty coatings included in the Aerospace CTG. The EPA proposed that the same application equipment requirements that apply to primer and topcoat application operations apply to specialty coatings. The EPA also proposed limits for emissions of inorganic HAP from spray-applied specialty coatings by revising the requirements to use spray booths with filters meeting minimum efficiency requirements for the spray application of primers and topcoats that contain

inorganic HAP so they also apply to specialty coatings. Additionally, we proposed that the low-volume exemption provisions in the current Aerospace NESHAP for primers, topcoats and chemical milling maskants be revised to include specialty coatings.

2. What changed since proposal?

The EPA is including a definition of “non-HAP material” in 40 CFR 63.742, and revising 40 CFR 63.741(f) to exclude non-HAP coatings, strippers, maskants, and cleaning solvents from the requirements to reduce organic HAP emissions from aerospace manufacturing and rework operations. The final rule also clarifies that only the organic HAP content limits for all types of coatings are enforceable (*i.e.*, a coating cannot be considered out of compliance if it exceeds the VOC content, but does not exceed the HAP content limit), and that the VOC content can be used to demonstrate compliance with the HAP content limit for coatings that do not contain HAP solvents that are exempt from the EPA’s definition of VOC found at 40 CFR 51.100(s).

The EPA is amending 40 CFR 63.741(f) in the final rule to exempt coatings that have been designated as “classified national security information” and amending 40 CFR 63.742 to add the definition of “classified national security information.” The EPA is revising the definition in Appendix A to subpart GG of “electric or radiation-effect coating” to change the word “classified” to “classified national security information.”

The EPA is also revising the definition of “electrostatic discharge and electromagnetic interference (EMI) coating” in Appendix A to subpart GG to reflect all of the uses of these coatings on aerospace vehicles and components.

3. Comments and Responses

Comment: One commenter argued that the EPA should not issue dual limits for VOC and HAP for specialty coatings and should clarify that the VOC limits are not separately enforceable and are used only as a surrogate for HAP. The commenter argued that the EPA should make clear in the final rule that:

- (1) Only the organic HAP limits are enforceable;
- (2) Coatings that do not contain organic HAP are not covered by the rule; and
- (3) For coatings that do not contain exempt solvents that are also HAP, VOC content may be used to demonstrate compliance with the organic HAP limits as an alternative to determining organic HAP content directly.

The commenter argued that CAA section 112 does not allow for the setting of VOC limits, except as a surrogate for HAP content, and then only in situations in which the HAP content could not exceed the VOC content. Therefore, the use of the VOC content to demonstrate compliance with the HAP content limits can only apply when the coating does not contain any exempt solvents that are HAP. The commenter argued that the VOC content would effectively cap the HAP content in those coatings with no exempt solvents.

The commenter also argued that under either approach, coatings that do not contain any organic HAP cannot be subject to the HAP content limits or the VOC limits as a surrogate for HAP, and the rule should include a provision to clarify this. The commenter argued that facilities can use coating formulation information to establish whether or not the coatings contain organic HAP.

Response: The EPA agrees with the commenter's recommendations to clarify the relationship between the VOC content of coatings and the HAP emission limits. In the final rule, the EPA is including a definition of "non-HAP material" in 40 CFR 63.472, and revising 40 CFR 63.741(f) to exclude non-HAP coatings from the requirements to reduce organic HAP emissions from coating operations. These clarifications and revisions in the final rule apply to all coating operations and not just specialty coating operations. The definition of "non-HAP material" is consistent with the HAP content criteria in other surface coating NESHAP.

The final rule also clarifies that only the organic HAP content limits are enforceable (*i.e.*, a coating cannot be considered out of compliance if it exceeds the VOC content, but does not exceed the HAP content limit), and that the VOC content can be used to demonstrate compliance with the HAP content limit for coatings that do not contain exempt solvents that are HAP. For coatings that contain exempt solvents that are HAP, the HAP content must be used to demonstrate compliance.

Comment: One commenter representing the Department of Defense (DoD) commented that DoD will be unable to certify compliance with the HAP/VOC limits for some materials whose composition is classified as national security information. The materials have properties with specific, classified characteristics based on their use such as radiation-effect coating, according to the commenter. Disclosure of the composition of these materials

would risk undermining the function of the coating or could provide sufficient information that could be used to counter the effect of the coating, according to the commenter. The commenter requested that the proposed rule be modified to continue to exempt materials that meet the definition of "Classified National Security Information."

The commenter recommended that the EPA amend 40 CFR 63.742 with an additional definition for the term "Classified National Security Information" to read as follows:

Classified National Security Information means information that has been determined pursuant to this Executive Order 13526, "Classified National Security Information," December 29, 2009 or any successor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. The term "Classified Information" is an alternative term that may be used instead of "Classified National Security Information."

Response: The EPA agrees with the commenter. Therefore, the EPA is amending 40 CFR 63.741(f) in the final rule to specify that certain coatings that have been designated as "classified national security information" are not subject to the requirements of subpart GG and amending 40 CFR 63.742 to add the definition of "classified national security information" as suggested by the commenter. For consistency, the EPA is also revising the definition of "electric or radiation-effect coating" to change the word "classified" to "classified national security information."

Comment: One commenter argued that the current definition of electrostatic discharge and EMI coating in Appendix A to subpart GG appears to limit the use of these coatings on aircraft radomes, but these coatings are commonly used on several parts of the non-metallic exterior portions of the aircraft to dissipate electrical charge, not just the composite radome. The commenter recommended that the EPA should change the definition to reflect all of the uses of coatings on aircraft to state the following (deleted text in brackets, added text in italics):

Electrostatic discharge and electromagnetic interference (EMI) coating—A coating applied to [space vehicles, missiles, aircraft radomes, and helicopter blades] *aerospace vehicles or components* to disperse static electricity or reduce electromagnetic interference.

Response: The EPA agrees with the commenter that this definition should be revised as suggested to reflect all of the uses of these coatings on aerospace vehicles and components.

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule, in the comment responses in section IV.D.3 of this preamble, and in the response to comments document in the docket for this rulemaking, we are finalizing the proposed requirements for specialty coatings with respect to HAP and VOC content limits as proposed and with the changes described in section IV.D.2 of this preamble.

E. Specialty Coating Application Equipment Requirements

1. What did we propose?

The EPA proposed that specialty coating application operations be subject to the same application equipment requirements in 40 CFR 63.745(f) that apply to primer and topcoat application operations. These requirements include the use of either non-spray application methods (*e.g.*, brush or roller), or the use of high-efficiency spray application methods (*e.g.*, high-volume low-pressure (HVLP) or electrostatic spray guns), with exceptions for certain coating operations and materials.

2. What changed since proposal?

The EPA is revising the application equipment requirements in 40 CFR 63.745(f) since proposal to make the following changes in the final rule:

- Exclude the application of adhesives, sealants, maskants, caulking materials, and inks from the application equipment requirements. (These coatings will be still subject to the organic HAP content limitations in 40 CFR 63.745(c).)
- Exclude from the application equipment requirements the application of any high-solids coating (not just specialty coatings) that contains less than 20 grams per liter of VOC for coatings that do not contain exempt solvents that are HAP, or 20 grams per liter of HAP for coatings that do contain exempt solvents that are HAP.
- Exclude from the application equipment requirements the application of all coatings (not just specialty coatings) applied using hand-held application equipment with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). The exclusion from the application equipment requirements is also limited to the spray application of no more than 3.0 fluid ounces of coating in a single application or "job" (*i.e.*, the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup

capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or refilling a small paint cup to apply more than 3.0 fluid ounces of coating under this exclusion in 40 CFR 63.745(f) is prohibited. If a paint cup liner is used in a reusable holder or paint cup, then the holder or paint cup must be designed to hold a liner with a capacity of no more than 3.0 fluid ounces. (These coatings will still be subject to the organic HAP content limitations in 40 CFR 63.745(c).)

- Include high-efficiency airless spray guns and air-assisted airless spray guns in the list of allowable application methods for all coatings (not just specialty coatings).
- Revise 40 CFR 63.745(f)(1) and (f)(2) to clarify that the high-efficiency application equipment requirements apply only to spray-applied coating operations, as defined in 40 CFR 63.742, and remove the references to non-spray application methods.

The final rule includes a definition of “spray-applied coating operation” in 40 CFR 63.742 to clarify the applicability of the requirements in 40 CFR 63.745(f) and (g).

For specialty coating operations, the final rule also provides an alternative to the application equipment equivalency demonstration requirements in 40 CFR 63.750(i) so owners and operators may apply specialty coatings using any other coating application method capable of achieving emission reductions or a transfer efficiency equivalent to or better than that provided by HVLP, electrostatic spray, air-assisted airless, or airless application. To use this option, the owner or operator must also maintain records demonstrating the transfer efficiency achieved.

3. Comments and responses

Comment: One commenter argued that 40 CFR 63.745(f) should be revised to clarify that the proposed specialty coating application equipment requirements allow the use of any non-spray application equipment. The commenter argued that the rule allows the use of alternatives to the methods listed in 40 CFR 63.745(f)(1), but only if they are demonstrated to be equivalent to HVLP spray or electrostatic spray, according to 40 CFR 63.750(i). The commenter argued that the rule should be revised to allow all hand application methods and non-spray methods allowed in the California rules and to require the equivalency demonstration only for spray application methods. The commenter recommended that the EPA add the following language to 40 CFR

63.745(f)(1) to clarify that other methods are allowed:

In addition to the methods in (f)(1)(i) through (f)(1)(ix), specialty coatings may be applied by flow coating, web coating, coil coating, touch-up markers, marking pens, trowels, spatulas, daubers, rags, sponges, and mechanically and/or pneumatic-driven syringes.

Response: The EPA agrees with the commenter that 40 CFR 63.745(f) should be revised to clarify that any hand or non-spray application methods should be allowed. Although the commenter made this in reference to only specialty coatings, the same is also true for the other types of coatings regulated by subpart GG. However, the EPA has determined that, based on the public comments received, further clarification and simplification of 40 CFR 63.745(f) are needed in the final rule. The purpose of this section is to minimize emissions from spray-applied coating operations by requiring the use of high-efficiency spray application equipment in almost all spray-applied coating operations, except in limited situations in which it is not technically feasible. All hand and non-spray application methods, including the specialty coating methods listed by the commenter, have essentially 100-percent transfer efficiency because no coating material is lost to overspray. The same is also true of other non-spray methods listed in 40 CFR 63.745(f): Flow/curtain coat application; dip coat application; roll coating; brush coating; cotton-tipped swab application; and electrodeposition (dip) coating. Two of the application methods mentioned by the commenter, touch-up markers and marking pens, are not included in the list of allowed methods in the final rule because the definition of “coating” in the final rule excludes materials applied by these methods, as a result of changes made in response to other public comments.

Therefore, in order to clarify and simplify the requirements of 40 CFR 63.745(f) in the final rule, the EPA is removing the references to these non-spray application methods and is revising the language of this section to clarify that these requirements apply to only spray-applied coating operations. The final rule is also adding a definition of “spray-applied coating operations” to 40 CFR 63.742. The definition of spray-applied coating operation added to 40 CFR 63.742 includes a list of application methods that are excluded from this definition, and these exclusions include, but are not limited to, the non-spray application methods that were formerly listed in 40 CFR 63.745(f) and

the additions suggested by the commenters.

Comment: One commenter argued that adhesives, sealants, maskants, caulking materials, and inks are not atomized even when applied with spray application equipment; therefore, the application of these specialty coatings is not a spray-application operation and should not be subject to the high efficiency application equipment requirements. The commenter argued that the EPA should clarify that the application of adhesives, sealants, and maskants, caulking materials, and inks is not subject to the application equipment requirements by adding these to the list of exemptions in 40 CFR 63.745(f)(3).

Response: The EPA agrees with the commenter that these operations should be excluded from the provisions for spray-applied coating operations in 40 CFR 63.745(f). In other, more recently developed surface coating NESHAP such as 40 CFR part 63, subpart HHHHHH, the EPA also recognized that these materials are not atomized in the same way as, for example, primers and topcoats, even when applied with spray application equipment.

Comment: One commenter argued that 40 CFR 63.745(f)(3)(ii), which is an exemption from the high-efficiency application requirement in 40 CFR 63.745(f)(1), should be revised to exempt coatings that contain less than 20 grams of VOC per liter of coating. The commenter argued that this exemption accommodates spray application of low VOC coatings with high solids content that are not practical to apply with high-efficiency equipment, such as high solid/low VOC ceramic coatings applied to reduce the infrared signature of military aircraft and are classified as electric or radiation-effect specialty coatings. These coatings are not water-reducible and, due to high viscosity, cannot be spray applied using high-efficiency application equipment. The commenter noted that this exemption is also found in the California South Coast Air Quality Management District and Antelope Valley Air Quality Management District aerospace rules.

Response: The EPA agrees with the commenter on the need for an exemption from the application equipment rules for coatings that contain less than 20 grams of VOC per liter of coating. (These coatings continue to be subject to all other applicable requirements of subpart GG.) However, because subpart GG is a NESHAP and is not a VOC rule, facilities will be able to use the VOC content to meet this exemption only for coatings that do not

contain HAP that are exempt from the definition of VOC. For coatings that contain HAP that are exempt from the definition of VOC, facilities will need to consider both the HAP and VOC content in determining whether the coatings qualify for this exemption to ensure that it is applied only to coatings with a high-solids content as intended.

Comment: One commenter argued that 40 CFR 63.745(f)(3) should be revised to allow the use of detailing guns or airbrushes for all specialty coating application operations, and not just the two exemptions currently in the rule at 40 CFR 63.745(f)(3)(i) and (iv).

Response: The EPA agrees that the use of airbrushes and detailing guns should be allowed for all specialty coating operations, and not just those included at 40 CFR 63.745(f)(3)(i) and (iv). Although the commenter made this comment in reference to only specialty coatings, the same is also true for the other types of coatings regulated by subpart GG, so the EPA is making this revision for all coatings. In past surface coating rulemakings, the EPA has determined that it is difficult to precisely define a “detailing gun” and “airbrush,” and these terms are not currently defined in subpart GG. Instead, in more recent rulemakings the EPA has adopted an objective standard based on the capacity of the paint cup attached to the spray gun to identify equipment that is typically considered an airbrush or detail gun. In 40 CFR part 63, subparts HHHHHH and XXXXXX, the EPA included less stringent provisions for hand-held application equipment with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). The EPA is adopting the same approach in the final amendments to 40 CFR 63.745(f)(3), but is also including language that limits the amount of coating applied to no more than 3.0 fluid ounces in a single coating operation. The exclusion from the application equipment requirements is also limited to the spray-application of no more than 3.0 fluid ounces of coating in a single application or “job” (*i.e.*, the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or refilling a small paint cup to apply more than 3.0 fluid ounces under this exclusion in 40 CFR 63.745(f) is prohibited. If a paint cup liner is used in a reusable holder or cup, then the holder or cup must also be designed to hold a liner with a capacity of no more

than 3.0 fluid ounces. For example, a 3.0 ounce liner cannot be used in a holder that can also be used with a 6.0 ounce liner. This language is intended to prevent facilities from circumventing the rule by refilling paint cups or by using multiple detachable cups that have been filled in advance. (These coatings continue to be subject to the organic HAP content limitations in 40 CFR 63.745(c).)

Comment: One commenter argued that 40 CFR 63.745(f)(1) should be revised to allow the use of high-efficiency air-assisted airless spray guns, airless spray guns, screen printing, and inkjet printing for application of specialty coatings because these technologies are equivalent to or better than HVLP. The commenter argued that under CAA section 112(h)(3), the Agency must allow alternative equipment that achieves equivalent emission reductions to the equipment prescribed as MACT. The commenter also noted that under other NESHAP (*e.g.*, 40 CFR part 63, subparts JJ and HHHHHH), the EPA has determined that air-assisted airless and airless spray guns are equivalent to HVLP and electrostatic spray, which the EPA has designated as the MACT for aerospace specialty coatings. The commenter also noted that 40 CFR part 63, subpart HHHHHH allows the use of air-assisted airless spray guns and airless spray guns (in addition to HVLP) for aerospace surface coating operations at area sources. Further, the commenter noted that several state and regional air agencies allow the use of air-assisted airless spray guns and airless spray guns as equivalent to HVLP and included copies of two permits from the Antelope Valley Air Quality Management District and the Georgia Environmental Protection Division.

Finally, the commenter argued that screen printing and ink jet technology should be listed as approved application methods because they each achieve nearly 100-percent transfer efficiency, which is higher than the transfer efficiency of HVLP spray guns.

Response: The EPA agrees with the commenter that these alternative application methods (high-efficiency air-assisted airless spray guns, airless spray guns, screen printing, and inkjet printing) should be allowed under 40 CFR 63.745(f)(1) for surface coating application. Although the commenter made this comment in reference to specialty coatings only, the same is also true for the other types of coatings regulated by subpart GG; so, the EPA is making this revision for all coatings. As the commenter noted, the EPA has already included air-assisted airless

spray guns and airless spray guns in other more recent surface coating rule makings. The EPA is adding them to the list of allowed methods under subpart GG because they are considered equivalent in efficiency to the methods already listed. The EPA is also including screen printing and inkjet printing to the list of methods that are considered non-spray application methods with transfer efficiency at least equal to the other non-spray application methods already in the rule. The definition of “spray-applied coating operation” being added to 40 CFR 63.742 specifically excludes screen printing and inkjet printing.

Comment: One commenter argued that the EPA should provide an alternative to using the equivalency demonstration requirements in 40 CFR 63.750(i). The commenter argued that the method in 40 CFR 63.750(i) is overly burdensome, especially for specialty coatings, because it requires testing on parts of a similar configuration to the actual parts being coated, and because of the number of specialty coatings used at most facilities. The commenter recommended that for specialty coatings, the EPA should allow a facility to use any application method that achieves emission reductions or a transfer efficiency equal to or better than the methods approved in the rule (HVLP, electrostatic spray, air-assisted airless, and airless), and that the EPA should allow facilities to use a method of its choice to demonstrate equivalency. The commenter argued that clarifying that facilities may demonstrate either equivalent emission reductions or transfer efficiency would increase flexibility in the rule by allowing the use of either type of equivalency method. The commenter recommended that the following language be added to 40 CFR 63.745(f):

For specialty coatings, any other coating application method capable of achieving emission reductions or a transfer efficiency equivalent to or better than that provided by HVLP, electrostatic spray, air-assisted airless, or airless application. Any owner or operator using an application method pursuant to this subparagraph shall maintain records demonstrating the transfer efficiency achieved.

Response: The EPA agrees with the commenter that the approval procedures specified in 40 CFR 63.750(i) may be less appropriate for specialty coatings than for primers and topcoats because of the diversity of parts on which specialty coatings are used. Therefore, the EPA is adding language similar to the recommended language to 40 CFR 63.750(i) for specialty coating application methods, which is the

actual approval process that needs to be revised for specialty coatings. The EPA also recognizes that with the addition of other application methods in 40 CFR 63.745(f)(1), aerospace facilities will be less likely to have to demonstrate that an alternative method is equivalent to HVLP or electrostatic spray application methods.

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule, in the comment responses in section IV.E.3 of this preamble, and in the response to comments document in the docket for this rulemaking, we are finalizing requirements for specialty coatings with respect to application equipment methods, as proposed, and with the changes described in section IV.E.2 of this preamble.

F. Specialty Coating Inorganic HAP Control Requirements

1. What did we propose?

The EPA proposed that specialty coating application operations that include the spray application of coatings that contain inorganic HAP be subject to the same standards for inorganic HAP emissions in 40 CFR 63.745(g) that apply to primer and topcoat application operations. These requirements include the use of a spray booth or similar enclosure that is fitted with filters on the exhaust and minimum filtration efficiency requirements for the exhaust filters.

2. What changed since proposal?

The EPA is revising the inorganic HAP control requirements in 40 CFR 63.745(g) since proposal to make the following changes:

- Clarifying in 40 CFR 63.745(g) that the inorganic HAP control requirements apply to only spray-applied coatings, and adding a definition of “spray-applied coating operations” to 40 CFR 63.742.
- Excluding from the inorganic HAP control requirements coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). The exclusion from the inorganic HAP control requirements is also limited to the spray application of no more than 3.0 fluid ounces of coating in a single application or “job” (*i.e.*, the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or

refilling a small paint cup to apply more than 3.0 fluid ounces under this exclusion in 40 CFR 63.745(g) is prohibited. If a paint cup liner is used in a reusable holder or paint cup, then the holder or cup must be designed to hold a liner with a capacity of no more than 3.0 fluid ounces. (These coatings will continue to be subject to the organic HAP content limitations in 40 CFR 63.745(c).)

- Clarifying that the use of portable enclosures that meet the same filtration requirements as for spray booths can be used to comply.
- Allowing facilities that use spray booths to control inorganic HAP emissions to use an interlock system that will automatically shut down the surface coating equipment if the monitored parameters for the filtration system deviate from the allowed operating range.

3. Comments and Responses

Comment: One commenter argued that the EPA should clarify the operations subject to the inorganic HAP requirements by defining “spray-applied coating operation.” The commenter noted that the term “spray gun” is defined in the current rule as “a device that atomizes a coating or other material and projects the particulates or other material onto a substrate.” The commenter noted that 40 CFR part 63, subpart HHHHHH, which applies to area source aerospace facilities, excludes some specialty coating materials (including adhesives, sealants, maskants, and caulking materials) from the definition of spray-applied coating operation because they are not spray applied or are not atomized even when they are applied with a spray gun, and instead are emitted in larger particles that settle near the source and are not emitted. The commenter also noted that certain application methods were excluded from the definition of “spray-applied coating operation” in subpart HHHHHH, including the following: Powder coating, hand-held non-refillable aerosol containers, and non-atomizing application technology (for example, paint brushes, rollers, hand wiping, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, and marking pens).

The commenter recommended that the operations subject to the inorganic HAP control requirements be clarified by adding the following definition to 40 CFR 63.742:

Spray-Applied Coating Operations means operations that apply coatings using a device that creates an atomized mist of coating and deposits the coating on a substrate. For the

purposes of this subpart, spray-applied operations do not include the following materials or activities:

- (1) Application of coating using powder coating, hand-held non-refillable aerosol containers, or non-atomizing application technology, including but not limited to paint brushes, rollers, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, marking pens, trowels, spatulas, daubers, rags, sponges, mechanically and/or pneumatic-driven syringes, and inkjet machines.
- (2) Application of adhesives, sealants, maskants, caulking materials, and inks.

Response: The EPA agrees with the commenter that certain operations, which are often performed with specialty coatings, should be specifically excluded from the inorganic HAP control requirements for spray-applied coating operations because they are not, in fact, applied with atomizing spray application equipment. Therefore, the EPA is adopting a definition very similar to that suggested by the commenter. The suggested definition is consistent with the provisions in 40 CFR part 63, subpart HHHHHH for defining coating operations subject to the inorganic HAP control requirements in subpart HHHHHH.

Comment: One commenter argued that the rule should include an additional exemption from the inorganic HAP requirements for specialty coatings in 40 CFR 63.745(g)(4) for the application of coatings from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). The commenter noted that this exemption is provided in 40 CFR part 63, subpart HHHHHH to accommodate low volume applications, including operations that use airbrushes, which may occasionally occur in various locations throughout the assembly facility where it is impractical to relocate the aircraft or part to a coating booth. Because the paint cup capacity is limited to 3.0 fluid ounces, operations of this type are inherently limited and result in little or no inorganic HAP emissions. Providing this exemption for specialty coatings would allow operational flexibility without creating extra HAP emissions, according to the commenter.

Response: The EPA agrees with the commenter on the need for the suggested exemption for coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). (These coatings will continue to be subject to the organic HAP content limitations in 40 CFR 63.745(c) and other applicable requirements of subpart GG.) The EPA

is incorporating this change into the final rule because it is consistent with the exemption for coatings applied with air brushes in 40 CFR part 63, subpart HHHHHH, as noted by the commenter. This exemption is also consistent with the current exemptions in 40 CFR 63.745(g) for the control of inorganic HAP, for example, stencil operations performed by brush or airbrush, and the use of hand-held aerosol can application methods. The EPA is also including language that limits the amount of coating applied to no more than 3.0 fluid ounces in a single coating operation. The exclusion from the inorganic HAP control requirements is limited to the spray-application of no more than 3.0 fluid ounces of coating in a single application or “job” (*i.e.*, the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or refilling a small paint cup to apply more than 3.0 fluid ounces of coating under this exclusion in 40 CFR 63.745(g) is prohibited. If a paint cup liner is used in a holder or cup, then the holder or cup must also be designed to hold a liner with a capacity of no more than 3.0 fluid ounces. For example, a 3.0 ounce liner cannot be used in a holder or cup that can also be used with a 6.0 ounce liner. This language is intended to prevent facilities from circumventing the rule by refilling paint cups or by using multiple detachable cups that have been filled in advance.

Comment: One commenter requested that the EPA allow interlock systems as an alternative to daily pressure drop and water flow readings on coating spray booths, as this type of system automatically shuts off the air supply to the spray guns if the monitored parameters are out of range. The commenter noted that the EPA has included an interlock option in other NESHAP (*e.g.*, 79 FR 72874, December 8, 2014). The commenter argued that an interlock system option would reduce the monitoring and recordkeeping burden for regulated facilities while ensuring that coating operations cease when the parameters are out of range.

Response: The EPA agrees that these types of interlock systems accomplish the same objectives as daily pressure drop and water flow readings and reduce the monitoring and recordkeeping burden associated with the use of spray booths to control inorganic HAP emissions from spray-applied coating operations, and has included this option in the final rule.

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule, in the comment responses in section IV.F.3 of this preamble, and in the response to comments document in the docket for this rulemaking, we are finalizing the proposed requirements for specialty coatings with respect to the requirements for controlling inorganic HAP emissions as proposed and with the changes described in section IV.F.2 of this preamble.

G. Complying With the Specialty Coating Limits

1. What did we propose?

The EPA proposed to revise 40 CFR 63.750 to include alternative compliance demonstration provisions for all coatings subject to the Aerospace NESHAP (primers, topcoats, specialty coatings and chemical milling maskants). If the manufacturer’s supplied formulation data or calculation of HAP and VOC content indicates that the coating meets the organic HAP and VOC content emission limits for its coating type, as specified in 40 CFR 63.745(c) and 63.747(c), then the owner or operator would not be required to demonstrate compliance for these coatings using the test method and calculations specified in 40 CFR 63.750(c), (e), (k), and (m), or to keep the associated records and submit reports associated with these methods and calculations. Instead, the owner or operator would be able to rely on the manufacturers’ formulation data and calculation of the HAP or VOC content to demonstrate compliance. However, the owner or operator would continue to be required to maintain purchase records and manufacturers’ supplied data sheets for these compliant coatings. Owners or operators of facilities using these coatings would also continue to be required to handle and transfer these coatings in a manner that minimizes spills, apply these coatings using one or more of the specified application techniques and comply with inorganic HAP emission requirements.

2. What changed since proposal?

The EPA has revised 40 CFR 63.750(c) (Organic HAP content level determination—compliant primers, topcoats, and specialty coatings) and 63.750(k) (Organic HAP content level determination—compliant chemical milling maskants) to add a provision that owners and operators may add non-HAP solvents to coatings that meet the organic HAP and VOC content limits as supplied by the manufacturer and added language to 63.752(c) and (f) to

specify the records that must be kept to demonstrate compliance using this provision.

The EPA revised 40 CFR 63.741(f) to clarify that subpart GG does not apply to coatings that do not contain HAP, but owners and operators can include these non-HAP coatings in averaging as long as records are kept of the non-HAP coatings used for averaging.

The EPA is revising the definition of coating in 40 CFR 63.742 to be consistent with the definition used in other more recent surface coating NESHAP.

We are also finalizing a change made since proposal as an outgrowth of comments to add EPA Method 311, Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings, as the reference method for determining the HAP content of primers, topcoats, and specialty coatings.

3. Comments and Responses

Comment: One commenter recommended that the rule allow addition of HAP-free solvents to specialty coatings that meet the organic HAP and VOC content limits as supplied by the coating manufacturer. The commenter argued that industry members have identified several specialty coatings that meet the organic HAP and VOC content limits as supplied by the manufacturer but that would no longer meet the VOC limit “as applied” when solvents are added as recommended in the manufacturing specification. In those cases, the solvents added contain VOC, but no HAP, such as primers that are applied in warm weather. The commenter suggested that facilities would be required to keep records demonstrating compliance with the limits as supplied and that the solvents added do not contain HAP. The commenter argued that such a change would be equivalent to the proposed standards because (1) The coatings meet the organic HAP and VOC content limits as supplied, thereby effectively limiting the HAP content of the coating, and (2) the solvents added do not contain HAP, such that the coatings would remain compliant with the organic HAP limit “as applied.”

Response: The EPA agrees that facilities should be able to add non-HAP solvents to coatings that meet the organic HAP and VOC content limits as supplied by the manufacturer. The facilities will be required to keep records demonstrating that the coatings meet the HAP and VOC content limits as supplied and that the thinners contain no HAP. The EPA has added language to 40 CFR 63.750(c) (primers/topcoat/specialty) and (k) (chemical

milling maskants) to add this provision and to 40 CFR 63.752(c) and (f) to specify the records that must be kept to demonstrate compliance.

Comment: One commenter argued that the rule should be revised to clarify that it does not apply to specialty coatings that do not contain HAP. The commenter noted that proposed 40 CFR 63.741(f) includes the following sentence (emphasis added):

The requirements of this subpart also do not apply to primers, topcoats, specialty coatings, chemical milling maskants, strippers, and cleaning solvents containing HAP and VOC at concentrations less than 0.1 percent by mass for carcinogens or 1.0 percent by mass for non-carcinogens, as determined from manufacturer's representations, such as in a material safety data sheet or product data sheet, or testing.

The commenter argued that this could be interpreted to mean that the rule would regulate coatings that contain no HAP, if they contained VOC above the levels specified in that sentence. The commenter argued that this is likely to have been unintentional because the EPA has the authority to regulate only sources of HAP under CAA section 112, and the EPA cannot regulate sources of VOC that are not sources of HAP. The commenter argued, however, that aerospace facilities should have the option to use coatings with no HAP to demonstrate compliance using the coating content averaging provisions of 40 CFR 63.750(d) and (f) to encourage the development and use of non-HAP coatings. The commenter recommended that the following provision should be added to 40 CFR 63.741(f) to clarify the exemption:

The requirements of this subpart also do not apply to specialty coatings containing HAP at concentrations less than 0.1 percent by mass for carcinogens or 1.0 percent by mass for non-carcinogens, as determined from manufacturer's representations, such as in a material safety data sheet or product data sheet, or testing, except that if an owner or operator chooses to include one or more such coatings in averaging under §63.743(d), then the recordkeeping requirements of §63.752(c)(4) shall apply.

Response: The EPA agrees with the commenter that, as a rule promulgated under section 112 of the CAA, subpart GG should not apply to coatings that contain no HAP. Under CAA section 112(d)(1), the EPA is required to "promulgate regulations establishing emissions standards for each category or subcategory of major sources . . . of listed hazardous air pollutants." Therefore, the EPA is revising 40 CFR 63.741(f) to remove the reference to VOC in the sentence cited by the commenter. The EPA also agrees that

facilities should be allowed to include these non-HAP coatings in averaging, so the EPA is adding in language similar to that suggested by the commenter to clarify the recordkeeping requirements that would apply to these non-HAP coatings used in an average.

Comment: One commenter argued that the EPA should revise the definition of "coating" in 40 CFR 63.742 to be consistent with other surface coating NESHAP. The commenter argued that the current definition is vague, and with the proposed regulation of specialty coatings, it could be read to include products that are not considered coating products under other EPA surface coating rules. The commenter argued that the definition should limit coatings to liquid or mastic materials and exclude materials that are excluded from the definition of coating in other EPA rules. The commenter recommended the following definition of coating:

Coating means a liquid, liquefiable, or mastic composition that is applied to the surface of an aerospace vehicle or component and converted by evaporation, cross-linking, or cooling, to form a decorative, protective, or functional solid film or the solid film itself. Coating application with handheld, non-refillable aerosol containers, touch-up markers, marking pens, or the application of paper film or plastic film which may be pre-coated with an adhesive by the manufacturer are not coating operations for the purposes of this subpart.

Response: The EPA agrees with the commenter that the definition of "coating" should be clarified because of the addition of specialty coatings, and the revised definition should be consistent with other surface coating NESHAP. The EPA reviewed the definitions of "coating" in other surface coating NESHAP and is revising the definition in subpart GG to match the definition used in 40 CFR part 63, subparts MMMM and PPPP to account for the diversity of materials represented by the specialty coatings and to clarify that the standards do not apply to paper or plastic film pre-coated with an adhesive by the film manufacturer.

The EPA is also excluding materials in handheld, non-refillable aerosol containers, touch-up markers, and marking pens from the definition of coating because these types of coatings have been excluded from the definition of "coating" or "coating operation" in other surface coating NESHAP. Aerosol coatings have been excluded from the subpart GG emissions limits because they are included in the list of specialty coatings in Appendix A to subpart GG.

The EPA is not adding the suggested language that a coating is "a liquid,

liquefiable, or mastic composition that is applied to the surface of an aerospace vehicle or component and converted by evaporation, cross-linking, or cooling, to form a decorative, protective, or functional solid film or the solid film itself." The EPA believes that this language is not needed because the revised definition will now include the following as examples of coatings: Paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. The EPA believes that these examples will be at least as illustrative as the language suggested by the commenter and will be consistent with the definition of "coatings" in other EPA rules.

The definition of coating in the final rule reads as set forth in 40 CFR 63.742.

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule, in the comment responses in section IV.G.3 of this preamble, and in the response to comments document in the docket for this rulemaking, we are finalizing the proposed requirements for specialty coatings with respect to the compliance requirements as proposed and with the changes described in section IV.G.2 of this preamble.

H. Electronic Reporting Requirements

1. What did we propose?

The EPA proposed that owners and operators of aerospace manufacturing and rework facilities submit electronic copies of certain required performance test reports by direct computer-to-computer electronic transfer using EPA-provided software. The direct computer-to-computer electronic transfer is accomplished through the EPA's CDX using the CEDRI. The CDX is the EPA's portal for submittal of electronic data using the EPA-provided ERT to generate electronic reports of performance tests and evaluations. The ERT generates an electronic report package that will be submitted using the CEDRI. The submitted report package will be stored in the CDX archive (the official copy of record) and the EPA's public database called WebFIRE. All stakeholders would have access to all reports and data in WebFIRE and accessing these reports and data will be very straightforward and easy (see the WebFIRE Report Search and Retrieval link at <http://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission>). A description of the WebFIRE database is available at <http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main>. A description of the ERT and instructions

for using ERT can be found at <http://www3.epa.gov/ttn/chief/ert/index.html>. CEDRI can be accessed through the CDX Web site (<http://www.epa.gov/cdx>).

The submission of performance test data electronically to the EPA applies only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at <http://www.epa.gov/ttn/chief/ert/index.html>.

2. What changed since proposal?

The EPA is making no changes to the proposed electronic reporting requirements and they are being finalized as proposed.

3. Comments and Responses

Comments were received regarding the proposed electronic reporting requirements and were generally supportive. The comments and our specific responses to those comments can be found in the comment summary and response document available in the docket for this action (EPA-HQ-OAR-2014-0830).

4. Rationale for Final Approach

For the reasons explained in the preamble to the proposed rule and in the response to comments document in the docket for this rulemaking, we are finalizing the requirements for electronic reporting as proposed.

I. Startup, Shutdown, and Malfunction Provisions

1. What did we propose?

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We have eliminated the SSM exemption in this rule. Consistent with *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied*, 130 S. Ct. 1735 (U.S. 2010), the EPA proposed to remove the SSM provisions and other changes so that standards in this rule would apply at all times. We also proposed several revisions to Table 1 to

subpart GG of part 63 (the General Provisions Applicability Table, hereafter referred to as the "General Provisions table") as explained in more detail below. For example, we proposed to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also proposed to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

In proposing the standards in this rule, the EPA took into account startup and shutdown periods and, for the reasons explained below, did not propose alternate standards for those periods. Information on periods of startup and shutdown received from the facilities through CAA section 114 questionnaire responses indicated that emissions during these periods do not exceed the emissions during normal operations. The facilities do not perform the regulated surface coating operations unless and until their control devices (e.g., spray booths or other types of control devices) are operating to fully control emissions. Therefore, we determined that separate standards for periods of startup and shutdown are not necessary.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition sudden, infrequent, and not reasonably preventable failures of emissions control, process or monitoring equipment. The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and, for existing sources, generally must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the agency to consider malfunctions in determining the level "achieved" by the best performing sources when setting emission standards. As the D.C. Circuit has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting

emissions standards, nothing in CAA section 112 requires the agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As a result, the performance of units that are malfunctioning is not "reasonably" foreseeable. *See, e.g., Sierra Club v. EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) ("The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'") *See also, Weyerhaeuser v. Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes offline as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady-state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations and the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for

malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation.

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

a. 40 CFR 63.743(e) General Duty

We proposed to revise the entry in the General Provisions table for 40 CFR 63.6(e)(1)(i) by changing the "yes" in column 2 to a "no." Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We proposed instead to add general duty regulatory text at 40 CFR 63.743(e) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The former language in 40 CFR

63.6(e)(1)(i) characterized what the general duty entailed during periods of SSM. With the elimination of the SSM exemption, there was no need to differentiate between normal operations and SSM events in describing the general duty. Therefore the language the EPA proposed for 40 CFR 63.743(e) does not include that language from 40 CFR 63.6(e)(1).

We also proposed to revise the General Provisions table entry for 40 CFR 63.6(e)(1)(ii) by changing the "yes" in column 2 to a "no." Section 63.6(e)(1)(ii) imposed requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.743(e).

b. SSM Plan

We proposed to revise the General Provisions table entry for 40 CFR 63.6(e)(3) by changing the "yes" in column 2 to a "no." Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA proposed to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We proposed to revise the General Provisions table entry for 40 CFR 63.6(f)(1) by changing the "yes" in column 2 to a "no." The former language of 40 CFR 63.6(f)(1) exempted sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club v. EPA* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club*, the EPA proposed to revise some standards in this rule to apply at all times.

d. 40 CFR 63.749(j) Performance Testing

We proposed to revise the General Provisions table entry for 40 CFR 63.7(e)(1) by changing the "yes" in column 2 to a "no." Section 63.7(e)(1) describes performance testing requirements. The EPA instead proposed to add a performance testing requirement at 40 CFR 63.749(j). The performance testing requirements we proposed to add differ from the General Provisions performance testing provisions in several respects. The

regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered "representative" for purposes of performance testing. The proposed performance testing provisions specified that performance testing of controls must be conducted during representative operating conditions of the applicable source and may not take place during SSM periods of the applicable controlled surface coating operations, controlled chemical milling maskant application operations or controlled chemical depainting operations. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. The EPA proposed to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records "as may be necessary to determine the condition of the performance test" available to the Administrator upon request, but does not specifically require the information to be recorded. The regulatory text the EPA proposed to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We proposed to revise the General Provisions table entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the "yes" in column 2 to a "no." The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

f. 40 CFR 63.752(a) Recordkeeping

We proposed to revise the General Provisions table entry for 40 CFR 63.10(b)(2)(i) by changing the "yes" in column 2 to a "no." Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA proposed that

recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We proposed to revise the General Provisions table entry for 40 CFR 63.10(b)(2)(ii) by changing the “yes” in column 2 to a “no.” Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA proposed to add such requirements to 40 CFR 63.752(a). The regulatory text we proposed to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA proposed that this requirement apply to any failure to meet an applicable standard and proposed to require that the source record the date, time, and duration of the failure rather than the “occurrence.” The EPA also proposed to add to 40 CFR 63.752(a) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods include mass balance calculations, measurements when available, or engineering judgment based on known process parameters (e.g., coating HAP content and application rate or control device efficiencies). The EPA proposed to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We proposed to revise the General Provisions table entry for 40 CFR 63.10(b)(2)(iv) by changing the “yes” in column 2 to a “no.” When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record

corrective actions is now applicable by reference to 40 CFR 63.752(a).

We proposed to revise the General Provisions table entry for 40 CFR 63.10(b)(2)(v) by changing the “yes” in column 2 to a “no.” When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

g. 40 CFR 63.753 Reporting

We proposed to revise the General Provisions table entry for 40 CFR 63.10(d)(5) by changing the “yes” in column 2 to a “no.” Section 63.10(d)(5) describes the reporting requirements for SSM periods. To replace the General Provisions reporting requirement, the EPA proposed to add reporting requirements to 40 CFR 63.753(a). The replacement language added to 40 CFR 63.753(a) differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We proposed language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual report already required under this rule. We proposed that the report must contain the number, date, time, duration and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods include mass balance calculations, measurements when available or engineering judgment based on known process parameters (e.g., coating HAP content and application rates and control device efficiencies). The EPA proposed this requirement to ensure there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans will no longer be required. The proposed amendments will, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal

schedule from this section. These specifications will be no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

As discussed above, we proposed to revise the General Provisions table entry for 40 CFR 63.10(d)(5), by changing the “yes” in column 2 to a “no.” Section 63.10(d)(5)(ii) describes an immediate report for SSM events when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a SSM event were not consistent with an SSM plan, because plans will no longer be required, and other reports and records will be used to allow the EPA to determine the severity of the failure to meet an applicable standard and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

2. What changed since proposal?

We have not changed any aspect of the SSM provisions for the Aerospace Manufacturing and Rework Facilities source category since the proposal.

3. Comments and Responses

Comments were received regarding the proposed revisions to remove the SSM exemptions for the Aerospace Manufacturing and Rework Facilities source category. The comments and our specific responses to those comments can be found in the comment summary and response document available in the docket for this action (EPA-HQ-OAR-2014-0830).

4. Rationale for Final Approach

For the reasons provided above, provided in the preamble for the proposed rule and provided in the comment summary and response document available in the docket, we have removed the SSM exemption from the Aerospace NESHAP; eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption; and removed or modified inappropriate, unnecessary or redundant language in the absence of the SSM exemption. We are finalizing our proposed determination that facilities comply with the standards at all times and no additional standards are needed to address emissions during startup or shutdown periods.

J. Effective Date and Compliance Dates for the Amendments

1. What did we propose?

The EPA proposed that the compliance date for the proposed amendments would be the effective date of those amendments (*i.e.*, the date the final amendments are promulgated), with one exception. The EPA proposed a compliance date of 1 year after the effective date for the following standards for existing specialty coating affected sources: 40 CFR 63.745(c)(5) and (6) (HAP and VOC content limits for specialty coatings); 40 CFR 63.745(f) (coating application equipment); and 40 CFR 63.745(g) (control of inorganic HAP emissions).

2. What changed since proposal?

The compliance date for existing specialty coating operations to comply with the amended requirements in 40 CFR 63.745 has been revised since proposal from 1 year from the effective date of this rule to 3 years from the effective date of this rule.

3. Comments and Responses

Comment: Several commenters argued that the EPA should provide a 3-year compliance period for specialty coatings rather than the proposed 1-year period. All commenters argued that additional time is needed to determine whether each coating is compliant, to engineer new coating formulations, to ensure the replacement specialty coatings meet the needed performance requirements specified by aircraft manufacturers, DoD, Federal Aviation Administration (FAA), National Aeronautics and Space Administration (NASA), or other countries' government agencies. They argued that additional time is also needed to incorporate the new formulation into the material specifications and add the coating to the qualified product list for the aircraft, and to implement changes to raw material supply chains, product lines, and distribution channels to ensure compliance by the deadline and to mitigate the effect of obsolete products and product information.

One commenter noted that the EPA acknowledged the lengthy period of time needed to qualify new coatings with respect to the technology review performed for primer and topcoat operations. Another commenter argued that 1 year is shorter than compliance periods provided in any other surface coating NESHAP and in other RTR standards. The commenter noted that the CTG limits generally have been applied only to facilities in non-attainment areas, and facilities in

attainment areas may be faced with the need to reformulate some coatings. The commenter also argued that the application equipment and spray booth filtration requirements for specialty coatings will also be new requirements for all facilities using specialty coatings, and additional time may be needed to revise title V operating permits for new or upgraded spray booths, or to allow for averaging or alternative compliance demonstrations. The commenter added that, because of the large number of specialty coatings, additional time is also needed to develop compliance systems (even for facilities that previously were required to comply with the primer and topcoat operation standards), determine the VOC and HAP content of these coatings, and setting up recordkeeping and reporting systems.

Response: We agree with the commenters that, based on the additional information provided in their comments, a 3-year compliance period for existing sources is needed for specialty coating operations to comply with the new standards. A 3-year compliance period is the maximum amount of time allowed for an existing source compliance date under 40 CFR 63.6(c) of the General Provisions. Consistent with CAA section 112(i)(3), for standards developed under CAA section 112(d)(3) the EPA could provide up to a 3-year compliance date for existing sources. "[S]ection 112(i)(3)'s three-year maximum compliance period applies generally to 'any emissions standard . . . promulgated under [section 112].'" *Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 672(D.C. Cir. 2013).

4. Rationale for Final Approach

For the reasons provided in the preamble for the proposed rule, in the comment responses in section IV.J.3 of this preamble, and in the comment summary and response document available in the docket, we are finalizing the proposal to require that all of the amendments in the final rule will be effective on December 7, 2015, with one exception. The one exception is the compliance date for existing specialty coating affected sources (*i.e.*, existing on February 17, 2015) will be December 7, 2018, for the reasons explained in section IV.J.3 of this preamble.

K. Standards for Cleaning Operations and Standards for Handling and Storage of Waste

1. What did we propose?

The EPA proposed no changes to the standards for cleaning operations in 40 CFR 63.744 and for the standards for the

handling and storage of waste in 40 CFR 63.748.

2. What changed since proposal?

Based on public comments received on the proposal, the EPA is clarifying the applicability of the requirements for the handling and storage of spent cleaning solvents and HAP-containing wastes in 40 CFR 63.744(a) and 63.748 relative to subpart GG and the regulations in 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) that implement the RCRA. These clarifying changes include the following:

- Removing and reserving 40 CFR 63.741(e);
- Revising 40 CFR 63.744(a) to specify that fresh and spent cleaning solvents, and solvent-laden applicators that are not handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) must comply with the requirements in 40 CFR 63.744(a)(1) through (a)(4); and
- Revising 40 CFR 63.748 to specify that wastes that contain organic HAP from aerospace surface coating operations (primer, topcoat, specialty coating, chemical milling maskant, and chemical depainting operations) that are not handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) must be handled and stored as follows:

(a) Conduct the handling and transfer of wastes that contain organic HAP to or from containers, tanks, vats, vessels, or piping systems in such a manner that minimizes spills during handling and transfer; and

(b) Store all waste that contains organic HAP in closed containers.

3. Comments and Responses

Comment: One commenter argued that the EPA may not exempt waste handling and storage operations from the technology review because doing so would violate CAA section 112(d)(6) and disagreed with the EPA's basis for not doing a technology review in the current rulemaking.

First, the commenter argued that the CAA requires a review of the existing emission standards at least every 8 years after promulgation, including reviewing developments in practices, processes, and control technologies. The commenter added that the EPA argued that "there is no need to do a technology review" in the current rulemaking because the EPA sets standards for

wastes not covered by RCRA and the EPA stated that “[t]he practical effect of [this rule] is that all HAP-containing wastes generated by aerospace manufacturing and rework operations are subject to RCRA and are exempt from the requirements of 40 CFR 63.748.” The commenter added that in 1994, for wastes that are not subject to the provisions of RCRA, the EPA promulgated standards that required HAP-containing waste to be handled in such a manner that spills are minimized for waste handling and storage operations. The commenter added that the EPA recognizes that it must perform the first required 8-year review of the 1994 standards.

In addition, the commenter argued that the EPA has not provided any data or other evidence showing that all aerospace waste is exempt from the current standards that apply to aerospace facilities, nor has it shown that aerospace waste and storage handling is actually regulated by RCRA. The commenter stated that the EPA cites no RCRA regulations that regulate the emissions of these operations, including their hazardous air emissions, much less any such regulations that do so effectively. The commenter argued that unless the EPA can show that all aerospace waste storage and handling operations’ air emissions are appropriately regulated by RCRA, at least as stringently as CAA section 112(d) and (f) require, then its refusal to review these standards is arbitrary and capricious.

The commenter argued that the EPA’s stated reason for originally exempting certain waste (that is subject to RCRA) from the CAA waste handling and storage standards conflicts with and does not support a refusal to do a CAA section 112(d)(6) review now. The commenter noted that the EPA states in the current rule preamble that it promulgated the original exemption to try to avoid creating “potential conflicts” with RCRA. However, the commenter argued that the agency’s explanation for the original exemption was actually more nuanced as the EPA stated that it was promulgating the exemption “so that the . . . standards would not require less strict handling and storage of waste than the RCRA requirements.” The commenter argued that there is no indication that it would create “potential conflicts” for the EPA to review the existing CAA standards to see if there are “developments” that it should account for in revised standards, as the CAA requires, to assure stronger standards than currently apply under either CAA or RCRA. The commenter explained that it would be fully

consistent with the originally stated objective of assuring sufficiently strict requirements for the EPA to perform the requisite review now and would allow the EPA to assess and determine whether the CAA standards are up to date and sufficiently stringent. The commenter added that if the EPA performs the requisite CAA review and finds that there are “developments” in waste storage and handling, the EPA will then need to revise the standards to assure that they satisfy CAA section 112(d), including CAA section 112(d)(2) and (3). As part of this analysis, the EPA can ensure the standards are not less stringent than what is required under RCRA, and thus avoid any potential conflicts, according to the commenter.

The commenter argued that the reviews required by CAA sections 112(d)(6) and (f)(2) are both necessary in part to assure that there are appropriate emission standards in place for HAP emitted by aerospace waste storage and handling operations. The commenter stated that the EPA has no authority to exempt major sources from CAA section 112 standards. The commenter noted that the EPA acknowledged that it also may not set no control standards. The commenter added that these must meet a particular stringency test as defined by CAA section 112(d)(2) and (3). The commenter argued that the EPA may not evade these CAA responsibilities by referring to a different statute (*i.e.*, RCRA) that does not include and cannot substitute for the CAA section 112 requirements. The commenter argued that the EPA must ensure that the required CAA section 112(d)(6) review is satisfied and that any HAP emitted from waste storage and handling operations are subject to CAA section 112(d) standards that assure the “maximum achievable” degree of emission reductions.

The commenter noted that it is unclear whether the EPA included waste handling and storage operations in its CAA section 112(f)(2) risk assessment. The commenter argued that the EPA did not state whether it included emissions from waste storage and handling operations in the CAA section 112(f)(2) review, which requires assessing risks to public health and the environment under the existing standards.

Finally, the commenter argued that the EPA may not rely on the original exemption for certain waste operations because that, in turn, is unlawful under CAA section 112(c) and (d). Where Congress intended to allow the EPA to exempt sources from CAA section 112 standards based on the existence of standards under other statutes, it did so

expressly, according to the commenter. See, *e.g.*, CAA section 7412(d)(9) (radionuclide emissions provision). The commenter added that there is no such exemption for aerospace sources, or any part of their emissions.

Response: The EPA disagrees with the commenter. The EPA is not exempting these waste handling operations from regulation under CAA section 112. In addition, as described in section IV.B.3 of this preamble, the EPA has completed a technology review for the standards for handling and storage of waste in 40 CFR 63.748 as required by CAA section 112(d)(6). Finally, the EPA has included these waste storage and handling operations in the risk assessment required under CAA section 112(f)(2).

First, the EPA has established standards for waste storage and handling operations under 40 CFR 63.744 and 63.748 that are already not subject to requirements under RCRA.

The provisions under 40 CFR 63.744(a)(1) and (a)(2) require that spent cleaning solvent and spent solvent-laden materials (*e.g.*, cloth or paper applicators) be stored in closed containers. The provisions under 40 CFR 63.744(a)(3) and 40 CFR 63.748 require that all handling and transfer of spent cleaning solvents or HAP containing wastes be done in a manner to minimize spills.

The provisions in 40 CFR 63.741(e) provide that “All wastes that are determined to be hazardous wastes under the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580) (RCRA) as implemented by 40 CFR parts 260 and 261, and that are subject to RCRA requirements as implemented in 40 CFR parts 262 through 268” are not subject to the requirements of subpart GG. The EPA included this provision so that the standards in subpart GG would not potentially require less stringent handling and storage of waste than the RCRA requirements. At the same time, the EPA made a determination that, for wastes subject to RCRA, no more stringent controls for HAP air emissions were achievable. The hazardous waste storage requirements implemented in the RCRA requirements represented the most stringent controls achievable.

However, the EPA recognizes that the inclusion of this language under 40 CFR 63.741(e) can lead to confusion over the materials and activities that are subject to the requirements of subpart GG, specifically 40 CFR 63.744(a) and 63.748. The EPA believes that some entities could read this provision as exempting from subpart GG all waste materials and activities that are eventually subject to RCRA even before they are placed in RCRA-covered

containers for handling and storage, or before they are handled and stored according to RCRA requirements.

Therefore, the EPA is removing and reserving 40 CFR 63.741(e), and revising 40 CFR 63.744(a) and 63.748 to clarify the requirements for the handling and storage of spent solvents and other wastes relative to subpart GG and RCRA. The EPA is revising 40 CFR 63.744(a) to specify that fresh and spent cleaning solvents, and solvent-laden applicators that are not handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) must comply with the requirements in 40 CFR 63.744(a)(1) through (a)(4).

The EPA is revising 40 CFR 63.748 to specify that wastes that contain organic HAP from aerospace surface coating operation wastes from primer, topcoat, specialty coating, chemical milling maskant, and chemical depainting operations that are not handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC) must be handled and stored as follows:

(1) Conduct the handling and transfer of wastes that contain organic HAP to or from containers, tanks, vats, vessels, or piping systems in such a manner that minimizes spills during handling and transfer; and (2) store all waste that contains organic HAP in closed containers.

The EPA has determined that these changes will ensure that all spent solvents and other wastes that contain organic HAP that are generated from aerospace surface coating operations are handled and stored so that emissions are minimized through the application of MACT controls (*i.e.*, closed containers or closed transfer systems) either through the measures specified in subpart GG or because the spent solvent or waste handling is subject to regulation under RCRA, including the air emission control requirements in 40 CFR part 265, subpart CC. The EPA has included 40 CFR 63.748(b) to clarify the requirements for handling of waste and to ensure uniform handling of organic HAP containing materials and consistency among the requirements of 40 CFR 63.744(a), 63.748, and the regulations implementing RCRA. The EPA is also making this addition in order to be responsive to commenter's concerns that 40 CFR 64.748 did not satisfy the requirements of CAA section 112(d)(2); however, this provision reflects practices that are already employed by facilities to be compliant with 40 CFR 63.744(a) and the RCRA

regulations. The EPA did not intend to exempt RCRA hazardous wastes from all waste storage and handling requirements of the rule. Our intention was for RCRA 40 CFR parts 262 through 268 to regulate the storage of RCRA wastes but also for 63.748 to require the handling and transfer of the waste to or from RCRA-controlled waste containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills and emissions from non-RCRA containers that may hold waste.

The EPA conducted a technology review of the standards for cleaning operations in 40 CFR 63.744, and the results of that review were included in the docket for the proposed rulemaking. In that technology review, the EPA concluded that there were no new developments in practices, processes, and control technologies for cleaning operations. Those controls of air emissions from cleaning operations (*i.e.*, the control of emissions from the handling and storage of spent solvent using closed containers and the housekeeping measures to minimize spills) are equally applicable to the storage and handling of waste. Therefore, the EPA concluded, at proposal, that there are no new developments in practices, processes, and control technologies for the requirements for cleaning operation or the handling and transfer of waste. However, as discussed in section IV.B.3 of this preamble, the EPA has also completed a separate technology review, since proposal, for the storage and handling of waste, and that technology review is in the docket for this rulemaking. The technology review for storage and handling of waste also concluded that there were no new developments in practices, processes, and control technologies for air emissions from waste storage and handling operations.

The EPA has also reviewed the requirements for the handling of waste under RCRA that would be applicable to RCRA wastes generated from aerospace surface coating operations, and the EPA has determined that there were no new developments in practices, processes, and control technologies for the handling of waste from surface coating operations beyond the current requirements in RCRA, including the air emission control requirements in 40 CFR part 265, subpart CC.

With respect to the question of whether the EPA included waste handling and storage in the risk assessment required by CAA section 112(f)(2), the risk assessment included data on emissions associated with waste handling operations. The EPA ICR that

collected information in 2011 requested information from cleaning operations (including emissions from the handling and storage of spent cleaning solvent and solvent-laden materials) and information on emissions from any tanks associated with the cleaning, surface coating, or chemical depainting operations. These data encompass all of the potential sources of HAP emissions that would be associated with waste handling and storage associated with the cleaning operations or with other (non-cleaning) surface coating waste storage and handling. The EPA included these HAP emissions data in the inputs to the air quality modeling and risk assessment completed by the EPA in making the residual risk determination under CAA section 112(f)(2).

4. Rationale for Final Approach

For the reasons provided above in section IV.K.3 of this preamble, we are revising 40 CFR 63.744(a) and 63.748 to clarify the relationship between the requirements for the handling and storage of spent cleaning solvent and waste in subpart GG relative to the regulations implementing RCRA.

L. Technical Corrections to the Aerospace NESHAP

1. Technical Corrections Included in the Proposed Rule

The EPA proposed the following technical corrections to subpart GG:

- Revising 40 CFR 63.743(a)(2) to match the section title in 40 CFR 63.5.
- Revising 40 CFR 63.743(a)(8) to correct the reference to paragraph 63.6(i)(12)(iii)(B) by changing the "(1)" to an "(i)."
- Revising 40 CFR 63.744(a) to correct and clarify the format of the reference to 40 CFR 63.744(a)(1) through (4).
- Correcting the ordering of 40 CFR 63.744(a)(3) and (4); currently paragraph (a)(4) is printed before (a)(3).
- Correcting the paragraph numbering for 40 CFR 63.746(b)(4)(ii)(C) by changing paragraph (C) from a lower case to upper case "C."
- Correcting the numbering of the tables in 40 CFR 63.745 to account for the proposed addition of Table 1 to that section to include specialty coating limits.
- Revising 40 CFR 63.749(d)(4) to correct the references to 40 CFR 63.749(d)(4)(i) through (d)(4)(iv) and (e).
- Revising 40 CFR 63.750(g)(6)(i) to remove the letters "VR/FD" that were inadvertently included.

The EPA did not receive any comments on these proposed changes. Therefore, these changes have been incorporated into the final rule as proposed.

2. Technical Corrections Included in the Final Rule

The public comments on the proposed rule included requests for the following technical corrections to subpart GG in addition to those discussed directly above:

One commenter recommended that the first full sentence of 40 CFR 63.753(c) should be revised to include specialty coating application operations to clarify that this section applies to specialty coating applications. The EPA agrees with this comment and is making this clarifying change.

One commenter requested that the EPA change the specialty coating category name for “Corrosion Prevention System” in Appendix A to subpart GG to “Corrosion Prevention Compound” to match the naming convention used in Table 1 to subpart GG. The EPA acknowledges this difference within subpart GG, but in the final rule is changing the name used in Table 1 to subpart GG to match the category definition in Appendix A to subpart GG because that definition specifically uses the word “system,” instead of “compound,” in the body of the definition.

One commenter noted that the EPA should state in 40 CFR 63.752(a) that facilities are not required to keep records in accordance with 40 CFR 63.10(d)(5), to be consistent with the removal of SSM requirements in 40 CFR 63.753(a) and Table 1 to subpart GG. The EPA agrees and has added 40 CFR 63.10(d)(5) to the list of paragraphs in 40 CFR 63.10 that do not apply.

One commenter noted that the term “affected unit” should be changed to “affected source” in 40 CFR 63.752(a)(1) to (3) for consistency with other sections of the rule. The EPA agrees and has made this change.

One commenter requested that the EPA clarify in the final rule if 40 CFR 63.10(b)(2)(vii) to (xiv) are applicable to the Aerospace NESHAP. The EPA acknowledges that in the version of Table 1 to subpart GG published in the **Federal Register** (80 FR 8438), the row for 40 CFR 63.10(b)(2)(vii) to (xiv) in the amended Table 1 to subpart GG was inadvertently left blank in the second column, and this should have been marked “Yes” that these requirements still apply. The amendments to Table 1 to subpart GG changed only certain elements in Table 1 and those changes, including those to 40 CFR 63.10(b), were explained in the preamble. Before the amendments, all of 40 CFR 63.10(b) applied to subpart GG. Sub-paragraphs 40 CFR 63.10(b)(2)(vii) to (xiv) are not

being amended, and they still apply to subpart GG.

In the final rule, the EPA is also correcting 40 CFR 63.749(d)(3)(i) and (4)(i) to reference the applicable limits in 63.745(c). At 40 CFR 63.749(d)(3)(i) and (4)(i), the rule referenced only the single primer and topcoat limits that were promulgated in 1995 (60 FR 45948, September 1, 1995) and did not include the primer and topcoat limits that were added in 1998 (63 FR 46526, September 1, 1998) and 2000 (65 FR 76941, December 8, 2000). This change will resolve confusion over the applicable limits being referenced.

The EPA is also correcting several references to “spray cans” and replacing those references with “non-refillable aerosol containers” because that is the term used elsewhere in the rule. Similarly, the EPA is also correcting several references to “painting operations” and replacing them with “surface coating operations.”

V. Summary of Cost, Environmental and Economic Impacts

A. What are the affected sources?

The EPA estimates, based on the responses to the 2011 ICR, that there are 144 major source facilities that are engaged in aerospace manufacturing and rework surface coating operations. Based on the responses to the 2011 ICR, the EPA estimates that 109 facilities likely would be affected by the final limits for specialty coatings and the requirements to use high-efficiency application equipment for specialty coatings.

B. What are the air quality impacts?

The EPA estimates that annual HAP emissions from specialty coatings are about 360 tpy; inorganic HAP emissions are about 5 tpy, and the remainder are organic HAP. The estimated emission reductions are 58 tons of HAP, which would be achieved from the regulation of specialty coatings. The EPA estimated that these emission reductions will result from the requirements to use high-efficiency application equipment and also from the application of the HAP content limits to specialty coatings.

C. What are the cost impacts?

The EPA estimates that the annual cost impacts will be about \$590,000 per year for all affected facilities. The cost impacts are attributed to monitoring and recordkeeping costs for complying with the specialty coating HAP content limits. The cost per facility was estimated based on the number of specialty coatings used at each facility,

as reported in the 2011 ICR. The costs are based on an assumption of 1 hour of technical labor for annual recordkeeping and reporting for each specialty coating used by a facility, plus additional management and clerical hours representing a fraction of the technical labor hours.

The EPA does not have sufficient data from the 2011 ICR to estimate the total cost impacts for specialty coatings having to comply with the proposed high-efficiency application equipment requirement. Because high-efficiency application equipment generates less coating overspray than conventional equipment, the costs of upgrading to new equipment can be offset by cost savings from reduced coating consumption and reduced spray booth filter maintenance. For these reasons, many facilities are likely to have already switched to high-efficiency application methods for specialty coating operations, as they are already required to for primer and topcoat application operations. For example, the average volume of specialty coatings used per facility is 3,000 gallons per year, based on the 2011 ICR data. The estimated purchase cost for a professional quality HVLP spray gun is \$700 for the gun and hoses. If the average facility had to purchase three new spray guns, and the facility was spending an average of \$30 per gallon of spray-applied coating, the facility would need to see a decrease in coating consumption of only 70 gallons per year (about a 3-percent reduction) to recover the initial cost of those three spray guns in 1 year.

The EPA expects some additional potential cost savings from the alternative compliance demonstration provision included in 40 CFR 63.750(c), (e), (k), and (m), but we do not have sufficient data to estimate the cost savings associated with the alternative compliance demonstration. However, for comparison, the estimated cost to perform an analysis of VOC content according to EPA Method 24, based on published vendor data, is about \$575 per sample. The costs for an analysis of HAP content using EPA Method 311 are expected to be at least several times higher. Because the alternative compliance demonstration will allow facilities to use coating manufacturers' documentation of HAP or VOC content based on coating composition, the cost of these coating analyses using EPA Method 24 or 311 would be avoided.

The EPA's cost analyses are documented in the memorandum, *Methodology for Estimating Control Costs for Specialty Coating Operations in the Aerospace Source Category*,

January 2014, in the docket for this rulemaking.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets are also examined. Both the magnitude of costs needed to comply with the rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule.

This rule applies to the surface coating and related operations at facilities that are major sources and are engaged, either in part or in whole, in the manufacture or rework of commercial, civil or military aerospace vehicles or components. The final rule adds recordkeeping and reporting provisions for specialty coating operations but does not change the compliance costs for operations already being regulated by the existing emission standards. The annual costs were calculated for only the 109 aerospace manufacturing and rework facilities that reported having specialty coating operations.

The estimated annual costs for the final rule are less than \$1 million in the first year and in succeeding years (less than \$850,000 in the first year and less than \$600,000 in succeeding years). These costs are estimated for the 109 facilities that, based on information reported by facilities, appear to have specialty coating operations. Thus, the average cost per facility is less than \$10,000 per year. These costs are small compared to sales for the companies in aerospace manufacturing and reworking. For example, in 2012 the average annual value of shipments (a rough estimate of sales) for firms in the category of "other aircraft parts and auxiliary equipment manufacturing" was almost \$50 million (Source: U.S. Census Bureau, 2012 Economic Census for NAICS 336413 for 2012). In this case, the cost-to-sales estimate will be approximately 0.02 percent of sales for each firm. Costs this small will not have significant market impacts, whether they are absorbed by the firm or passed on as price increases.

The EPA does not know of any firms that are small entities and using specialty coatings that are potentially subject to this final rule. Because no small firms face control costs, there is no significant impact on small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

E. What are the benefits?

We anticipate this rulemaking will reduce organic and inorganic HAP emissions by approximately 58 tons each year. These avoided emissions will result in improvements in air quality and reduced negative health effects associated with exposure to air pollution of these emissions.

This rulemaking is not an "economically significant regulatory action" under Executive Order 12866 because it is not likely to have an annual effect on the economy of \$100 million or more. Therefore, we have not conducted a Regulatory Impact Analysis (RIA) for this rulemaking or a benefits analysis. While we expect that these avoided emissions will improve air quality and reduce health effects associated with exposure to air pollution associated with these emissions, we have not quantified or monetized the benefits of reducing these emissions for this rulemaking.

F. What analysis of environmental justice did we conduct?

The EPA is making environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations in the United States. The EPA has established policies regarding the integration of environmental justice into the agency's rulemaking efforts, including recommendations for the consideration and conduct of analyses to evaluate potential environmental justice concerns during the development of a rule.

Following these recommendations, to gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis for aerospace manufacturing and rework facilities prior to proposal to identify any overrepresentation of minority, low income or indigenous populations. This analysis gives an indication of the prevalence of sub-populations that may be exposed to air pollution from the sources. Further details concerning this analysis are presented in the memorandum titled, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Aerospace Facilities*, a copy of which is available in the dockets for this action. The results of the analysis were summarized in Table 3 of the proposed rule preamble (see 80 FR 8414, February 17, 2015).

The results of the Aerospace Manufacturing and Rework Facilities baseline risk assessment indicated that emissions from the source category expose approximately 180,000 people to a cancer risk at or above 1-in-1 million and no one was predicted to have a chronic non-cancer TOSHI greater than 1.

The baseline analysis indicated that the percentages of the population exposed to a cancer risk greater than or equal to 1-in-1 million and living within 50 kilometers (km) of the 144 aerospace facilities is higher for minority populations, 36 percent exposed, versus the national minority population average of 28 percent. The specific demographics of the population within 50 km of the facilities indicate potential disparities in certain demographic groups, including the "African American" and "Below the Poverty Level" groups. However, the EPA's baseline analysis also showed that the estimated risks were within the ample margin of safety for all minority populations and low income populations. The EPA has also determined that the changes to this rule, which will reduce emissions of organic and inorganic HAP by 58 tpy, will lead to reduced risks to minority populations and low-income populations compared to the baseline analysis.

G. What analysis of children's environmental health did we conduct?

As part of the health and risk assessments, as well as the proximity analysis conducted for this action, risks to infants and children were assessed. These analyses are documented in the *Residual Risk Assessment for the Aerospace Manufacturing and Rework Facilities Source Category in Support of the January, 2015 Risk and Technology Review*, and in the *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Aerospace Facilities*, which are available in the docket for this action.

The results of the proximity analysis show that children 17 years and younger as a percentage of the population in close proximity to aerospace manufacturing and rework facilities and with an estimated cancer risk greater than or equal to 1-in-1 million is similar to the percentage of the national population in this age group (26 percent versus 24 percent, respectively). The difference in the absolute number of percentage points of the population 17 years old and younger from the national average indicates a 2 percent over-representation near aerospace manufacturing and rework facilities. Consistent with the EPA's

Policy on Evaluating Health Risks to Children,⁵ we conducted inhalation and multipathway risk assessments for the Aerospace Manufacturing and Rework Facility source category considering risk to infants and children. Children are exposed to chemicals emitted to the atmosphere via two primary routes: Either directly via inhalation or indirectly via ingestion or dermal contact with various media that have been contaminated with the emitted chemicals. The EPA considers the possibility that children might be more sensitive than adults to toxic chemicals, including chemical carcinogens.

For each carcinogenic HAP included in this assessment that has a potency estimate available, individual and population cancer risks were calculated by multiplying the corresponding lifetime average exposure estimate by the appropriate unit risk estimate (URE). This calculated cancer risk is defined as the upper-bound probability of developing cancer over a 70-year period (*i.e.*, the assumed human lifespan) at that exposure. Because UREs for most HAP are upper-bound estimates, actual risks at a given exposure level may be lower than predicted, and could be zero.

For the EPA's list of carcinogenic HAP that act by a mutagenic mode-of-action, we applied the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*.⁶ This guidance has the effect of adjusting the URE by factors of 10 (for children aged 0-1), 3 (for children aged 2-15), or 1.6 (for 70 years of exposure beginning at birth), as needed in risk assessments. In this case, this has the effect of increasing the estimated lifetime risks for these pollutants by a factor of 1.6.

With regard to other carcinogenic pollutants for which early-life susceptibility data are lacking, it is the Agency's long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity. The basis for this

methodology is also provided in the 2005 Supplemental Guidance.

In the treatment of POM, the EPA expresses carcinogenic potency for compounds in this group in terms of benzo[a]pyrene equivalence, even though only a small fraction of the total POM emissions may be reported as individual compounds, based on evidence that carcinogenic POM have the same mutagenic mechanism of action as does benzo[a]pyrene. For this reason, the EPA implementation policy⁷ recommends applying the *Supplemental Guidance* to all carcinogenic PAHs (a subset of POM) for which risk estimates are based on relative potency. Accordingly, we applied the *Supplemental Guidance* to all unspiciated POM mixtures.

Unlike linear dose-response assessments for cancer, non-cancer health hazards generally are not expressed as a probability of an adverse occurrence. Instead, hazard of non-cancer effects is expressed by comparing an exposure to a reference level as a ratio. The HQ is the estimated exposure divided by a reference level (*e.g.*, the reference concentration, RfC). For a given HAP, exposures at or below the reference level (HQ \leq 1) are not likely to cause adverse health effects. As exposures increase above the reference level (HQs increasingly greater than 1), the potential for adverse effects increases. For exposures predicted to be above the RfC, the risk characterization includes the degree of confidence ascribed to the RfC values for the compound(s) of concern (*i.e.*, high, medium, or low confidence) and discusses the impact of this on possible health interpretations. The reference levels used to determine the HQ's incorporate generally conservative uncertainty factors that account for effects in the most susceptible populations including all life stages (*e.g.*, infants and children).

For our multipathway screening assessment (*i.e.*, ingestion), we assessed risks for adults and various age groups of children. Children's exposures are expected to differ from exposures of adults due to differences in body weights, ingestion rates, dietary preferences and other factors. It is important, therefore, to evaluate the contribution of exposures during childhood to total lifetime risk using appropriate exposure factor values, applying age-dependent adjustment factors (ADAF) as appropriate. The EPA

developed a health-protective exposure scenario whereby the receptor, at various life stages, receives ingestion exposure via both the farm food chain and the fish ingestion pathways.

Based on the analyses described above, the EPA has determined that the changes to this rule, which will reduce emissions of organic and inorganic HAP by 58 tpy, will lead to reduced risk to children and infants.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1687.10. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information requirements in this rulemaking are based on the notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These notifications, reports, and records are essential in determining compliance, and are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

Respondents are owners or operators of aerospace manufacturing and rework operations. The rule adds recordkeeping and reporting provisions for specialty coating operations, but does not change the recordkeeping and reporting provisions for any other types of operations. Therefore, of the 144 aerospace manufacturing and rework facilities subject to the Aerospace NESHAP, the annual costs for increased

⁵ Policy on Evaluating Health Risks to Children, U.S. Environmental Protection Agency, Washington, DC. May 2014. Available at http://www2.epa.gov/sites/production/files/2014-05/documents/1995_childrens_health_policy_statement.pdf.

⁶ Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens. Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC. EPA/630/R-03/003F. March 2005. Available at http://www.epa.gov/raf/publications/pdfs/childrens_supplement_final.pdf.

⁷ US EPA, 2005. Science Policy Council Cancer Guidelines Implementation Workgroup Communication I: Memo from W.H. Farland dated 4 October 2005 to Science Policy Council. <http://www.epa.gov/osa/spc/pdfs/canguid1.pdf>

recordkeeping and reporting apply to only the 109 aerospace manufacturing and rework facilities that reported having specialty coating operations. Respondents must keep records of the specialty coatings used at the facility, including the name and VOC content of the coating, the HAP and VOC emitted per gallon of coating and the monthly volume of each coating used. Respondents must also submit semiannual reports of noncompliance. Recordkeeping and reporting of monitored parameters related to air pollution control technologies are required if controls are used to demonstrate compliance with the standards. The reports and records will be used to determine compliance with the standards.

Respondents/affected entities: Aerospace manufacturing and rework facilities using specialty coatings.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart GG).

Estimated number of respondents: 109 facilities using specialty coatings.

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 6,914 hours (per year) for the responding facilities and 148 hours (per year) for the agency. These are estimates for the average annual burden for the first 3 years after the rule is final. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$695,570 (per year), which includes no annualized capital or operation and maintenance costs, for the responding facilities and \$8,740 (per year) for the agency. These are estimates for the average annual cost for the first 3 years after the rule is final.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a

substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action will not impose any costs on small entities. Although there are small entities subject to this final rule they are either not using specialty coatings or the specialty coatings they're using are already compliant with the limits in the rule. Therefore, no facilities meeting the Small Business Administration's definition of a small business will incur costs. The results of the economic impact analysis are summarized in section V.D of this preamble and can be found in the memorandum, *Economic Impact Analysis for National Emission Standards for Aerospace Manufacturing and Rework Facilities*. A copy of this memorandum is in the docket for this rulemaking. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the aerospace manufacturing or rework surface coating operations that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this

action present a disproportionate risk to children. This action's health and risk assessments are contained in the document, *Residual Risk Assessment for the Aerospace Manufacturing and Rework Facilities Source Category in Support of the November 2015 Risk and Technology Review Final Rule*, which is available in the docket for this action, and are discussed in section V.G of this preamble.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

The final rule involves technical standards. The EPA is adding EPA Method 311 in the final rule to measure the organic HAP content of coatings subject to the rule. Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards (VCS) in addition to EPA Method 311. Two VCS were identified that were potentially applicable for EPA Method 311. These were American Society for Testing and Materials (ASTM) D6438 (1999)—Standard Test Method for Acetone, Methyl Acetate, and Parachlorobenzotrifluoride Content of Paints and Coatings by Solid Phase Microextraction-Gas Chromatography, and California Air Resources Board (CARB) Method 310—Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products. The EPA decided not to use either of these VCS because both methods are impractical as alternatives to EPA Method 311 because they target chemicals that are VOC and are not HAP. The search and review results have been documented and are placed in the docket for this rulemaking.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it increases the level of environmental protection for all affected populations. A summary of the results of this evaluation are contained in section IV.A of this preamble and

more detailed information is provided in the residual risk document, *Residual Risk Assessment for the Aerospace Manufacturing and Rework Facilities Source Category in Support of the November 2015 Risk and Technology Review Final Rule* in the docket for this rulemaking. A copy of this methodology and the results of the demographic analysis are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Aerospace Facilities*, which may be found in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2014-0830).

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 19, 2015.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

- 2. Section 63.741 is amended by:
 - a. Revising paragraph (c) introductory text.
 - b. Redesignating paragraphs (c)(4) through (7) as paragraphs (c)(5) through (8).
 - c. Adding paragraph (c)(4).
 - d. Revising newly redesignated paragraph (c)(8).
 - e. Removing and reserving paragraph (e).
 - f. Revising paragraphs (f) and (g).

The revisions and addition read as follows:

§ 63.741 Applicability and designation of affected sources.

* * * * *

(c) *Affected sources.* The affected sources to which the provisions of this subpart apply are specified in paragraphs (c)(1) through (8) of this section. The activities subject to this subpart are limited to the manufacture or rework of aerospace vehicles or components as defined in this subpart. Where a dispute arises relating to the applicability of this subpart to a specific activity, the owner or operator shall demonstrate whether or not the activity is regulated under this subpart.

* * * * *

(4) For organic HAP or VOC emissions, each specialty coating application operation, which is the total of all specialty coating applications at the facility.

* * * * *

(8) For inorganic HAP emissions, each spray booth, portable enclosure, or hangar that contains a primer, topcoat, or specialty coating application operation subject to § 63.745(g), or a depainting operation subject to § 63.746(b)(4).

* * * * *

(e) [Reserved]

(f) This subpart does not regulate research and development, quality control, and laboratory testing activities, chemical milling, metal finishing, electrodeposition (except for electrodeposition of paints), composites processing (except for cleaning and coating of composite parts or components that become part of an aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure), electronic parts and assemblies (except for cleaning and topcoating of completed assemblies), manufacture of aircraft transparencies, and wastewater operations at aerospace facilities. These requirements do not apply to the rework of aircraft or aircraft components if the holder of the Federal Aviation Administration (FAA) design approval, or the holder's licensee, is not actively manufacturing the aircraft or aircraft components. These requirements also do not apply to parts and assemblies not critical to the vehicle's structural integrity or flight performance. The requirements of this subpart do not apply to primers, topcoats, specialty coatings, chemical milling maskants, strippers, and cleaning solvents that meet the definition of non-HAP material, as determined from manufacturer's representations, such as in a material safety data sheet or product data sheet, or testing, except that if an owner or operator chooses to

include one or more non-HAP primer, topcoat, specialty coating, or chemical milling maskant in averaging under § 63.743(d), then the recordkeeping requirements of § 63.752(c)(4) shall apply. The requirements of this subpart also do not apply to primers, topcoats, and specialty coatings that meet the definition of “classified national security information” in § 63.742. Additional specific exemptions from regulatory coverage are set forth in paragraphs (e), (g), (h), (i) and (j) of this section and §§ 63.742, 63.744(a)(1), (b), (e), 63.745(a), (f)(3), (g)(4), 63.746(a), (b)(5), 63.747(c)(3), and 63.749(d).

(g) The requirements for primers, topcoats, specialty coatings, and chemical milling maskants in §§ 63.745 and 63.747 do not apply to the use of low-volume coatings in these categories for which the annual total of each separate formulation used at a facility does not exceed 189 l (50 gal), and the combined annual total of all such primers, topcoats, specialty coatings, and chemical milling maskants used at a facility does not exceed 757 l (200 gal). Primers, topcoats, and specialty coatings exempted under paragraph (f) of this section and under § 63.745(f)(3) and (g)(4) are not included in the 50 and 200 gal limits. Chemical milling maskants exempted under § 63.747(c)(3) are also not included in these limits.

* * * * *

- 3. Section 63.742 is amended by:
 - a. Adding a definition for “Airless and air-assisted airless spray” in alphabetical order.
 - b. Revising the definition for “Chemical milling maskant”.
 - c. Adding a definition for “Classified National Security Information” in alphabetical order.
 - d. Revising the definition for “Coating”.
 - e. Adding a definition for “Non-HAP material” in alphabetical order.
 - f. Revising the definition for “Softener”.
 - g. Adding a definition for “Spray-applied coating operation” in alphabetical order.
 - h. Revising the definition for “Stripper.”

The additions and revisions read as follows:

§ 63.742 Definitions.

* * * * *

Airless and air-assisted airless spray mean any coating spray application technology that relies solely on the fluid pressure of the coating to create an atomized coating spray pattern and does not apply any atomizing compressed air to the coating before it leaves the spray

gun nozzle. Air-assisted airless spray uses compressed air to shape and distribute the fan of atomized coating, but still uses fluid pressure to create the atomized coating.

* * * * *

Chemical milling maskant means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are also not included in this definition. (See also Type I and Type II etchant definitions.)

* * * * *

Classified National Security Information means information that has been determined pursuant to Executive Order 13526, "Classified National Security Information," December 29, 2009 or any successor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. The term "Classified Information" is an alternative term that may be used instead of "Classified National Security Information."

* * * * *

Coating means a material that is applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances; paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer; or pre-impregnated composite sheets are not considered coatings for the purposes of this subpart. Materials in handheld non-refillable aerosol containers, touch-up markers, and marking pens are also not considered coatings for the purposes of this subpart. A liquid plastic coating means a coating made from fine particle-size polyvinyl chloride (PVC) in solution (also referred to as a plastisol).

* * * * *

Non-HAP material means, for the purposes of this subpart, a primer, topcoat, specialty coating, chemical milling maskant, cleaning solvent, or

stripper that contains no more than 0.1 percent by mass of any individual organic HAP that is an Occupational Safety and Health Administration-defined carcinogen as specified in 29 CFR 1910.1200(d)(4) and no more than 1.0 percent by mass for any other individual HAP.

* * * * *

Softener means a liquid that is applied to an aerospace vehicle or component to degrade coatings such as primers, topcoats, and specialty coatings specifically as a preparatory step to subsequent depainting by non-chemical based depainting equipment. Softeners may contain VOC but shall not contain any HAP as determined from MSDS's or manufacturer supplied information.

* * * * *

Spray-applied coating operation means coatings that are applied using a device that creates an atomized mist of coating and deposits the coating on a substrate. For the purposes of this subpart, spray-applied coatings do not include the following materials or activities:

(1) Coatings applied from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters) in which no more than 3.0 fluid ounces of coating is applied in a single application (i.e., the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component). Under this definition, the use of multiple small paint cups and the refilling of a small paint cup to spray apply more than 3.0 fluid ounces of a coating is a spray-applied coating operation. Under this definition, the use of a paint cup liner in a reusable holder or cup that is designed to hold a liner with a capacity of more than 3.0 fluid ounces is a spray-applied coating operation.

(2) Application of coating using powder coating, hand-held non-refillable aerosol containers, or non-atomizing application technology, including but not limited to paint brushes, rollers, flow coating, dip coating, electrodeposition coating, web coating, coil coating, touch-up markers, marking pens, trowels, spatulas, daubers, rags, sponges, mechanically and/or pneumatic-driven syringes, and inkjet machines.

(3) Application of adhesives, sealants, maskants, caulking materials, and inks.

* * * * *

Stripper means a liquid that is applied to an aerospace vehicle or component to remove permanent coatings such as

primers, topcoats, and specialty coatings.

* * * * *

- 4. Section 63.743 is amended by:
- a. Revising paragraphs (a)(2), (a)(8), and (a)(10).
- b. Removing and reserving paragraph (b).
- c. Revising paragraphs (d)(1), (2), and (3).
- d. Removing and reserving paragraphs (d)(4) and (5).
- e. Adding paragraph (e).

The revisions and addition read as follows:

§ 63.743 Standards: General.

(a) * * *

(2) § 63.5, Preconstruction review and notification requirements; and

* * * * *

(8) For the purposes of this subpart, each owner or operator is to be provided 30 calendar days to present additional information to the Administrator after he/she is notified of the intended denial of a compliance extension request submitted under either § 63.6(i)(4) or § 63.6(i)(5), rather than 15 calendar days as provided for in § 63.6(i)(12)(iii)(B) and § 63.6(i)(13)(iii)(B).

* * * * *

(10) For the purposes of compliance with the requirements of § 63.5(b)(4) of the General Provisions and this subpart, owners or operators of existing primer, topcoat, or specialty coating application operations and depainting operations who construct or reconstruct a spray booth or hangar that does not have the potential to emit 10 tons/yr or more of an individual inorganic HAP or 25 tons/yr or more of all inorganic HAP combined shall only be required to notify the Administrator of such construction or reconstruction on an annual basis. Notification shall be submitted on or before March 1 of each year and shall include the information required in §63.5(b)(4) for each such spray booth or hangar constructed or reconstructed during the prior calendar year, except that such information shall be limited to inorganic HAP. No advance notification or written approval from the Administrator pursuant to §63.5(b)(3) shall be required for the construction or reconstruction of such a spray booth or hangar unless the booth or hangar has the potential to emit 10 tons/yr or more of an individual inorganic HAP or 25 tons/yr or more of all inorganic HAP combined.

(b) [Reserved]

* * * * *

(d) * * *

(1) Each owner or operator of a new or existing source shall use any

combination of primers, topcoats (including self-priming topcoats), specialty coatings, Type I chemical milling maskants, or Type II chemical milling maskants such that the monthly volume-weighted average organic HAP and VOC contents of the combination of primers, topcoats, specialty coatings, Type I chemical milling maskants, or Type II chemical milling maskants, as determined in accordance with the applicable procedures set forth in § 63.750, complies with the specified content limits in §§ 63.745(c) and 63.747(c), unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(2) Averaging is allowed only for uncontrolled primers, topcoats (including self-priming topcoats), specialty coatings, Type I chemical milling maskants, or Type II chemical milling maskants.

(3) Averaging is not allowed between specialty coating types defined in Appendix A to this subpart, or between the different types of coatings specified in paragraphs (d)(3)(i) through (vii) of this section.

(i) Primers and topcoats (including self-priming topcoats).

(ii) Type I and Type II chemical milling maskants.

(iii) Primers and chemical milling maskants.

(iv) Topcoats and chemical milling maskants.

(v) Primers and specialty coatings.

(vi) Topcoats and specialty coatings.

(vii) Chemical milling maskants and specialty coatings.

(4) [Reserved]

(5) [Reserved]

* * * * *

(e) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty

to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved.

Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 5. Section 63.744 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.744 Standards: Cleaning operations.

(a) *Housekeeping measures.* Each owner or operator of a new or existing cleaning operation subject to this subpart shall comply with the requirements in paragraphs (a)(1) through (4) of this section unless the cleaning solvent used is identified in Table 1 of this section or meets the definition of “Non-HAP material” in 63.742. The requirements of paragraphs (a)(1) through (4) of this section do not apply to spent cleaning solvents, and solvent-laden applicators that are subject to and handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC).

* * * * *

■ 6. Section 63.745 is amended by:

■ a. Revising the section heading and paragraphs (a), (b), and (c) introductory text.

■ b. Redesignating tables 1 through 4 as tables 2 through 5.

■ c. Adding paragraphs (c)(5), (c)(6), and new Table 1.

■ d. Revising paragraphs (e) introductory text, (e)(1), (f) introductory text, (f)(1), (f)(2), (f)(3)(i), (f)(3)(ii), (f)(3)(iv), (f)(3)(v), and (f)(3)(vi).

■ e. Adding paragraphs (f)(3)(vii) and (f)(3)(viii).

■ f. Revising paragraphs (g) introductory text, (g)(1), (g)(2)(i)(A), (g)(2)(i)(C), (g)(2)(ii)(A), (g)(2)(ii)(B), (g)(2)(iii)(B), (g)(2)(iv)(C), (g)(2)(v), (g)(4)(ix), and (g)(4)(x).

■ g. Adding paragraph (g)(4)(xi).

The revisions and additions read as follows:

§ 63.745 Standards: Primer, topcoat, and specialty coating application operations.

(a) Each owner or operator of a new or existing primer, topcoat, or specialty coating application operation subject to this subpart shall comply with the requirements specified in paragraph (c) of this section for those coatings that are uncontrolled (no control device is used to reduce organic HAP emissions from the operation), and in paragraph (d) of this section for those coatings that are controlled (organic HAP emissions from the operation are reduced by the use of a control device). Aerospace equipment that is no longer operational, intended for public display, and not easily capable of being moved is exempt from the requirements of this section.

(b) Each owner or operator shall conduct the handling and transfer of primers, topcoats, and specialty coatings to or from containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills.

(c) *Uncontrolled coatings—organic HAP and VOC content levels.* Each owner or operator shall comply with the organic HAP and VOC content limits specified in paragraphs (c)(1) through (6) of this section for those coatings that are uncontrolled.

* * * * *

(5) Organic HAP emissions from specialty coatings shall be limited to an organic HAP content level of no more than the HAP content limit specified in Table 1 of this section for each applicable specialty coating type.

(6) VOC emissions from specialty coatings shall be limited to a VOC content level of no more than the VOC content limit specified in Table 1 of this section for each applicable specialty coating type.

TABLE 1—SPECIALTY COATINGS—HAP AND VOC CONTENT LIMITS

| Coating Type | HAP Limit g/L (lb/gallon) ¹ | VOC Limit g/L (lb/gallon) ¹ |
|---|--|--|
| Ablative Coating | 600 (5.0) | 600 (5.0) |
| Adhesion Promoter | 890 (7.4) | 890 (7.4) |
| Adhesive Bonding Primers: Cured at 250°F or below | 850 (7.1) | 850 (7.1) |
| Adhesive Bonding Primers: Cured above 250°F | 1030 (8.6) | 1030 (8.6) |
| Commercial Interior Adhesive | 760 (6.3) | 760 (6.3) |
| Cyanoacrylate Adhesive | 1,020 (8.5) | 1,020 (8.5) |
| Fuel Tank Adhesive | 620 (5.2) | 620 (5.2) |
| Nonstructural Adhesive | 360 (3.0) | 360 (3.0) |
| Rocket Motor Bonding Adhesive | 890 (7.4) | 890 (7.4) |
| Rubber-based Adhesive | 850 (7.1) | 850 (7.1) |

TABLE 1—SPECIALTY COATINGS—HAP AND VOC CONTENT LIMITS—Continued

| Coating Type | HAP Limit g/L (lb/gallon) ¹ | VOC Limit g/L (lb/gallon) ¹ |
|--|--|--|
| Structural Autoclavable Adhesive | 60 (0.5) | 60 (0.5) |
| Structural Nonautoclavable Adhesive | 850 (7.1) | 850 (7.1) |
| Antichafe Coating | 660 (5.5) | 660 (5.5) |
| Bearing Coating | 620 (5.2) | 620 (5.2) |
| Caulking and Smoothing Compounds | 850 (7.1) | 850 (7.1) |
| Chemical Agent-Resistant Coating | 550 (4.6) | 550 (4.6) |
| Clear Coating | 720 (6.0) | 720 (6.0) |
| Commercial Exterior Aerodynamic Structure Primer | 650 (5.4) | 650 (5.4) |
| Compatible Substrate Primer | 780 (6.5) | 780 (6.5) |
| Corrosion Prevention System | 710 (5.9) | 710 (5.9) |
| Cryogenic Flexible Primer | 645 (5.4) | 645 (5.4) |
| Cryoprotective Coating | 600 (5.0) | 600 (5.0) |
| Dry Lubricative Material | 880 (7.3) | 880 (7.3) |
| Electric or Radiation-Effect Coating | 800 (6.7) | 800 (6.7) |
| Electrostatic Discharge and Electromagnetic Interference (EMI) Coating | 800 (6.7) | 800 (6.7) |
| Elevated-Temperature Skydrol-Resistant Commercial Primer | 740 (6.2) | 740 (6.2) |
| Epoxy Polyamide Topcoat | 660 (5.5) | 660 (5.5) |
| Fire-Resistant (interior) Coating | 800 (6.7) | 800 (6.7) |
| Flexible Primer | 640 (5.3) | 640 (5.3) |
| Flight-Test Coatings: Missile or Single Use Aircraft | 420 (3.5) | 420 (3.5) |
| Flight-Test Coatings: All Other | 840 (7.0) | 840 (7.0) |
| Fuel-Tank Coating | 720 (6.0) | 720 (6.0) |
| High-Temperature Coating | 850 (7.1) | 850 (7.1) |
| Insulation Covering | 740 (6.2) | 740 (6.2) |
| Intermediate Release Coating | 750 (6.3) | 750 (6.3) |
| Lacquer | 830 (6.9) | 830 (6.9) |
| Bonding Maskant | 1,230 (10.3) | 1,230 (10.3) |
| Critical Use and Line Sealer Maskant | 1,020 (8.5) | 1,020 (8.5) |
| Seal Coat Maskant | 1,230 (10.3) | 1,230 (10.3) |
| Metallized Epoxy Coating | 740 (6.2) | 740 (6.2) |
| Mold Release | 780 (6.5) | 780 (6.5) |
| Optical Anti-Reflective Coating | 750 (6.3) | 750 (6.3) |
| Part Marking Coating | 850 (7.1) | 850 (7.1) |
| Pretreatment Coating | 780 (6.5) | 780 (6.5) |
| Rain Erosion-Resistant Coating | 850 (7.1) | 850 (7.1) |
| Rocket Motor Nozzle Coating | 660 (5.5) | 660 (5.5) |
| Scale Inhibitor | 880 (7.3) | 880 (7.3) |
| Screen Print Ink | 840 (7.0) | 840 (7.0) |
| Extrudable/Rollable/Brushable Sealant | 280 (2.3) | 280 (2.3) |
| Sprayable Sealant | 600 (5.0) | 600 (5.0) |
| Silicone Insulation Material | 850 (7.1) | 850 (7.1) |
| Solid Film Lubricant | 880 (7.3) | 880 (7.3) |
| Specialized Function Coating | 890 (7.4) | 890 (7.4) |
| Temporary Protective Coating | 320 (2.7) | 320 (2.7) |
| Thermal Control Coating | 800 (6.7) | 800 (6.7) |
| Wet Fastener Installation Coating | 675 (5.6) | 675 (5.6) |
| Wing Coating | 850 (7.1) | 850 (7.1) |

¹ Coating limits for HAP are expressed in terms of mass (grams or pounds) of HAP per volume (liters or gallons) of coating less water. Coating limits for VOC are expressed in terms of mass (grams or pounds) of VOC per volume (liters or gallons) of coating less water and less exempt solvent.

* * * * *

(e) *Compliance methods.* Compliance with the organic HAP and VOC content limits specified in paragraphs (c)(1) through (6) of this section shall be accomplished by using the methods specified in paragraphs (e)(1) and (2) of this section either by themselves or in conjunction with one another.

(1) Use primers, topcoats (including self-priming topcoats), and specialty coatings with HAP and VOC content levels equal to or less than the limits specified in paragraphs (c)(1) through (6) of this section; or

* * * * *

(f) *Application equipment.* Except as provided in paragraph (f)(3) of this section, each owner or operator of a new or existing primer, topcoat (including self-priming topcoat), or specialty coating application operation subject to this subpart in which any of the coatings contain organic HAP or VOC shall comply with the requirements specified in paragraphs (f)(1) and (f)(2) of this section.

(1) All spray applied primers, topcoats (including self-priming topcoats), and specialty coatings shall be applied using one or more of the spray application techniques specified

in paragraphs (f)(1)(i) through (f)(1)(v) of this section.

(i) High volume low pressure (HVLP) spraying;

(ii) Electrostatic spray application;

(iii) Airless spray application;

(iv) Air-assisted airless spray application; or

(v) Any other coating spray application methods that achieve emission reductions or a transfer efficiency equivalent to or better than HVLP spray, electrostatic spray, airless spray, or air-assisted airless spray application methods as determined

according to the requirements in §63.750(i).

(2) All coating spray application devices used to apply primers, topcoats (including self-priming topcoats), or specialty coatings shall be operated according to company procedures, local specified operating procedures, and/or the manufacturer's specifications, whichever is most stringent, at all times. Spray application equipment modified by the facility shall maintain a transfer efficiency equivalent to HVLP spray, electrostatic spray, airless spray, or air-assisted airless spray application techniques.

(3) * * *

(i) Any situation that normally requires an extension on the spray gun to properly reach limited access spaces;

(ii) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns;

* * * * *

(iv) The use of airbrush application methods for stenciling, lettering, and other identification markings, and the spray application of no more than 3.0 fluid ounces of coating in a single application (*i.e.*, the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or refilling a small paint cup to apply more than 3.0 fluid ounces under the requirements of this paragraph is prohibited. If a paint cup liner is used in a reusable holder or cup, then the holder or cup must be designed to hold a liner with a capacity of no more than 3.0 fluid ounces. For example, a 3.0 ounce liner cannot be used in a holder that can also be used with a 6.0 ounce liner under the requirements of this paragraph;

(v) The use of hand-held non-refillable aerosol containers;

(vi) Touch-up and repair operations;

(vii) Adhesives, sealants, maskants, caulking materials, and inks; and

(viii) The application of coatings that contain less than 20 grams of VOC per liter of coating.

(g) *Inorganic HAP emissions.* Except as provided in paragraph (g)(4) of this section, each owner or operator of a new or existing primer, topcoat, or specialty coating application operation subject to this subpart in which any of the coatings that are spray-applied (as defined in §63.742) and contain inorganic HAP, shall comply with the applicable requirements in paragraphs (g)(1) through (3) of this section.

(1) Apply these coatings in a booth, hangar, or portable enclosure in which air flow is directed downward onto or across the part or assembly being coated and exhausted through one or more outlets.

(2) * * *

(i) * * *

(A) Before exhausting it to the atmosphere, pass the air stream through a dry particulate filter system certified using the methods described in §63.750(o) to meet or exceed the efficiency data points in Tables 2 and 3 of this section; or

TABLE 2—TWO-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR EXISTING SOURCES

| Filtration efficiency requirement, % | Aerodynamic particle size range, µm |
|--------------------------------------|-------------------------------------|
| >90 | >5.7 |
| >50 | >4.1 |
| >10 | >2.2 |

TABLE 3—TWO-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR EXISTING SOURCES

| Filtration efficiency requirement, % | Aerodynamic particle size range, µm |
|--------------------------------------|-------------------------------------|
| >90 | >8.1 |
| >50 | >5.0 |
| >10 | >2.6 |

* * * * *

(C) Before exhausting it to the atmosphere, pass the air stream through an air pollution control system that meets or exceeds the efficiency data points in Tables 2 and 3 of this section and is approved by the permitting authority.

(ii) * * *

(A) Before exhausting it to the atmosphere, pass the air stream through a dry particulate filter system certified using the methods described in §63.750(o) to meet or exceed the efficiency data points in Tables 4 and 5 of this section; or

TABLE 4—THREE-STAGE ARRESTOR; LIQUID PHASE CHALLENGE FOR NEW SOURCES

| Filtration efficiency requirement, % | Aerodynamic particle size range, µm |
|--------------------------------------|-------------------------------------|
| >95 | >2.0 |
| >80 | >1.0 |
| >65 | >0.42 |

TABLE 5—THREE-STAGE ARRESTOR; SOLID PHASE CHALLENGE FOR NEW SOURCES

| Filtration efficiency requirement, % | Aerodynamic particle size range, µm |
|--------------------------------------|-------------------------------------|
| >95 | >2.5 |
| >85 | >1.1 |
| >75 | >0.70 |

(B) Before exhausting it to the atmosphere, pass the air stream through an air pollution control system that meets or exceeds the efficiency data points in Tables 4 and 5 of this section and is approved by the permitting authority.

(iii) * * *

(B) If the primer, topcoat, or specialty coating contains chromium or cadmium, control shall consist of a HEPA filter system, three-stage filter system, or other control system equivalent to the three-stage filter system as approved by the permitting agency.

(iv) * * *

(C) Continuously monitor the pressure drop across the filter and read and record the pressure drop once per shift, or install an interlock system that will automatically shut down the coating spray application system if the pressure drop exceeds or falls below the filter manufacturer's recommended limit(s); and

* * * * *

(v) If a conventional waterwash system is used, continuously monitor the water flow rate and read and record the water flow rate once per shift, or install an interlock system that will automatically shut down the coating spray application system if the water flow rate falls below or exceeds the limit(s) specified by the booth manufacturer or in locally prepared operating procedures. If a pumpless system is used, continuously monitor the booth parameter(s) that indicate performance of the booth per the manufacturer's recommendations to maintain the booth within the acceptable operating efficiency range and read and record the parameters once per shift, or install an interlock system that will automatically shut down the coating spray application system if the booth parameters are outside the parameter range in the manufacturer's recommendations.

* * * * *

(4) * * *

(ix) Spray application of primers, topcoats, and specialty coatings in an area identified in a title V permit, where the permitting authority has determined

that it is not technically feasible to spray apply coatings to the parts in a booth;

(x) The use of hand-held non-refillable aerosol containers; and

(xi) The spray application of no more than 3.0 fluid ounces of coating in a single application (i.e., the total volume of a single coating formulation applied during any one day to any one aerospace vehicle or component) from a hand-held device with a paint cup capacity that is equal to or less than 3.0 fluid ounces (89 cubic centimeters). Using multiple small paint cups or refilling a small paint cup to apply more than 3.0 fluid ounces under the requirements of this paragraph is prohibited. If a paint cup liner is used in a reusable holder or cup, then the holder or cup must be designed to hold a liner with a capacity of no more than 3.0 fluid ounces. For example, under the requirements of this paragraph, a 3.0 ounce liner cannot be used in a holder that can also be used with a 6.0 ounce liner.

■ 7. Section 63.746 is amended by:

■ a. Revising paragraphs (b)(4)(ii)(A) and (B).

■ b. Redesignating the first paragraph (c) (beginning "Owners or operators of new sources . . .") as paragraph (b)(4)(ii)(C). The revisions read as follows:

§ 63.746 Standards: Depainting operations.

(b) * * *
(4) * * *

(ii)(A) For existing sources, pass any air stream removed from the enclosed area or closed-cycle depainting system through a dry particulate filter system, certified using the method described in § 63.750(o) to meet or exceed the efficiency data points in Tables 2 and 3 of § 63.745, through a baghouse, or through a waterwash system before exhausting it to the atmosphere.

(B) For new sources, pass any air stream removed from the enclosed area or closed-cycle depainting system through a dry particulate filter system certified using the method described in § 63.750(o) to meet or exceed the efficiency data points in Tables 4 and 5 of § 63.745 or through a baghouse before exhausting it to the atmosphere.

* * * * *

■ 8. Section 63.748 is revised to read as follows:

§ 63.748 Standards: Handling and storage of waste.

(a) The owner or operator of each facility subject to this subpart that produces a waste that contains organic HAP from aerospace primer, topcoat, specialty coating, chemical milling maskant, or chemical depainting

operations must be handled and stored as specified in paragraph (a)(1) or (a)(2) of this section. The requirements of paragraphs (a)(1) and (a)(2) of this section do not apply to spent wastes that contain organic HAP that are subject to and handled and stored in compliance with 40 CFR parts 262 through 268 (including the air emission control requirements in 40 CFR part 265, subpart CC).

(1) Conduct the handling and transfer of the waste to or from containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills.

(2) Store all waste that contains organic HAP in closed containers.

(b) [Reserved]

■ 9. Section 63.749 is amended by:

■ a. Revising paragraphs (a), (b), the heading for paragraph (d), paragraphs (d)(3) introductory text, (d)(3)(i), (d)(4) introductory text, (d)(4)(i), (d)(4)(iii)(A), (d)(4)(iii)(B), (e) introductory text, and (h)(3) introductory text.

■ b. Adding new paragraph (j).

The revisions and additions read as follows:

§ 63.749 Compliance dates and determinations.

(a) *Compliance dates.* (1) Each owner or operator of an existing affected source subject to this subpart shall comply with the requirements of this subpart by September 1, 1998, except as specified in paragraphs (a)(2) and (3) of this section. Owners or operators of new affected sources subject to this subpart shall comply on the effective date or upon startup, whichever is later. In addition, each owner or operator shall comply with the compliance dates specified in § 63.6(b) and (c) as indicated in Table 1 to this subpart.

(2) Owners or operators of existing primer, topcoat, or specialty coating application operations and depainting operations who construct or reconstruct a spray booth or hangar must comply with the new source requirements for inorganic HAP specified in §§ 63.745(g)(2)(ii) and 63.746(b)(4) for that new spray booth or hangar upon startup. Such sources must still comply with all other existing source requirements by September 1, 1998.

(3) Each owner or operator of a specialty coating application operation that begins construction or reconstruction after February 17, 2015 shall be in compliance with the requirements of this subpart on December 7, 2015 or upon startup, whichever is later. Each owner or operator of a specialty coating application operation that is existing on February 17, 2015 shall be in

compliance with the requirements of this subpart on or before December 7, 2018.

(b) *General.* Each facility subject to this subpart shall be considered in noncompliance if the owner or operator uses a control device, other than one specified in this subpart, that has not been approved by the Administrator, as required by § 63.743(c).

* * * * *

(d) *Organic HAP and VOC content levels—primer, topcoat, and specialty coating application operations—* * * *

* * * * *

(3) The primer application operation is considered in compliance when the conditions specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section, as applicable, and in paragraph (e) of this section are met. Failure to meet any one of the conditions identified in these paragraphs shall constitute noncompliance. The compliance demonstration for a primer may be based on the organic HAP content or the VOC content of the primer; demonstrating compliance with both the HAP content limit and the VOC content limit is not required. If a primer contains HAP solvents that are exempt from the definition of VOC in § 63.741 and 40 CFR 51.100, then the HAP content must be used to demonstrate compliance.

(i) For all uncontrolled primers, all values of H_i and H_a (as determined using the procedures specified in § 63.750(c) and (d)) are less than or equal to the applicable HAP content limit in § 63.745(c)(1), and all values of G_i and G_a (as determined using the procedures specified in § 63.750(e) and (f)) are less than or equal to the applicable VOC content limit in § 63.745(c)(2).

* * * * *

(4) The topcoat or specialty coating application operation is considered in compliance when the conditions specified in paragraphs (d)(4)(i) through (d)(4)(iv) of this section, as applicable, and in paragraph (e) of this section are met. Failure to meet any of the conditions identified in these paragraphs shall constitute noncompliance.

(i) The topcoat application operation is considered in compliance when the conditions specified in paragraph (d)(4)(i)(A) of this section are met. The specialty coating application operation is considered in compliance when the conditions specified in paragraph (d)(4)(i)(B) are met. The compliance demonstration for a topcoat or a specialty coating may be based on the organic HAP content or the VOC content of the coating; demonstrating

compliance with both the HAP content limit and the VOC content limit is not required. If a topcoat or specialty coating contains HAP solvents that are exempt from the definition of VOC in § 63.741 and 40 CFR 51.100, then the HAP content must be used to demonstrate compliance.

(A) For all uncontrolled topcoats, all values of H_i and H_a (as determined using the procedures specified in § 63.750(c) and (d)) are less than or equal to the applicable HAP content limit in § 63.745(c)(3), and all values of G_i and G_a (as determined using the procedures specified in § 63.750(e) and (f)) are less than or equal to the applicable VOC content limit in § 63.745(c)(4).

(B) For all uncontrolled specialty coatings, all values of H_i and H_a (as determined using the procedures specified in § 63.750(c) and (d)) are less than or equal to the HAP content limits specified in Table 1 to § 63.745 for the applicable specialty coating types (less water) as applied, and all values of G_i and G_a (as determined using the procedures specified in § 63.750(e) and (f)) are less than or equal to the VOC content limits specified in Table 1 to § 63.745 for the applicable specialty coating types (less water and exempt solvents) as applied.

* * * * *

(iii)(A) Uses an application technique specified in § 63.745(f)(1)(i) through (f)(1)(iv); or

(B) Uses an alternative application technique, as allowed under § 63.745(f)(1)(v), such that the emissions of both organic HAP and VOC for the implementation period of the alternative application method are less than or equal to the emissions generated using HVLP spray, electrostatic spray, airless spray, or air-assisted airless spray application methods, as determined using the procedures specified in § 63.750(i).

* * * * *

(e) *Inorganic HAP emissions—primer, topcoat, and specialty coating application operations.* For each primer, topcoat, or specialty coating application operation that emits inorganic HAP, the operation is in compliance when:

* * * * *

(h) * * *

(3) The chemical milling maskant application operation is considered in compliance when the conditions specified in paragraphs (i)(3)(i) and (ii) of this section are met. The compliance demonstration for a chemical milling maskant may be based on the organic HAP content or the VOC content of the chemical milling maskant; demonstrating compliance with both the

HAP content limit and the VOC content limit is not required. If a chemical milling maskant contains HAP solvents that are exempt from the definition of VOC in § 63.741 and 40 CFR 51.100, then the HAP content must be used to demonstrate compliance.

* * * * *

(j) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

■ 10. Section 63.750 is amended by revising paragraphs (c) introductory text, (c)(2), (d) introductory text, (d)(1)(iii), (e) introductory text, (f) introductory text, (f)(1)(iii), (i)(1), (i)(2)(i), (i)(2)(iii), (i)(3) introductory text, (k) introductory text, (m) introductory text, and (o) to read as follows:

§ 63.750 Test methods and procedures.

* * * * *

(c) *Organic HAP content level determination—compliant primers, topcoats, and specialty coatings.* For those uncontrolled primers, topcoats, and specialty coatings complying with the primer, topcoat, or specialty coating organic HAP content limits specified in § 63.745(c) without being averaged, the procedures in paragraphs (c)(1) through (3) of this section shall be used to determine the mass of organic HAP emitted per volume of coating (less water) as applied. As an alternative to the procedures in paragraphs (c)(1) through (3) of this section, an owner or operator may use the coating manufacturer's supplied data to demonstrate that organic HAP emitted per volume of coating (less water), as applied, is less than or equal to the applicable organic HAP limit specified in § 63.745(c). Owners and operators that use the coating manufacturer's supplied data to demonstrate compliance based on the HAP content of the coating may add non-HAP solvent

to those coatings provided that the owner or operator also maintains records of the non-HAP solvent added to the coating.

* * * * *

(2) For each coating formulation as applied, determine the organic HAP weight fraction, water weight fraction (if applicable), and density from manufacturer's data. If the value for organic HAP weight fraction cannot be determined using the manufacturer's data, the owner or operator shall use Method 311 of 40 CFR part 63, appendix A, or submit an alternative procedure for determining the value for approval by the Administrator. If the values for water weight fraction (if applicable) and density cannot be determined using the manufacturer's data, the owner or operator shall submit an alternative procedure for determining their values for approval by the Administrator. Recalculation is required only when a change occurs in the coating formulation. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 311 analysis, compliance shall be based on the results from the Method 311 analysis.

* * * * *

(d) *Organic HAP content level determination—averaged primers, topcoats, and specialty coatings.* For those uncontrolled primers, topcoats, and specialty coatings that are averaged together in order to comply with the primer, topcoat, and specialty coating organic HAP content limits specified in § 63.745(c), the following procedure shall be used to determine the monthly volume-weighted average mass of organic HAP emitted per volume of coating (less water) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1) * * *

(iii) Manufacturer's formulation data may be used to determine the total organic HAP content of each coating and any ingredients added to the coating prior to its application. If the total organic HAP content cannot be determined using the manufacturer's data, the owner or operator shall use Method 311 of 40 CFR part 63, appendix A for determining the total organic HAP weight fraction, or shall submit an alternative procedure for determining the total organic HAP weight fraction for approval by the Administrator. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 311 analysis,

compliance shall be based on the results from the Method 311 analysis.

* * * * *

(e) *VOC content level determination—compliant primers, topcoats, and specialty coatings.* For those uncontrolled primers, topcoats, and specialty coatings complying with the primer, topcoat, and specialty coating VOC content levels specified in § 63.745(c) without being averaged, the procedures in paragraphs (e)(1) through (3) of this section shall be used to determine the mass of VOC emitted per volume of coating (less water and exempt solvents) as applied. As an alternative to the procedures in paragraphs (e)(1) through (3) of this section, an owner or operator may use coating manufacturer's supplied data to demonstrate that VOC emitted per volume of coating (less water and exempt solvents), as applied, is less than or equal to the applicable VOC limit specified in § 63.745(c).

* * * * *

(f) *VOC content level determination—averaged primers, topcoats, and specialty coatings.* For those uncontrolled primers, topcoats, and specialty coatings that are averaged within their respective coating category in order to comply with the primer, topcoat, and specialty coating VOC content limits specified in § 63.745(c)(2), (c)(4), and (c)(6), the following procedure shall be used to determine the monthly volume-weighted average mass of VOC emitted per volume of coating (less water and exempt solvents) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1) * * *

(iii) Determine the VOC content of each primer, topcoat, and specialty coating formulation (less water and exempt solvents) as applied using EPA Method 24 or from manufacturer's data.

* * * * *

(i)(1) *Alternative application method—primers, topcoats, and specialty coatings.* (i) Each owner or operator seeking to use an alternative application method (as allowed in § 63.745(f)(1)(v)) in complying with the standards for primers and topcoats shall use the procedures specified in paragraphs (i)(2)(i) and (ii) or (i)(2)(iii) of this section to determine the organic HAP and VOC emission levels of the alternative application technique as compared to either HVLP, electrostatic spray application methods, air-assisted airless application methods, or airless application methods.

(ii) For specialty coatings, an owner or operator may use any other coating application method capable of achieving emission reductions or a transfer efficiency equivalent to or better than that provided by HVLP, electrostatic spray, air-assisted airless, or airless application. Any owner or operator using an application method pursuant to this paragraph (i)(2)(ii) shall maintain records demonstrating the transfer efficiency achieved.

(2)(i) For the process or processes for which the alternative application method is to be used, the total organic HAP and VOC emissions shall be determined for an initial 30-day period, the period of time required to apply coating to five completely assembled aircraft, or a time period approved by the permitting agency. During this initial period, only HVLP, electrostatic spray application methods, air-assisted airless application methods, or airless application methods shall be used. The emissions shall be determined based on the volumes, organic HAP contents (less water), and VOC contents (less water and exempt solvents) of the coatings as applied.

* * * * *

(iii) Test the proposed application method against either HVLP, electrostatic spray application methods, air-assisted airless application methods, or airless application methods in a laboratory or pilot production area, using parts and coatings representative of the process(es) where the alternative method is to be used. The laboratory test will use the same part configuration(s) and the same number of parts for both the proposed method and the HVLP, electrostatic spray application methods, air-assisted airless application methods, or airless application methods.

* * * * *

(3) Each owner or operator seeking to demonstrate that an alternative application method achieves emission reductions equivalent to HVLP, electrostatic spray application methods, air-assisted airless application methods, or airless application methods shall comply with the following:

* * * * *

(k) *Organic HAP content level determination—compliant chemical milling maskants.* For those uncontrolled chemical milling maskants complying with the chemical milling maskant organic HAP content limit specified in § 63.747(c)(1) without being averaged, the procedure in paragraph (k)(1) of this section shall be used to determine the mass of organic HAP emitted per unit volume of coating (chemical milling maskant) i as applied

(less water), H_i (lb/gal). As an alternative to the procedures in paragraph (k)(1) of this section, an owner or operator may use coating manufacturer's supplied data to demonstrate that organic HAP emitted per volume of coating (less water), as applied, is less than or equal to the applicable organic HAP limit specified in § 63.747(c). Owners and operators that use the coating manufacturer's supplied data to demonstrate compliance based on the HAP content of the coating may add non-HAP solvent to those coatings provided that the owner or operator also maintains records of the non-HAP solvent added to the coating.

* * * * *

(m) *VOC content level determination—compliant chemical milling maskants.* For those uncontrolled chemical milling maskants complying with the chemical milling maskant VOC content limit specified in § 63.747(c)(2) without being averaged, the procedure specified in paragraphs (m)(1) and (2) of this section shall be used to determine the mass of VOC emitted per volume of chemical milling maskant (less water and exempt solvents) as applied. As an alternative to the procedures in paragraphs (m)(1) and (2) of this section, an owner or operator may use coating manufacturer's supplied data to demonstrate that VOC emitted per volume of coating (less water and exempt solvents), as applied, is less than or equal to the applicable VOC limit specified in § 63.747(c).

* * * * *

(o) *Inorganic HAP emissions—dry particulate filter certification requirements.* Dry particulate filters used to comply with §§ 63.745(g)(2) or 63.746(b)(4) must be certified by the filter manufacturer or distributor, paint/depainting booth supplier, and/or the facility owner or operator using method 319 in appendix A of this part, to meet or exceed the efficiency data points found in Tables 2 and 3, or 4 and 5 of § 63.745 for existing or new sources respectively.

■ 11. Section 63.751 is amended by revising paragraph (c) to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(c) *Dry particulate filter, HEPA filter, and waterwash systems—primer, topcoat, and specialty coating application operations.* (1) Each owner or operator using a dry particulate filter system to meet the requirements of § 63.745(g)(2) shall, while primer, topcoat, and specialty coating application operations are occurring, continuously monitor the pressure drop

across the system and read and record the pressure drop once per shift following the recordkeeping requirements of § 63.752(d), or install an interlock system as specified in § 63.745(g)(2)(iv)(C).

(2) Each owner or operator using a conventional waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer or topcoat application operations are occurring, continuously monitor the water flow rate through the system and read and record the water flow rate once per shift following the recordkeeping requirements of § 63.752(d), or install an interlock system as specified in § 63.745(g)(2)(v). Each owner or operator using a pumpless waterwash system to meet the requirements of § 63.745(g)(2) shall, while primer, topcoat, and specialty coating application operations are occurring, measure and record the parameter(s) recommended by the booth manufacturer that indicate booth performance once per shift, following the recordkeeping requirements of § 63.752(d), or install an interlock system as specified in § 63.745(g)(2)(v).

* * * * *

■ 12. Section 63.752 is amended by revising paragraphs (a), (c) introductory text, (c)(1), (c)(2) introductory text, (c)(4) introductory text, (c)(5) introductory text, (c)(6) introductory text, the heading of paragraph (d), and paragraphs (d)(1) and (f) introductory text to read as follows:

§ 63.752 Recordkeeping requirements.

(a) *General.* Each owner or operator of a source subject to this subpart shall fulfill all recordkeeping requirements specified in § 63.10(a), (b), (d), and (f), except § 63.10(b)(2)(i), (iv) and (v). Each owner or operator must also record and maintain according to § 63.10(b)(1) the information specified in paragraph (a)(1) through (3) of this section.

(1) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time, and duration of each failure.

(2) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) Record actions taken to minimize emissions in accordance with § 63.743(e), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(c) *Primer, topcoat, and specialty coating application operations—organic HAP and VOC.* Each owner or operator required to comply with the organic HAP and VOC content limits specified in § 63.745(c) shall record the information specified in paragraphs (c)(1) through (6) of this section, as appropriate. Each owner and operator using coating manufacturer's supplied data to demonstrate compliance with the applicable organic HAP or VOC limit specified in § 63.745(c) may retain the manufacturer's documentation and annual purchase records in place of the records specified in paragraphs (c)(2) and (3) of this section. Owners and operators using the coating manufacturer's supplied data to demonstrate compliance based on the HAP content of the coating, and adding non-HAP solvent to those coatings, must also maintain records of the non-HAP solvent added to the coating.

(1) The name and VOC content as received and as applied of each primer, topcoat, and specialty coating used at the facility.

(2) For uncontrolled primers, topcoats, and specialty coatings that meet the organic HAP and VOC content limits in § 63.745(c)(1) through (c)(6) without averaging:

* * * * *

(4) For primers, topcoats, and specialty coatings complying with the organic HAP or VOC content level by averaging:

* * * * *

(5) For primers, topcoats, and specialty coatings that are controlled by a control device other than a carbon adsorber:

* * * * *

(6) For primers, topcoats, and specialty coatings that are controlled by a carbon adsorber:

* * * * *

(d) *Primer, topcoat, and specialty coating application operations—inorganic HAP emissions.* (1) Each owner or operator complying with § 63.745(g) for the control of inorganic HAP emissions from primer, topcoat, and specialty coating application operations through the use of a dry particulate filter system or a HEPA filter system shall record the pressure drop across the operating system once each shift during which coating operations occur.

* * * * *

(f) *Chemical milling maskant application operations.* Each owner or operator seeking to comply with the organic HAP and VOC content limits for the chemical milling maskant application operation, as specified in

§ 63.747(c), or the control system requirements specified in § 63.747(d), shall record the information specified in paragraphs (f)(1) through (4) of this section, as appropriate. Each owner and operator using coating manufacturer's supplied data to demonstrate compliance with the applicable organic HAP or VOC limit specified in § 63.747(c) may retain the manufacturer's documentation and annual purchase records in place of the records specified in paragraph (f)(1) of this section. Owners and operators using the coating manufacturer's supplied data to demonstrate compliance based on the HAP content of the coating, and adding non-HAP solvent to those coatings, must also maintain records of the non-HAP solvent added to the coating.

■ 13. Section 63.753 is amended by:

- a. Revising paragraphs (a)(1) introductory text and (a)(2).
- b. Adding paragraphs (a)(4) and (5).
- c. Revising paragraphs (c) introductory text, (c)(1)(i), (c)(1)(ii), and (e)(1).
- d. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.753 Reporting requirements.

(a)(1) Except as provided in paragraphs (a)(2) through (5) of this section, each owner or operator subject to this subpart shall fulfill the requirements contained in § 63.9(a) through (e) and (h) through (j), Notification requirements, and § 63.10(a), (b), (d), and (f), Recordkeeping and reporting requirements, of the General Provisions, 40 CFR part 63, subpart A, and that the initial notification for existing sources required in § 63.9(b)(2) shall be submitted no later than September 1, 1997, or as specified in § 63.9(b)(2). In addition to the requirements of § 63.9(h), the notification of compliance status shall include:

* * * * *

(2) The initial notification for existing sources, required in § 63.9(b)(2) shall be submitted no later than September 1, 1997, or as specified in § 63.9(b)(2). For the purposes of this subpart, a title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b)(2), provided the same information is contained in the permit application as required by § 63.9(b)(2), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall

be submitted by the same due dates as those specified for the initial notifications.

* * * * *

(4) Each owner or operator subject to this subpart is not required to comply with § 63.10(b)(2)(i), (b)(2)(iv), (b)(2)(v), and (d)(5).

(5) If a source fails to meet an applicable standard specified in §§ 63.744 through 63.748, report such events in the semiannual report:

(i) The number of failures to meet an applicable standard.

(ii) For each instance, report the date, time, and duration of each failure.

(iii) For each failure the report must include a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

* * * * *

(c) *Primer, topcoat, and specialty coating application operations.* Each owner or operator of a primer or topcoat application operation subject to this subpart shall submit the following information:

(1) * * *

(i) For primers, topcoats, and specialty coatings where compliance is not being achieved through the use of averaging or a control device, the HAP or VOC content in manufacturer's supplied data as recorded under § 63.752(c), or each value of H_i and G_i , as recorded under § 63.752(c)(2)(i), that exceeds the applicable organic HAP or

VOC content limit specified in § 63.745(c);

(ii) For primers, topcoats, and specialty coatings where compliance is being achieved through the use of averaging, each value of H_a and G_a , as recorded under § 63.752(c)(4)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.745(c);

* * * * *

(e) * * *

(1) For chemical milling maskants where compliance is not being achieved through the use of averaging or a control device, the HAP or VOC content in manufacturer's supplied data as recorded under § 63.752(f), or each value of H_i and G_i , as recorded under § 63.752(f)(1)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.747(c);

* * * * *

(f) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance tests following the procedure specified in either paragraph (f)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (<http://www.epa.gov/ttn/chief/ert/index.html>) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can

be accessed through the EPA's Central Data Exchange (CDX) (<http://cdx.epa.gov/>)). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (f).

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

■ 14. Revise table 1 to subpart GG of part 63 to read as follows:

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

| Reference | Applies to affected sources in subpart GG | Comment |
|-------------------|---|--|
| 63.1(a)(1) | Yes. | |
| 63.1(a)(2) | Yes. | |
| 63.1(a)(3) | Yes. | |
| 63.1(a)(4) | Yes. | |
| 63.1(a)(5) | No | Reserved. |
| 63.1(a)(6) | Yes. | |
| 63.1(a)(7) | Yes. | |
| 63.1(a)(8) | Yes. | |
| 63.1(a)(9) | No | Reserved. |
| 63.1(a)(10) | Yes. | |
| 63.1(a)(11) | Yes. | |
| 63.1(a)(12) | Yes. | |
| 63.1(a)(13) | Yes. | |
| 63.1(a)(14) | Yes. | |
| 63.1(b)(1) | Yes. | |
| 63.1(b)(2) | Yes. | |
| 63.1(b)(3) | Yes. | |
| 63.1(c)(1) | Yes. | |
| 63.1(c)(2) | Yes | Subpart GG does not apply to area sources. |
| 63.1(c)(3) | No | Reserved. |
| 63.1(c)(4) | Yes. | |
| 63.1(c)(5) | Yes. | |
| 63.1(d) | No | Reserved. |
| 63.1(e) | Yes. | |
| 63.2 | Yes. | |

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG—Continued

| Reference | Applies to affected sources in subpart GG | Comment |
|------------------------|---|--|
| 63.3 | Yes. | |
| 63.4(a)(1) | Yes. | |
| 63.4(a)(2) | Yes. | |
| 63.4(a)(3) | Yes. | |
| 63.4(a)(4) | No | Reserved. |
| 63.4(a)(5) | Yes. | |
| 63.4(b) | Yes. | |
| 63.4(c) | Yes. | |
| 63.5(a) | Yes. | |
| 63.5(b)(1) | Yes. | |
| 63.5(b)(2) | No | Reserved. |
| 63.5(b)(3) | Yes. | |
| 63.5(b)(4) | Yes. | |
| 63.5(b)(5) | Yes. | |
| 63.5(b)(6) | Yes. | |
| 63.5(c) | No | Reserved. |
| 63.5(d)(1)(i) | Yes. | |
| 63.5(d)(1)(ii)(A)–(H) | Yes. | |
| 63.5(d)(1)(ii)(I) | No | Reserved. |
| 63.5(d)(1)(ii)(J) | Yes. | |
| 63.5(d)(1)(iii) | Yes. | |
| 63.5(d)(2)–(4) | Yes. | |
| 63.5(e) | Yes. | |
| 63.5(f) | Yes. | |
| 63.6(a) | Yes. | |
| 63.6(b)(1)–(5) | Yes | § 63.749(a) specifies compliance dates for new sources. |
| 63.6(b)(6) | No | Reserved. |
| 63.6(b)(7) | Yes. | |
| 63.6(c)(1) | Yes. | |
| 63.6(c)(2) | No | The standards in subpart GG are promulgated under section 112(d) of the Act. |
| 63.6(c)(3)–(4) | No | Reserved. |
| 63.6(c)(5) | Yes. | |
| 63.6(d) | No | Reserved. |
| 63.6(e)(1)(i) | No | See § 63.743(e) for general duty requirement. |
| 63.6(e)(1)(ii) | No. | |
| 63.6(e)(2) | No | Section reserved. |
| 63.6(e)(3) | No. | |
| 63.6(f)(1) | No. | |
| 63.6(f)(2)–(f)(3) | Yes. | |
| 63.6(g) | Yes. | |
| 63.6(h) | No | The standards in subpart GG do not include opacity standards. |
| 63.6(i)(1)–(3) | Yes. | |
| 63.6(i)(4)(i)(A) | Yes. | |
| 63.6(i)(4)(i)(B) | No | § 63.743(a)(4) specifies that requests for extension of compliance must be submitted no later than 120 days before an affected source's compliance date. |
| 63.6(i)(4)(ii) | No | The standards in subpart GG are promulgated under section 112(d) of the Act. |
| 63.6(i)(5)–(12) | Yes. | |
| 63.6(i)(13) | Yes. | |
| 63.6(i)(14) | Yes. | |
| 63.6(i)(15) | No | Reserved. |
| 63.6(i)(16) | Yes. | |
| 63.6(j) | Yes. | |
| 63.7(a)(1) | Yes. | |
| 63.7(a)(2)(i)–(vi) | Yes. | |
| 63.7(a)(2)(vii)–(viii) | No | Reserved. |
| 63.7(a)(2)(ix) | Yes. | |
| 63.7(a)(3) | Yes. | |
| 63.7(b) | Yes. | |
| 63.7(c) | Yes. | |
| 63.7(d) | Yes. | |
| 63.7(e)(1) | No | See § 63.749(j). |
| 63.7(e)(2)–(4) | Yes. | |
| 63.7(f) | Yes. | |
| 63.7(g)(1) | Yes. | |
| 63.7(g)(2) | No | Reserved. |
| 63.7(g)(3) | Yes. | |
| 63.7(h) | Yes. | |
| 63.8(a)(1)–(2) | Yes. | |

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG—Continued

| Reference | Applies to affected sources in subpart GG | Comment | |
|------------------------|---|--|---|
| 63.8(a)(3) | No | Reserved. | |
| 63.8(a)(4) | Yes. | | |
| 63.8(b) | Yes. | | |
| 63.8(c)(1)(i) | No. | | |
| 63.8(c)(1)(ii) | Yes. | | |
| 63.8(c)(1)(iii) | No. | | |
| 63.8(c)(2)–(d)(2) | Yes. | | |
| 63.8(d)(3) | No. | | |
| 63.8(e)(1)–(4) | Yes. | | |
| 63.8(e)(5)(i) | Yes. | | |
| 63.8(e)(5)(ii) | No | | The standards in subpart GG do not include opacity standards. |
| 63.8(f)(1) | Yes. | | |
| 63.8(f)(2)(i)–(vii) | Yes. | | |
| 63.8(f)(2)(viii) | No | | The standards in subpart GG do not include opacity standards. |
| 63.8(f)(2)(ix) | Yes. | | |
| 63.8(f)(3)–(6) | Yes. | | |
| 63.8(g) | Yes. | | |
| 63.9(a) | Yes. | | |
| 63.9(b)(1) | Yes. | | |
| 63.9(b)(2) | Yes | § 63.753(a)(1) requires submittal of the initial notification at least 1 year prior to the compliance date; § 63.753(a)(2) allows a title V or part 70 permit application to be substituted for the initial notification in certain circumstances. | |
| 63.9(b)(3) | Yes. | | |
| 63.9(b)(4) | Yes. | | |
| 63.9(b)(5) | Yes. | | |
| 63.9(c) | Yes. | | |
| 63.9(d) | Yes. | | |
| 63.9(e) | Yes. | | |
| 63.9(f) | No | The standards in subpart GG do not include opacity standards. | |
| 63.9(g)(1) | No. | | |
| 63.9(g)(2) | No | The standards in subpart GG do not include opacity standards. | |
| 63.9(g)(3) | No. | | |
| 63.9(h)(1)–(3) | Yes | § 63.753(a)(1) also specifies additional information to be included in the notification of compliance status. | |
| 63.9(h)(4) | No | Reserved. | |
| 63.9(h)(5)–(6) | Yes. | | |
| 63.9(i) | Yes. | | |
| 63.9(j) | Yes. | | |
| 63.10(a) | Yes. | | |
| 63.10(b)(1) | Yes. | | |
| 63.10(b)(2)(i) | No. | | |
| 63.10(b)(2)(ii) | No | | See § 63.752(a) for recordkeeping of (1) date, time, and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure. |
| 63.10(b)(2)(iii) | Yes. | | |
| 63.10(b)(2)(iv)–(v) | No. | | |
| 63.10(b)(2)(vi) | Yes. | | |
| 63.10(b)(2)(vi)(A)–(C) | No | § 63.10(b)(vii)(A), (B) and (C) do not apply because subpart GG does not require the use of CEMS. | |
| 63.10(b)(2)(vii)–(xiv) | Yes. | | |
| 63.10(b)(3) | No. | | |
| 63.10(c)(1) | No. | | |
| 63.10(c)(2)–(4) | No | Reserved. | |
| 63.10(c)(5)–(6) | No. | | |
| 63.10(c)(7)–(8) | Yes. | | |
| 63.10(c)(9) | No | Reserved. | |
| 63.10(c)(10)–(13) | No. | | |
| 63.10(c)(14) | No | § 63.8(d) does not apply to this subpart. | |
| 63.10(c)(15) | No. | | |
| 63.10(d)(1)–(2) | Yes. | | |
| 63.10(d)(3) | No | The standards in subpart GG do not include opacity standards. | |
| 63.10(d)(4) | Yes. | | |
| 63.10(d)(5) | No | See § 63.753(a)(5) for malfunction reporting requirements. | |
| 63.10(e)(1) | No. | | |
| 63.10(e)(2)(i) | No. | | |
| 63.10(e)(2)(ii) | No | The standards in subpart GG do not include opacity standards. | |
| 63.10(e)(3) | No. | | |
| 63.10(e)(4) | No | The standards in subpart GG do not include opacity standards. | |
| 63.10(f) | Yes. | | |

TABLE 1 TO SUBPART GG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG—Continued

| Reference | Applies to affected sources in subpart GG | Comment |
|-------------|---|---------|
| 63.11 | Yes. | |
| 63.12 | Yes. | |
| 63.13 | Yes. | |
| 63.14 | Yes. | |
| 63.15 | Yes. | |
| 63.16 | Yes. | |

■ 15. Appendix A to subpart GG of part 63 is amended by revising definitions for “Electric or radiation-effect coating” and “Electrostatic discharge and electromagnetic interference (EMI) coating” to read as follows:

Appendix A to Subpart GG of Part 63—Specialty Coating Definitions

* * * * *

Electric or radiation-effect coating—A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as

“Classified National Security Information” by the Department of Defense are exempt.

Electrostatic discharge and electromagnetic interference (EMI) coating—A coating applied to aerospace vehicles and components to disperse static energy or reduce electromagnetic interference.

* * * * *

[FR Doc. 2015–30356 Filed 12–4–15; 8:45 am]

BILLING CODE 6560–50–P



FEDERAL REGISTER

Vol. 80

Monday,

No. 234

December 7, 2015

Part V

The President

Memorandum of December 2, 2015—Delegation of Reporting Functions Specified in Section 941 of the Fiscal Year 2014 National Defense Authorization Act

Proclamation 9375—Helsinki Human Rights Day, 2015

Proclamation 9376—International Day of Persons With Disabilities, 2015

Presidential Documents

Title 3—**Memorandum of December 2, 2015****The President****Delegation of Reporting Functions Specified in Section 941
of the Fiscal Year 2014 National Defense Authorization Act****Memorandum for the Secretary of Defense [and] the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I delegate the reporting functions conferred upon the President by section 941 of the Fiscal Year 2014 National Defense Authorization Act (Public Law 113–66) to the Secretary of Defense. In carrying out the functions under this delegation, the Secretary of Defense shall consult with the Secretary of State and, as appropriate, other departments and agencies.

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 2, 2015

Presidential Documents

Proclamation 9375 of December 2, 2015

Helsinki Human Rights Day, 2015

By the President of the United States of America

A Proclamation

Four decades ago, the leaders of the United States, Canada, the Soviet Union, and countries from across a divided Europe came together to sign the Helsinki Final Act—a document reflecting the conviction that the security of states is inextricably linked to the security of their citizens' rights. This comprehensive security concept is forever enshrined in the Act and is mirrored in the subsequent statements and commitments made by the members of the Organization for Security and Cooperation in Europe (OSCE). Today, the Act continues to shine as a beacon for all who reach, often at great risk to themselves, for human dignity, for justice and tolerance, and for democratic ideals—including the notions that power is derived from the consent of the governed and that human rights and fundamental freedoms belong to all of us—no matter where we live or where we come from. On Helsinki Human Rights Day, we pledge our cooperation and mutual respect as we work to fulfill the commitments made in the Helsinki Final Act.

The 57 OSCE states that stretch across North America, Europe, and Eurasia stand stronger when we stand together, and we must defend and uphold the commitments made in Helsinki 40 years ago. Recognition of the inherent dignity and human rights of every person, respect for the sovereignty and territorial integrity of states, and restraint from the threat or use of force are essential to safeguarding a Europe and a Eurasia that are whole, free, and at peace. As the OSCE Ministerial Council convenes in Belgrade, Serbia, the United States renews its commitment to these principles and urges other member states to do the same.

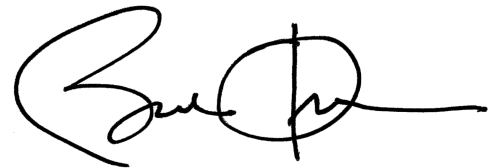
Thanks to the work of governments and the contributions of civil society, we have made historic progress to advance security, democracy, and human rights across the OSCE region in the last four decades. Still, we face significant challenges. Russian aggression against its neighbors, most recently Ukraine, is contrary to the principles of respect for each nation's sovereignty and territorial integrity laid out in the Helsinki Final Act. The ability of citizens to exercise their fundamental freedoms of association, expression, and peaceful assembly is increasingly constricted in a number of participating states. Actions based on hate and prejudice remain prevalent in too many states and are too often still reflected in national policy. These attitudes will continue to obstruct democracy's success until we root them out from both our institutions and our hearts. The United States strongly condemns the heinous terrorist attacks in Ankara, as well as the bombing of the Russian plane in Egypt. And in the wake of the tragic terrorist attacks in Paris, we recommit to our fight against terrorism and violent extremism while reaffirming our adherence to our common ideals with the French people and with any free society, similar to those delineated in the Helsinki Final Act: *liberté, égalité, and fraternité*.

The Helsinki Final Act inspires our vision for democracy, human rights, and human dignity. It inspires a vision for open economies and shared prosperity, and a world in which states resolve disputes peacefully and work together to build and maintain trust. It is a framework that, if its

commitments are upheld, can enable us to move beyond division and prejudice and toward a more democratic, prosperous, and peaceful OSCE region. Let us resolve to stand with victims of oppression and with all who yearn to exercise their human rights. Together, we can faithfully implement our shared Helsinki commitments and help forge an ever better future for all.

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 December 3, 2015, as Helsinki Human Rights Day. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities reflecting our steadfast dedication to human rights and democratic values. I also call upon the governments and peoples of all other signatory states to renew their commitment to comply with the principles established and consecrated in the Helsinki Final Act.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, 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.

Presidential Documents

Proclamation 9376 of December 2, 2015

International Day of Persons With Disabilities, 2015

By the President of the United States of America

A Proclamation

The United States has long been a leading voice for the rights of persons with disabilities, and we join the international community in expressing our support for them in all they do and in recognizing them as the valuable members of society that they are. This year, as we celebrate the 25th anniversary of the passing of the Americans with Disabilities Act (ADA)—landmark legislation that helps ensure the places that make up our shared national life truly belong to everyone—we also recognize that protecting the rights of those with disabilities is not just an American ideal, but a cornerstone of our work to ensure human rights around the globe. On International Day of Persons with Disabilities, we rededicate ourselves to building a fairer and more accessible world and to upholding the fundamental dignity and respect of all people.

A quarter-century ago, our Nation marked a milestone in the long march toward achieving equal opportunity for all with the passage of the ADA. A result of quiet persistence and perseverance coupled with passionate and vocal advocacy, this Act showed the world our full commitment to the rights of people with disabilities, and in these past 25 years, we have built on the foundation of equality laid by this law. The Affordable Care Act also guarantees people with disabilities a basic but fundamental protection—that they can no longer be denied access to health insurance due to a pre-existing condition. Additionally, my Administration has supported increasing funding for the Individuals with Disabilities Education Act (IDEA) grants, which would boost our efforts to provide every child living with a disability with a quality public education. And this year, the White House hosted a series of events commemorating IDEA's 40th anniversary to highlight the importance of inclusion and of recognizing the talents of all Americans in every aspect of society.

Each day, our founding values of equality and opportunity guide our work to forge a bright future for people with disabilities. Serving to protect these ideals are our brave men and women in uniform who give of themselves for us all, and when they return home with wounds of war, seen or unseen, it is our sacred obligation to ensure they can take full advantage of the freedoms they fought so hard to defend. That is why my Administration has worked to provide our country's veterans who have disabilities with access to timely, quality health care and the tools needed to convert their military skills into careers in civilian life.

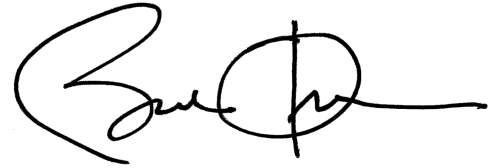
As we continue working to expand the promise of America to all our people, we must remember that the fight for disability rights should not stop at our Nation's shores. The United States continues to uphold our global commitment to the international disability community. During my first year in office, the United States signed the Convention on the Rights of Persons with Disabilities, an international declaration, now signed by 160 countries, that recognizes the inherent worth of people with disabilities and urges equal protection and benefits before the law. I am disappointed that the Senate blocked ratification of the Convention, and I continue to

call on these elected leaders, all of whom represent Americans with disabilities, to provide their advice and consent to ratification. A pillar of American leadership is our profound respect for the human dignity of all people, and it is imperative that we reach for a day when all of the more than 1 billion people of the world who live with a disability can enjoy the same rights afforded to those living here at home.

Our pursuit of equal rights for those with disabilities is not over. Today, we stand on the shoulders of generations who fought for better laws, demanded better treatment, and who, by being good, decent people and hard workers, proved to the world that having a disability should not force individuals into the margins of society. On this day, let us honor the efforts of those who agitated for the respect and dignity of all by picking up the inextinguishable torch of equality and carrying it forward into a future that recognizes the incredible talents and skills of people with disabilities. Together, we can secure a tomorrow in which all people know no limits but the scope of their dreams.

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 December 3, 2015, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, 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 main text block.

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